

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

David Xiqui Vasquez v. The Province LLC; Paul Reddick
Santa Clara County Superior Court

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 shall be memorialized by 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 Defendants The Province, LLC and Paul Reddick (collectively “Defendants”) and Plaintiff David Xiqui Vasquez (“Plaintiff”), for himself and on behalf of the State of California, (Defendants and Plaintiff as defined herein, are sometimes collectively referred to as the “Parties.”) Subject to the Court’s subsequent approval of the Settlement, this Agreement shall be effective once fully executed by the Parties.

The Parties agree that the Action shall be, and hereby is, ended, settled, resolved, and concluded by agreement of Defendants to pay the total sum of Seventy-Seven Thousand, Five Hundred and Zero Cents (\$77,500.00) for settlement of the Action (as defined below), which shall be fully inclusive to resolve the Action, including but not limited to Plaintiff’s Counsel’s attorneys’ fees and costs and the 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) “Action” shall refer to Plaintiff’s lawsuit, which will be filed after execution of this

Agreement, entitled *David Xiqui Vasquez v. The Province, LLC*, Santa Clara County Superior Court Case No. [to be determined].

- (b) “Aggrieved Employees” is defined as all current and former hourly or non-exempt employees who worked for Defendants in California at any time during the Release Period (as defined herein).
- (c) “Court” means the Superior Court for the State of California, Santa Clara County.
- (d) “Counsel for Defendants” is:

Jenn Protas, Esq.
Hoge Fenton
55 South Market St., Suite 900
San Jose, CA 95113
Phone: 408-947-2435
Email: Jenn.Protas@hogefenton.com

- (e) “Effective Date” means the date the Court has signed an order approving the motion or joint stipulation of settlement for approval of this PAGA Settlement, and enters an order thereon.
- (f) “Gross Settlement Amount” refers to the total maximum sum of Seventy-Seven Thousand, Five Hundred and Zero Cents (\$77,500.00), which shall be paid by Defendant to fund the Settlement, and from which all settlement payments for the Net Settlement Amount, Court approved attorneys’ fees and costs, and Settlement Administration Costs shall be paid.
- (g) “Net Settlement Amount” means the total sum available for payment of PAGA penalties to the Aggrieved Employees and the LWDA after deducting Plaintiff’s Counsel’s fees and costs, and costs of administration, collectively referenced in Section 3.01(a-d), from the Gross Settlement Amount.
- (h) “Plaintiff’s Counsel” is:

Harout Messrelian, Esq.
Messrelian Law Inc.
500 N Central Avenue
Glendale, CA
Tel. (818) 484-6531

Fax. (818) 956-1983
Email: hm@messrelianlaw.com

- (i) “Release Period” means October 14, 2020 through April 19, 2022.
- (j) “Released Claims” means any and all claims, rights, demands, liabilities and causes of action for civil penalties under the PAGA that arose during the Release Period, that were alleged or pled in the Action or that could have been alleged or pled based on the facts alleged in the Action, including but not limited to the following claims: (a) failure to pay all minimum wages owed; (b) failure to pay all overtime and/or double time wages owed; (c) failure to pay all overtime and/or double time wages owed at the correct rate(s) of pay due to bonus payments, incentive compensation, or otherwise; (d) failure to provide compliant meal periods, and premium pay for non-compliant meal periods; (e) failure to authorize and permit complaint rest periods, and provide premium pay for non-complaint rest periods; (f) failure to provide accurate, itemized wage statements and/or otherwise maintain accurate records; (g) failure to timely pay wages during employment and/or upon separation of employment; (h) failure to indemnify and/or reimburse for all reasonable and necessary business expenses; (i) all claims for PAGA penalties for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories described above, including failure to pay sick pay and provide Worker’s Compensation coverage; and (j) all other claims under the Private Attorneys General Act that were or could have been premised on the facts, claims, causes of action or legal theories described above pursuant to the IWC Wage Order(s) and/or California Labor Code, including but not limited to California Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 232, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2698, 2699, 2800, 2802, and 3700.5.
- (k) “Released Parties” means Defendants and each of their parents, subsidiaries and related entities, owners, officers, directors, shareholders, persons, employees, including but not limited to agents, servants, representatives, members, attorneys, insurers, re-insurers,

