

SETTLEMENT AND RELEASE AGREEMENT

This Settlement Agreement under the California Labor Code Private Attorneys General Act of 2004 ("PAGA") is made by and between Plaintiff Ralph Joseph Licup ("Plaintiff"), on behalf of himself and on behalf of the State of California, on the one hand, and Defendant Neil Patel Digital LLC ("Defendant"), on the other, subject to approval by the Court in accordance with California Labor Code section 2699(I)(2), and subject to the following terms and conditions:

I. 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" means the civil action entitled *Ralph Joseph Licup v. Neil Patel Digital LLC*, Superior Court of California, County of San Diego, Case No. 37-2022-00034942-CU-OE-CTL.
- B. "Agreement," "Settlement," or "Settlement Agreement" means this Settlement Agreement.
- C. "Complaint" means the Complaint filed by Plaintiff on or about August 30, 2022 in the Action, and any amendments thereto.
- D. "Court" means the Superior Court for the State of California, County of San Diego.
- E. "Covered Period" means the period of time from on or about August 30, 2021 to the date the Court enters an order granting approval of the Settlement.
- F. "Defendant" means Neil Patel Digital LLC.
- G. "Defendant's Counsel" means Summer J. Wynn and Haylee Saathoff of Cooley LLP.
- H. "Effective Date" means two court days after: (a) sixty-one (61) calendar days after the entry of the Court's Order granting approval of the Settlement, if no timely motions for reconsideration and no appeals or other efforts to obtain review have been filed; or (b) in the event that an appeal or other effort to obtain reconsideration or review has been initiated, the date sixty-one (61) calendar days after such appeal or other reconsideration or review has been finally concluded in favor of the Order granting approval of the Settlement and the Order granting approval of the Settlement is no longer subject to review, whether by appeal, petitions for rehearing, petitions for rehearing en banc, petitions for certiorari, or otherwise.
- I. "LWDA" means the California Labor & Workforce Development Agency.
- J. "LWDA Payment" means the portion of the payment from the Net Settlement Amount to be paid to the LWDA under the Settlement Agreement.
- K. "Net Settlement Amount" means the amount from the Total Settlement Amount that is available for distribution as the LWDA Payment and Settlement Shares to the PAGA Settlement Group Members after the deductions set forth in Sections IV(E) and IV(J). The entire Net Settlement Amount will be distributed to the LWDA and PAGA Settlement Group Members for settlement of PAGA penalties.
- L. "Order" means the Order granting approval of the Settlement; the Parties will submit a proposed Order Approving Settlement Agreement, in the form evidenced by Exhibit A to this Agreement, for consideration by the Court.

- M. "PAGA" means the Labor Code Private Attorneys General Act of 2004, California Labor Code section 2698 et seq.
- N. "PAGA Settlement Group Members" means hourly paid or non-exempt employees employed by Neil Patel Digital LLC in California during the Covered Period.
- O. "Plaintiff" means Ralph Joseph Licup.
- P. "Plaintiff's Counsel" means Justin Lo of Work Lawyers, PC.
- Q. "Parties" means Plaintiff and Defendant.
- R. "Released PAGA Claims" means any and all claims under PAGA, including but not limited to any and all claims for penalties, attorneys' fees, and/or costs, that arise from or relate to the allegations in the Complaint and the allegations in Plaintiff's letter to the LWDA dated June 24, 2022, including but not limited to alleged failure to provide meal and rest periods, alleged failure to provide complete and accurate wage statements, alleged failure to maintain accurate records, alleged failure to pay all overtime wages, alleged failure to pay all minimum wages, alleged failure to timely pay wages during employment, alleged failure to pay all wages on separation, and alleged failure to reimburse necessary expenditures and/or alleged violation of California Labor Code sections 201, 202, 203, 204, 210, 226, 226.7, 227.3, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 2800, 2802 et seq., and/or violation of Industrial Welfare Commission Wage Order No. 5.
- S. "Released Parties" means Defendant Neil Patel Digital LLC and all of its present and former parent companies, subsidiaries, divisions, partnerships, or affiliates, and each of its respective present and former employees, officers, directors, partners, members, agents, attorneys, administrators, representatives, shareholders, predecessors, successors, and assigns.
- T. "Releasing Parties" means Plaintiff, the LWDA, and all PAGA Settlement Group Members, and each of their predecessors, successors, and assigns.
- U. "Settlement Administrator" means the administrator Phoenix Settlement Administrator or a comparable vendor approved by the Court.
- V. "Settlement Share" means the portion of the Net Settlement Amount allocable to each PAGA Settlement Group Member as consideration for the settlement and release of claims for penalties under PAGA as provided by this Agreement.
- W. "Total Settlement Amount" means the total amount to be paid by Defendant as provided by this Agreement.

