

SETTLEMENT AGREEMENT

WHEREAS, plaintiff Jose Angel Lopez ("Plaintiff") filed a Complaint for Damages ("Complaint") against defendants Moreno & Associates, Inc. and Ernesto Moreno ("Defendants") (collectively with Plaintiff, the "Parties") on September 11, 2023 in *Lopez v. Moreno & Associates, Inc., et al.*, Santa Clara County Superior Court, Case No. 23CV422622 (the "Action");

WHEREAS, the Complaint includes causes of action for (a) failure to compensate for all hours worked, (b) failure to pay minimum wages, (c) failure to pay overtime, (d) failure to provide accurate itemized wage statements, (e) failure to pay wages when employment ends, (f) failure to pay wages owed every pay period, (g) failure to give rest breaks, (h) failure to give meal breaks, (i) penalties pursuant to the Private Attorneys General Act ("PAGA"), (j) failure to reimburse business expenses, (k) discrimination on the basis of physical disability, (l) failure to accommodate physical disability, (m) failure to engage in the interactive process, (n) retaliation, (o) failure to prevent discrimination and retaliation, (p) wrongful termination in violation of public policy, and (q) violation of Business & Professions Code section 172200;

WHEREAS, Plaintiff contends that he notified the Labor and Workforce Development Agency ("LWDA") on December 15, 2022 that he intended to pursue civil penalties against Defendants under PAGA;

WHEREAS, Plaintiff, on behalf of himself and other alleged allegedly aggrieved employees ("PAGA Employees"), and Defendants attended mediation on February 27, 2024 before the Hon. Brian Walsh (Ret.) of JAMS;

WHEREAS, the Parties negotiated at arm's length during mediation toward a settlement of the Action and reached the agreement reflected herein. The Parties agree that the terms and conditions of this Settlement Agreement ("this Agreement") are the result of lengthy, intensive arms-length negotiations supervised by an experienced employment law mediator. The Parties agree that the Agreement is entered into in good faith as to each PAGA Employee, and that the settlement is fair, reasonable and adequate as to each PAGA Employee; and

NOW THEREFORE, in consideration of the promises set forth below, and intending to be legally bound and acknowledging the sufficiency of the consideration set forth herein, the Plaintiff, individually and on behalf of himself and the PAGA Employees and the LWDA, on the one hand, and Defendants, on the other hand, agree on the following terms and conditions.

DEFINITIONS

The following definitions are applicable to this Agreement:

1. "Action" means the lawsuit entitled *Lopez v. Moreno & Associates, Inc., et al.*, Santa Clara County Superior Court case number 23CV422622.
2. "PAGA Employees" means all current and former hourly, non-exempt employees of Defendants in the state of California at any time during the PAGA Settlement Period (as defined below).
3. "Court" means the Superior Court for the State of California, County of Santa Clara.

4. "Effective Date" means the date of entry of the order of the court approving this settlement.
5. "Gross PAGA Settlement Amount" means the settlement amount of three hundred eighty thousand dollars and no cents (\$380,000.00) to be paid by Moreno & Associates, Inc. in full satisfaction of all Settled PAGA Claims.
6. "LWDA" means the California Labor and Workforce Development Agency.
7. "PAGA Penalties Fund" means the Gross PAGA Settlement Amount less the Attorneys' Fees and Costs, and Settlement Administrator Costs.
8. "Pay Period" shall mean any pay period under defendant Moreno & Associates, Inc.'s usual payroll practice in which aa PAGA Employee performed work for Moreno & Associates, Inc. on at least one day.
9. "Plaintiff's Counsel" means Messrelian Law Inc.
10. "Released Parties" means (a) Moreno & Associates, Inc., (b) each of its officers, directors, members, partners, owners, shareholders, employees (excluding PAGA Employees), former employees, agents, servants, attorneys, assigns, affiliates, independent contractors, volunteers, predecessors, successors, parent companies and organizations, and (c) J. Ernesto Moreno.
11. "Settlement Administrator" means Simpluris, Inc., whom the Parties have agreed to appoint to administer the Settlement.
12. "Settlement Approval" means the date on which the Court approves this Agreement with respect to the Settled PAGA Claims.
13. "Settled PAGA Claims" means all claims, charges, complaints, liens, demands, causes of action, obligations, and liabilities, whether known or unknown, against the Released Parties (as defined below) for civil penalties predicated on any of the alleged violations of the California Labor Code, Industrial Welfare Commission Wage Orders, regulations, and/or other provisions of law that were alleged or asserted in the Action or any PAGA notice(s) filed by the Plaintiff, or that could have been asserted in the Action or any PAGA notice(s) filed by the Plaintiffs based on any facts or allegations therein, with respect to PAGA Employees during the PAGA Settlement Period.
14. "Settlement Period" means the period commencing on December 15, 2021, and concluding on the date of Settlement Approval.