assigns, and affiliates and any and all other entities with whom they have been, are now, or may hereafter be affiliated, and any of their affiliated companies, predecessors, successors and assigns, as well as their past or present owners, officers, directors, agents, representatives, attorneys, insurers, re-insurers, assigns, or employees, as well as any individual or entity that could be jointly liable with Defendants for any of the Released Claims.

- (l) “Settlement Administrator” refers to [to be determined by the parties]
- (m) “Settlement” or “Agreement” refers to the settlement of the PAGA claim reached by the Parties of the Action, as set forth herein.

Article II.

Background.

Section 2.01 Background.

- (a) On October 14, 2021, Plaintiff mailed Defendants and the Labor Workforce Development Agency notice of alleged Labor Code and IWC Wage Order(s) violations that allegedly subjected Defendants to penalties under PAGA.
- (b) Subsequently, the Parties engaged in an extensive investigation that included an exchange of applicable policy documents, key data points regarding the size and makeup of the putative group, and a significant sampling of employee time and pay records.
- (c) The Parties attended a private mediation on April 19, 2022, with private mediator Judge Jamie Jacobs-May, which resulted in a settlement that was accepted by the Parties that day. Pursuant to the agreement of the Parties at mediation, Plaintiff is to file a lawsuit alleging one cause of action for PAGA penalties in order to gain approval of the PAGA settlement.

Article III.

Approval and Implementation of Settlement.

Section 3.01 Allocation of the Gross Settlement Amount.

The Parties will cooperate in obtaining through written stipulation or unopposed motion or *ex parte* application, if required, an Order from the Court approving the payment of the Gross Settlement Amount as follows:

(a) Plaintiff's Attorneys' Fees. Plaintiff's Counsel may request and be paid up to 33 1/3% of the Gross Settlement Amount or Twenty-Five Thousand, Eight Hundred Thirty-Three and Thirty-Three Cents (\$25,833.33) for attorneys' fees ("Plaintiff's Attorneys' Fees.") If Plaintiff's counsel's request for 33 1/3% of the Gross Settlement Amount is not approved and/or is reduced by the Court, any amount not approved and/or reduced by the Court will be included in the Net Settlement Amount to be paid to the Aggrieved Employees. Defendants agree not to oppose a fee request by Plaintiff's counsel in the foregoing amount.

(b) Litigation Costs. Plaintiff's Counsel may request up to Ten Thousand Dollars and Zero Cents (\$10,000.00) of the Gross Settlement Amount as reimbursement for actual expenses incurred in the Action ("Litigation Costs.") If Plaintiff's counsel's request for reimbursement of Litigation Costs is not approved and/or is reduced by the Court, any amount not approved and/or reduced by the Court will be included in the Net Settlement Amount to be paid to Aggrieved Employees. Defendants agree not to oppose a request for reimbursement of Litigation Costs not exceeding the foregoing amount.

(c) Administration Costs. Plaintiff's Counsel may request up to Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) of the Gross Settlement Amount as payment to the Settlement Administrator for costs incurred by the Settlement Administrator in connection with the Settlement, including mailing of the Notice of PAGA Settlement described herein ("Settlement Administration Costs"). To the extent the Settlement Administration Expenses exceed this amount, they shall be paid from the Gross Settlement Amount; to the extent they fall below this amount, they shall be included in the Net Settlement Amount to be paid to the Aggrieved Employees.

(d) Net Settlement Amount. The Net Settlement Amount shall be determined by

deducting Plaintiff's Attorney's Fees, Litigation Costs, and Settlement Administration Costs as set forth in section 3.01(a), (b), and (c) from the Gross Settlement Amount. The Net Settlement Amount shall be distributed as set forth below in section 3.04(b).