II. PROCEDURAL BACKGROUND

- A. On or about April 15, 2022, Plaintiff executed a separation and release agreement with Defendant whereby Plaintiff agreed to a general release of any and all claims, and received payment from Defendant in exchange for that agreement.
- B. On or about June 24, 2022, Plaintiff served a notice letter to the LWDA, pursuant to California Labor Code section 2699.3, to notify the LWDA of alleged Labor Code violations. The LWDA did not respond to Plaintiff's correspondence.

- C. On or about August 30, 2022, Plaintiff filed the Action via a Complaint for Civil Penalties Under PAGA in the Superior Court of California, County of San Diego, Case No. 37-2022-00034942-CU-OE-CTL. Plaintiff sought, on behalf of the State of California, to represent himself and the PAGA Settlement Group Members.
- D. On or about October 21, 2022, Defendant filed an Answer in the Superior Court of California, County of San Diego, generally denying all of the claims and allegations in the Complaint and raising a number of affirmative defenses, including but not limited to the separation and release agreement executed by Plaintiff. Defendant maintains that Plaintiff's complaint is barred by the separation and release agreement, but has nevertheless agreed to enter into this Agreement for the sole purpose of avoiding motion practice and protracted litigation expenses.
- E. In or about December 2022, the Parties conducted an informal exchange of data and information, including, but not limited to, data regarding the number of PAGA Settlement Group Members within the Covered Period, as well as hire dates and last dates of work within the Covered Period, as applicable, for the PAGA Settlement Group Members. Defendant continued to informally provide updated data regarding the PAGA Settlement Group Members into January 2023. The data provided reflected approximately 26 PAGA Settlement Group Members and approximately 587 pay periods during the Covered Period. Following this informal exchange of information, the Parties engaged in negotiations directly with one another, which ultimately resulted in the Parties agreement to resolve this matter, as detailed in this Settlement Agreement.
- F. The Parties expressly acknowledge that this Agreement is entered into solely for the purpose of compromising significantly disputed claims and that nothing herein is an admission of liability or wrongdoing by Defendant. The Agreement's provisions, and all related drafts, communications, and discussions cannot be construed as or deemed to be evidence of an admission or concession of any point of fact or law by any person or entity and cannot be offered or received into evidence or requested in discovery in this Action or any other action or proceeding as evidence of an admission or concession. Nothing in this Agreement is intended or will be construed as an admission by Defendant that Plaintiff's claims in the Action have any merit or that it has any liability to Plaintiff or any of the PAGA Settlement Group Members. If for any reason the Agreement is not approved by the Court, it will be of no force or effect.

III. NO ADMISSION OF LIABILITY

- A. Defendant denies that it has engaged in any unlawful activity, has failed to comply with the law in any respect, or has any liability to any person or entity under the claims asserted in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission of liability or wrongdoing by Defendant. This Settlement and the fact that Plaintiff and Defendant were willing to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with the Settlement).
- B. Whether or not the Order becomes final and the Effective Date occurs, nothing in this Agreement, any document, statement, proceeding or conduct related to the Settlement, or any reports or accounting of those matters, will be construed as, offered or admitted in evidence as, received as, or deemed to be evidence of a presumption, concession, indication or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession or damage. If the Court does not approve the Settlement or enter the Order approving it for any reason, or if the Effective Date does not occur for any reason, Defendant shall retain all of its rights to object to the maintenance of the Action as a representative action or otherwise, and nothing in this Agreement or other papers or

proceedings related to the Settlement shall be used as evidence or argument by any party concerning whether the Action may properly be maintained as a representative action under PAGA.

- C. This Section and all other provisions of this Agreement notwithstanding, any and all provisions of this Agreement may be admitted in evidence and otherwise used in any and all proceedings to enforce any or all terms of this Agreement, or in defense of any claims released or barred by this Agreement.

IV. SETTLEMENT TERMS AND CONDITIONS

- A. **Stipulation for Settlement Only.** Consistent with this Agreement, Plaintiff will stipulate to the dismissal of the Action, and thus all claims alleged against Defendant, with prejudice. Plaintiff shall file the request for dismissal of the Action, with prejudice, within 10 court days of the Effective Date.
- B. **PAGA Settlement Group Members.** Defendant represents that there are approximately 26 individuals that compose the PAGA Settlement Group Members.
- C. **Total Settlement Amount.** Subject to the terms and conditions of this Agreement, the Total Settlement Amount is Thirty-Three Thousand Dollars and no cents (\$33,000). The Total Settlement Amount will cover (a) the LWDA Payment; (b) all Settlement Shares to PAGA Settlement Group Members pursuant to the Settlement (described in Section IV(F)); (c) Plaintiff's attorneys' fees, costs, and expenses related to the claims encompassed by this Agreement (which includes, but is not limited to, all such fees and costs incurred to date, as well as all such fees and costs incurred in documenting the settlement, securing court approval of the settlement including any and all submissions related thereto, providing notice to the LWDA (described in Section IV(K)(2)), administration associated with the Settlement, and obtaining a dismissal of the Action with prejudice (described in Section IV(A)); and (d) the Settlement Administrator's fees and expenses. In no event shall Defendant be required to pay any amount more than the Total Settlement Amount.
- D. **Modification Based on Increase in Pay Periods.** Defendant represents that, as of January 2023, there have been approximately 587 pay periods worked by the PAGA Settlement Group Members during the Covered Period. If the number of relevant pay periods increases by more than 20% (i.e., by more than 117 pay periods) through the date of the Order, then the Total Settlement Amount shall be increased on a proportional basis based on the pay period value for every pay period over a 20% increase. The pay period value shall be calculated by dividing the Total Settlement Amount by 587. The Parties agree that the pay period value equals \$56.22 per pay period (\$33,000 / 587 pay periods). For example, and for purposes of illustration only, if the number of relevant pay periods increases to 1,000 pay periods in the Covered Period, then the Total Settlement Amount shall be increased by \$16,641.12 (1,000 pay periods – 704 pay periods = 296 pay periods x \$56.22).
- E. **Attorneys' Fees and Costs.** Defendant will not oppose an application for attorneys' fees in an amount that does not exceed 33% of the Total Settlement Amount (i.e., \$11,000). Defendant will not oppose an application for up to \$1,000 in litigation costs. Plaintiff's Counsel will not seek, or be entitled to any attorneys' fees and/or costs related to the claims encompassed by this Agreement, other than those specified in this Agreement. Plaintiff's Counsel shall be solely and legally responsible to pay all applicable taxes on any payments made pursuant to this Section IV(E). The appropriate 1099 tax forms shall be provided by the Settlement Administrator to Plaintiff's Counsel for any payments made pursuant to this Section IV(E). Plaintiff's Counsel agrees to indemnify and hold Defendant harmless as to any tax liabilities imposed on or sought to be recovered against Defendant relating to or arising from any payments made pursuant to this Section IV(E).

- F. **Settlement Shares.** Subject to the terms and conditions of this Agreement, each PAGA Settlement Group Member will be allocated a Settlement Share from 25% of the Net Settlement Amount; the remainder of the Net Settlement Amount shall be paid to the LWDA, as described in Section IV(H).
- G. **Distribution of Settlement Shares to PAGA Settlement Group Members.** After deducting for the amounts for the LWDA Payment, the Settlement Administrator's fees and expenses, the incentive payment to Plaintiff, and attorneys' fees, costs, and expenses, the remainder of the Net Settlement Amount will be paid as Settlement Shares to each PAGA Settlement Group Member. The portion of the Net Settlement Amount available for distribution to PAGA Settlement Group Members (25% of the Net Settlement Amount) will be divided equally among all PAGA Settlement Group Members.
- H. **Payment to LWDA.** The Settlement Administrator will pay 75% of the Net Settlement Amount to the LWDA as its share of the Settlement attributable to civil penalties under Labor Code section 2699(i) (the "LWDA Payment").
- I. **Appointment of Settlement Administrator.** In connection with a joint submission to the Court for an order approving this Agreement, the Parties will propose a Settlement Administrator to distribute the Settlement Shares and other payments due under the Settlement, and otherwise administer the Settlement. In the event that the Settlement is not approved, Defendant will pay the Settlement Administrator's reasonable fees incurred as of that time. The Settlement Administrator, as a condition of appointment, will agree to be bound by this Agreement with respect to the performance of its duties and its compensation.
- J. **Payment to Settlement Administrator.** The Settlement Administrator will pay to itself out of the Total Settlement Amount its reasonable fees and expenses as approved by the Court. The Settlement Administrator's fees are estimated to not exceed \$3,000.
- K. **Procedure for Seeking Approval of Settlement.**
1. Plaintiff agrees to promptly seek approval of this Settlement by ex parte application, if allowed by the Court, or by noticed motion, if a noticed motion is required by the Court. Plaintiff also agrees to submit the application or motion seeking approval of this Settlement by no later than April 21, 2023, and reserve the Court's first available date for hearing the approval request. The Parties will cooperate in seeking approval of the Settlement pursuant to California Labor Code section 2699(l)(2). The Parties will submit a proposed order granting approval of the Settlement in the form evidenced by Exhibit A to this Agreement. The Parties further agree to fully cooperate in the drafting and/or filing of any documents reasonably necessary to be prepared or filed and shall take all steps that may be requested by the Court relating to the approval and implementation of the Settlement.
 2. Plaintiff shall submit a copy of the Settlement to the LWDA at the same time that the Settlement is submitted to the Court for approval pursuant to California Labor Code section 2699(l)(2). If Plaintiff fails to satisfy this condition in compliance with California Labor Code section 2699(l)(2), the Settlement shall be voidable at Defendant's option.
 3. If the Court does not grant the motion for approval and issue an Order approving the Settlement, under the specific terms requested, the Parties agree to meet and confer to determine whether resolution of the claims encompassed by the Settlement can be obtained in a manner consistent with the Court's concerns.