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 and 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 Court Approval.

The Parties will seek the Court's approval of the PAGA settlement, and the payment of penalties as described in this Agreement by way of a stipulation or unopposed motion or *ex parte* application to be filed by Plaintiff's Counsel or as directed by the Court. Pursuant to California Labor Code section 2699(1)(2) and as required under PAGA, Plaintiff also will submit a copy of this Agreement to the Labor and Workforce Development Agency at the same time it is submitted to the Court. The Court's approval of the payment of the Gross Settlement Amount as described in this Agreement shall be embodied in a written Order.

Section 3.03 Notice to Aggrieved Employees.

(a) Notice. Notice shall be provided to the Aggrieved Employees in the following manner:

- (1) No later than ten (10) calendar days after the Effective Date, Defendants shall provide the Settlement Administrator with a list of all Aggrieved Employees (hereinafter the "Aggrieved Employees List"). The Aggrieved Employees List shall state the first name and last name in separate columns for each Aggrieved Employee; the last known home address for each Aggrieved Employee; each Aggrieved Employee's social security number, and each Aggrieved Employee's respective number of pay periods worked for

Defendants during the Release Period based on Defendants' records.

- (2) The Settlement Administrator shall utilize the United States National Change of Address ("NCOA") database and also perform an *Accurint* or similar skip tracing process to determine the best most recent addresses for the Aggrieved Employees prior to mailing the notices and settlement checks.
- (3) No later than ten (10) calendar days after Defendants provide the Aggrieved Employees List and deposits the Gross Settlement Amount (see below for timing) with the Settlement Administrator, the Settlement Administrator shall mail the Notice of PAGA Settlement (attached hereto as **Exhibit "A"**) together with a settlement payment to all Aggrieved Employees by first-class United States mail, postage prepaid, with directions to the Postmaster to forward the Notice of PAGA Settlement and return all undeliverable Notices to the Settlement Administrator. For each Notice of PAGA Settlement that is returned as undeliverable, the Settlement Administrator shall promptly attempt to locate the Aggrieved Employee by performing an additional skip trace and shall re-mail the Notice and settlement check no later than ten (10) days following receipt of the undeliverable Notice.

Section 3.04 Settlement Payment Procedures.

(a) Deposit of Gross Settlement Amount with Settlement Administrator.

No later than thirty (30) calendar days after the Effective Date, Defendants shall deposit the Gross Settlement Amount with the Settlement Administrator.

(b) PAGA Payments.

The total sum available for payment of PAGA penalties (the "Net Settlement Amount") shall be calculated by deducting Plaintiff's Attorneys' Fees, Litigation Costs, and Settlement

Administration Costs, collectively referenced in Section 3.01(a), (b), and (c) from the Gross Settlement Amount.

The Net Settlement Amount will be subdivided as follows: 75% of the payment will be paid to the Labor and Workforce Development Agency and 25% will be paid to Aggrieved Employees. The 25% of the Net Settlement Amount payable to the Aggrieved Employees will be divided among the Aggrieved Employees based on the following formula:

Twenty-Five Percent of the Net Settlement Amount shall be divided by the total pay periods worked for Defendants by all Aggrieved Employees during the Release Period to yield the "Employee Settlement Share Value." Each Aggrieved Employee shall be paid their individual total pay periods worked for Defendants during the Release Period multiplied by the Employee Settlement Share Value.

All Aggrieved Employees who cash their settlement check may receive an IRS Form 1099 for their portion of the settlement, if deemed required by the Settlement Administrator (in compliance with IRS guidelines).

The settlement checks issued to Aggrieved Employees shall remain valid for one hundred eighty (180) days. Any settlement checks remaining uncashed after one hundred eighty (180) days shall cause that Aggrieved Employee's payment to be distributed to Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code section 1500 et seq., for the benefit of that Aggrieved Employee. The Parties agree that this disposition results in no "unpaid residue" under California Civil Procedure Code section 384, as the entire Net Settlement will be paid out to Aggrieved Employee. Therefore, Defendants will not be required to pay any interest on said amount. In the event that an Aggrieved Employee's Individual Settlement Payment is distributed to the Controller of the State of California, the terms of the final judgment and the Release of Claims will nevertheless be binding upon that Aggrieved Employee.