4. If the Court does not grant approval of the Settlement, or if the Court's approval of the Settlement is reversed or materially modified on appellate review, then the Settlement will become null and void. A modification of amounts payable in attorneys' fees or expenses, or the amount of the requested incentive payment, shall not be deemed a material modification of the Settlement.
- L. **Submission of Order to LWDA.** Within 10 calendar days after entry of the Order approving the Settlement, Plaintiff shall submit a copy of the Order in compliance with California Labor Code section 2699(l)(3). If Plaintiff fails to satisfy this condition in compliance with California Labor Code section 2699(l)(3), the Settlement shall be voidable at Defendant's option.
- M. **Compliance with All Required Notice.** Plaintiff's compliance with the notice procedures described in Sections IV(K)(2) and IV(L) shall constitute due and sufficient notice to the LWDA, and shall be deemed by the Parties to satisfy any requirement of due process. Nothing else shall be required of, or done by, the Parties, Plaintiff's Counsel, or Defendant's Counsel to provide notice of the Settlement.
- N. **No Right to Opt Out.** The Parties agree there is no statutory right for any PAGA Settlement Group Member to opt out or otherwise exclude themselves from the Settlement.
- O. **Payment of Settlement Shares to PAGA Settlement Group Members.**
1. Within 10 business days after the Effective Date, Defendant will provide to the Settlement Administrator the last known mailing addresses for each of the PAGA Settlement Group Members, for the purpose of the Settlement Administrator distributing the Settlement Shares by U.S. mail delivery of a check. This mailing address information will otherwise remain confidential and will not be disclosed to anyone. The Settlement Administrator will distribute the Settlement Shares pursuant to the timing outlined in Section IV(P).
 2. If a PAGA Settlement Group Member fails to cash the Settlement Share check within 180 calendar days after it is sent via U.S. mail, the Settlement Administrator will distribute the funds represented by the uncashed check(s) to the California State Controller's Office Unclaimed Property Fund, or alternatively to a single recipient designated by the Court in its discretion in connection with the Court's consideration and approval of the Settlement.
- P. **Timing of Settlement Payments.** Within 10 business days after the Effective Date, the Settlement Administrator will provide Defendant with wire transfer information. Within 10 business days after the Settlement Administrator provides Defendant with wire transfer information, Defendant will transfer the Total Settlement Amount to the Settlement Administrator via wire transfer. The Settlement Administrator will then distribute the payments required under this Agreement within 10 business days after Defendant transfers the Total Settlement Amount to the Settlement Administrator. No person or entity shall have any claim against Defendant, Defendant's Counsel, Plaintiff, Plaintiff's Counsel or any Settlement Administrator based on distributions and payments made in accordance with this Agreement. Defendant shall have no responsibility to distribute any payment of attorneys' fees or costs to any attorney or law firm that may claim entitlement to fees and costs under this Settlement Agreement or as a result of the Action.
- Q. **Waiver of Right to Appeal.** Provided that the Court's approval of this Settlement is consistent with the material terms of this Agreement, Plaintiff, Defendant, and their respective counsel hereby waive any and all rights to appeal the approval of the Settlement, and the Order therefore will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal,

appellate proceedings or post-judgment proceedings. If any appeal is taken, the time for consummating the Settlement (including making payments under the Settlement) will be suspended until after the Effective Date.

- R. **Release and Waiver of Claims.** Upon the Effective Date, Releasing Parties shall waive and forfeit, and be deemed to have fully, finally and forever released and discharged all Released PAGA Claims against all Released Parties.
- S. **No Injunctive Relief.** As part of this Settlement, Defendant shall not be required to enter any consent decree, nor shall Defendant be required to agree to any provision of injunctive relief.
- T. **Interim Stay of Proceedings.** The Parties agree to refrain from further litigation of this matter, except such proceedings necessary to implement and obtain entry of the Order granting approval of the Settlement. The Parties further agree that the mutual, voluntary cessation of litigation shall terminate if the Settlement is not approved by the Court.
- U. **Continued Jurisdiction.** After entry of the request for dismissal of the Action, with prejudice, the Court shall have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Agreement, (ii) Agreement administration matters, and (iii) such matters as may be appropriate under court rules or applicable law, or as set forth in this Agreement.
- V. **Confidentiality.** Neither Plaintiff nor his counsel shall engage in the release of any statements, press releases, or advertising relating to this Settlement or to Defendant, nor shall they make any comments or initiate any publicity of any kind related to this Settlement or Defendant. If, before the filing of the submission to the Court seeking approval of the Settlement, Plaintiff or his counsel discloses to anyone other than Plaintiff's financial advisors (a) that a settlement has been reached or (b) any of the terms of the Settlement except as required by law or to effect the Settlement, Defendant may rescind the Settlement, rendering it null and void.
- W. **Fair Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action reached through arms-length negotiations, through the assistance of a neutral mediator, taking into account all relevant factors, current and potential.
- X. **Agreement Constitutes a Complete Defense.** To the extent permitted by law, this Settlement Agreement may be pled as a full and complete defense to any action, suit, or other proceedings that may be ongoing, instituted, prosecuted, or attempted, with respect to the Released PAGA Claims, against the Released Parties.
- Y. **Miscellaneous Terms.**
 - 1. **Entire Agreement.** This Agreement contains the entire agreement between the Parties regarding this Settlement and the Released PAGA Claims and constitutes the complete, final, and exclusive embodiment of their agreement with respect to the subject matter hereof, and all prior or contemporaneous understandings, representations, and statements, oral or written, are merged into and superseded by this Agreement. No other promises or agreements, either expressed or implied, shall be binding unless signed in writing by Plaintiff and Defendant.
 - 2. **Attorney Authorization.** Plaintiff's Counsel and Defendant's Counsel warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant

to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement this Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties may seek the assistance of the Court to resolve such disagreement.

3. **Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their successors-in-interest.
4. **Agreement Binding on Successors.** This Agreement will be binding upon, and inure to the benefit of, the successors of the Parties.
5. **Applicable Law.** All terms and conditions of this Agreement will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.
6. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
7. **Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
8. **Grammar.** The neuter form of a pronoun shall be considered to include within its meaning the masculine and feminine forms of the pronoun, and vice versa.
9. **Execution in Counterparts.** This Agreement may be executed in counterparts which shall be deemed to be part of one original, and facsimile signatures and signatures transmitted by PDF shall be equivalent to original signatures. Signatures on this Agreement communicated by facsimile or other similar electronic transmission or a digital signature provided through DocuSign (or some other similar service) shall be considered an original signature, and the use of electronic signatures and the keeping of records in electronic form be granted the same legal effect, validity, or enforceability as a signature affixed by hand or the use of a paper-based record keeping system to the extent and as provided for in any applicable law including the Federal Electronic Signatures in Global and National Commerce Act, California digital signature regulations, or any other similar state laws based on the Uniform Electronic Transactions Act.

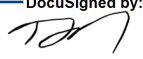
(CONTINUED ONTO NEXT PAGE)

V. EXECUTION

The Parties have duly authorized and caused this Agreement to be executed on the date(s) set forth below.

Dated: 4/13/2023

RALPH JOSEPH LICUP

DocuSigned by:

27D131AE12B348E...

Dated: April 7, 2023

NEIL PATEL DIGITAL LLC

By: Michelle Scully
Michelle Scully
VP, Human Resources

APPROVED AS TO FORM:

Dated: 4/7/2023

WORK LAWYERS, PC
Justin Lo

By: Justin Lo
DocuSigned by:

851114C5405E4A4...
Justin Lo
Attorney for Plaintiff

Dated: April 6, 2023

COOLEY LLP
Summer J. Wynn
Haylee Saathoff

By: Summer Wynn
Summer J. Wynn
Attorneys for Defendant Neil Patel Digital
LLC