(a) Plaintiff's Attorneys' Fees and Litigation Costs.

No later than Forty-Five (45) days after the Effective Date, the Settlement Administrator shall pay the court approved Plaintiff's Attorneys' Fees and Litigation Costs to Plaintiff's Counsel.

Any Plaintiff's Attorneys' Fees or Litigation Costs awarded to Plaintiff's Counsel by the Court shall be deducted from the Gross Settlement Amount for the purpose of determining the Net Settlement Amount. The "future" aspect of these amounts include, without limitation, all time and expenses expended by Plaintiff's Counsel in defending the Settlement and securing Approval of the Agreement (including any appeals therein). There will be no additional charge of any kind to the Aggrieved Employees or request for additional consideration from Defendant for such work. This amount shall include all attorneys' fees, litigation costs, and expenses for which Plaintiff and Plaintiff's Counsel could claim under any legal theory whatsoever.

(b) Settlement Administrator Expenses.

Upon completion of the Settlement Administrator's duties under the Agreement, the Settlement Administrator shall pay itself its actual costs in administering the settlement, up to the amount allocated to it for Settlement Administration Expenses.

Section 3.05 Order Approving Settlement and Judgment.

Plaintiff and Defendants will jointly submit, with the documents asking the Court to approve the settlement and this Agreement, an order based on the Settlement to be entered by the Court granting approval of the PAGA penalties and retaining jurisdiction over all matters relating to the administration, consummation, enforcement, and interpretation of the terms of this Agreement and closing the case after submission of proof by the administrator of the payment of all funds enumerated in the Settlement.

Article IV.

Limitations On Use Of This Settlement.

Section 4.01 No Admission.

Defendants deny liability for any claims alleged by Plaintiff on his own behalf or on behalf of the State of California and any of its agencies, including but not limited to the Department of Industrial Relations, Division of Labor Standards Enforcement, and Labor Workforce and Development Agency, and the Aggrieved Employees upon any claim or cause of action. This Agreement does not constitute, and is not intended to constitute, an admission by Defendants as to the merits, validity, or accuracy of any of the allegations or claims made against it in the Action.

Nothing in this Agreement, 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 Agreement, 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 Agreement, 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 Agreement may be used in any proceeding before the Court that has as its purpose the interpretation, implementation, or enforcement of this Agreement or any orders or judgments of the Court entered in connection with the Agreement.

None of the documents produced or created by Plaintiff or Aggrieved Employees in connection with the claims or claims resolution procedures constitute, and they are not intended to constitute, an admission by Defendants 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.

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 counsel in the Action 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 and to secure its approval by the Court.

Section 4.03 Nullification.

- (a) If the Court should for any reason refuse 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) If the Court does not approve the payment of PAGA penalties as described in this Agreement, the Parties agree to meet and confer to address the Court's concerns. If the Parties are unable to agree on a resolution, the Parties agree to seek the assistance of mediator Judge Jacobs-May to resolve any disputes.
- (c) 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 Plaintiff's and Aggrieved Employees' Release of PAGA Claims

Upon the final approval by the Court of this Settlement, Plaintiff and each Aggrieved Employee, shall, for the Release Period, fully release and forever discharge Defendants and their

present and former officers, directors, employees, shareholders, agents, trustees, representatives, attorneys, insurers, parent companies, subsidiaries, divisions, affiliates, predecessors, successors, assigns, including any individual or entity that are alleged to be or could be jointly liable with Defendants (the foregoing are collectively referred to hereafter as the “Releasees”) from the Released Claims. In event Defendants fail to deposit the Gross Settlement Amount with the Settlement Administrator, this Release and Waiver of Claims shall not become effective.

Miscellaneous Provisions.

Section 5.02 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 5.03 Amendments.

The terms and provisions of this Agreement may be amended only by a written agreement that is both (a) signed by the Plaintiff and Defendants 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 5.04 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 5.05 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 5.06 Entire Agreement.

This Agreement and the individual settlement agreement contain the entire understanding of the Parties hereto in respect of the subject matter contained herein. This Agreement and the individual settlement agreement supersede all prior agreements and understandings among the Parties hereto with respect to the settlement of the Action.

Section 5.07 Waiver of Compliance.

Any failure of any Party, 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 5.08 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. A scanned or faxed signature shall be valid as an original signature. 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 5.09 Attorneys' Fees and Costs.

Except as expressly provided herein, Defendants and Plaintiff shall each bear their own attorney's fees and costs.

Section 5.10 Dispute(s).

Should any dispute(s) arise among the Parties or their respective counsel regarding the implementation or interpretation of this Agreement, Plaintiff's Counsel and Defendants' counsel shall meet and confer in an attempt to reach a resolution. If the Parties are unable to reach a resolution, they agree to submit any such dispute(s) to the Court. Except as expressly provided herein and the individual settlement agreement, this Agreement has not been executed in reliance upon any other written or oral representations or terms, and no such extrinsic oral or written representations or terms shall modify, vary or contradict its terms. In entering into this Agreement, the Parties agree that this Agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and enforced under the laws of the State of California, both in its procedural and substantive aspects, without regard to its conflict of laws provisions. Any claim arising out of or relating to the Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior Court of the State of California for the County of Santa Clara. The foregoing is only limited to disputes concerning this Agreement and in no way limits or negates the enforceability and effect of any underlying arbitration agreements. Plaintiff, on his own behalf and on behalf of the Aggrieved Employees, and Defendants participated in the negotiation and drafting of this Agreement and had available to them the advice and assistance of independent counsel. As such, neither Plaintiff nor Defendant may claim that any ambiguity in this Agreement should be construed against the other.

Section 5.11 Fair Settlement

Plaintiff, Defendants, Plaintiff's Counsel, and Defendants' Counsel believe that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiation, taking into account all relevant factors, current

and potential, and is consistent with public policy, and fully complies with applicable law.

Section 5.12 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 5.13 Waiver of Appeals.

The Parties waive all appeals from the Court's approval of the PAGA penalties, unless the Court materially modifies the settlement and/or the PAGA penalties.

Section 5.14 Continuing Jurisdiction.

The Court shall retain exclusive and continuing equity jurisdiction of this Action over all Parties and Aggrieved Employees to interpret and enforce the terms, conditions and obligations of this Agreement.

Section 5.15

Article VII.

Publicity

Section 7.01 Publicity.

Plaintiff and his counsel agree that they have not and will not publish the Agreement. In response to any inquiries Plaintiff will state that "the case was resolved and it was resolved confidentially." Plaintiff's Counsel shall not report the Agreement or its content in any medium or in any publication, shall not post or report anything regarding the claims of Plaintiff or the Aggrieved Employees on their website, and shall not contact any reporters or media regarding the Agreement or its content. However, Plaintiff's attorneys are authorized to make disclosures to the Court and the LWDA for the purposes of obtaining the approval of the settlement. This disclosure

is limited to court filings and electronic submission of settlement documents to the LWDA and neither Plaintiffs nor their counsel or representatives are permitted to disseminate or publish, distribute, or discuss the information provided to the Court in those filings outside the filings themselves and any hearing held on those filings, unless ordered otherwise by the Court.

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

APPROVED AND ACCEPTED.

Dated: 4/19/2022 | 6:09 PM CDT, 2022

DocuSigned by:
By: David Xiqui
C0B711D4424047B...
David Xiqui Vasquez

Dated: 4/19/2022 | 4:08 PM PDT, 2022

The Province, LLC
DocuSigned by:
By: Paul Reddick
7784772EE244425...
Printed Name: Paul Reddick
Title: Owner/CEO, on behalf of himself
individually and on behalf of The Province, LLC