TERMS

15. Gross PAGA Settlement Amount. In consideration for Plaintiff's performance of the promises and representations described in this Settlement Agreement, and subject to all of the conditions of the Settlement being met, Moreno & Associates, Inc. will pay \$380,000.00 ("Gross PAGA Settlement Amount") to settle the Settled PAGA Claims. The Gross PAGA Settlement Amount includes Plaintiff's attorneys' fees, litigation costs and expenses, Settlement Administration Costs, and payments to PAGA Employees and the LWDA for their share of the PAGA Penalties Fund. No portion of the Gross PAGA Settlement Amount will be retained by, or revert to, Defendants.

16. Escalator Clause: Moreno & Associates represents that PAGA Employees worked approximately 11,100 pay periods between December 15, 2021 and February 15, 2024. If the actual number of pay periods for that same time period increases by more than 15%, then, at Defendants' option, either (a) the Gross PAGA Amount shall increase in the exact proportionate amount as any increase in the number of pay periods for that time period (i.e., if the number of pay periods increased by 16%, the Gross PAGA Amount shall increase by 1%), or (b) pay periods from December 15, 2021 forward shall be excluded from the PAGA Settlement Period until the number of pay periods in the PAGA Settlement Period is reduced to 12,765 (equivalent to 11,100 plus 15%).

17. PAGA Penalties Fund. The PAGA Penalties Fund will be paid to PAGA Employees and the LWDA in full satisfaction of the Settled PAGA Claims. Pursuant to PAGA, after deduction of attorneys fees, costs, and administrative expenses, seventy five percent (75%) of the PAGA Penalties Fund will be paid to the LWDA, and the remaining twenty-five percent (25%) will be paid to all PAGA Employees according to the following formula:

- 17(a) Defendants will calculate: (i) the total number of Pay Periods worked by each PAGA Employee during the Settlement Period, and (ii) the total number of Pay Periods worked by all PAGA Employees during the Settlement Period.
- 17(b) To determine each PAGA Employee's payment from the PAGA Penalties Fund, Defendants will use the following formula: $\text{Settlement Payment} = 25\% \text{ of PAGA Penalties Fund} \times [\text{Pay Periods Worked by Individual PAGA Employee During the Settlement Period} \div \text{Total Pay Periods Worked by All PAGA Employees during the Settlement Period}]$.

18. Attorneys' Fees and Costs. Defendants agree not to oppose or impede any application or motion by Plaintiff's Counsel for (a) attorneys' fees and costs not to exceed 35% of the Gross PAGA Amount (\$133,000.00) and (b) recovery of attorney's costs not to exceed \$10,500 both of which shall be paid from the Gross PAGA Amount as approved by the Court. Any portion of the attorneys' fees and costs not awarded to Plaintiff's Counsel will be added to the PAGA Penalties Fund.

19. Settlement Administration Costs. The Parties will retain Simpluris to serve as a third-party settlement administrator ("Settlement Administrator"). The Settlement Administrator will be responsible for establishing a qualified settlement fund ("QSF") and issuing payments and appropriate tax forms to PAGA Employees, the LWDA, Plaintiff, and Plaintiff's Counsel. The Settlement Administration Costs will be paid from the Gross PAGA Settlement Amount. Settlement Administration Costs are capped at five thousand dollars (\$5,000).

20. Court Approval of the Settlement and Distribution of Settlement Payments. The Parties will present this Settlement Agreement to the Court and the LWDA. The Parties will request that the Court issue an order and judgment of Settlement Approval, approving and incorporating by reference the terms and conditions of the Settlement Agreement (the "Order and Judgment") to the extent necessary to effectuate this Settlement Agreement. The Parties agree to work cooperatively, in good faith, and providing their best efforts to ensure this Settlement Agreement receives all necessary Court approval, including, but not limited to, filing or defending against any motions, appeals, or orders that would seek to invalidate this Settlement Agreement or any portion thereof.

21. List of PAGA Employees. Within 21 calendar days after entry of the Order and Judgment, Defendants will provide the Settlement Administrator a complete list of all PAGA Employees ("PAGA Employee List"). The PAGA Employee List will be formatted in Microsoft Office Excel or other format acceptable to the Settlement Administrator and will include each PAGA Employee's full name; most recent mailing address and telephone number known to Defendants; Social Security number; the number of Pay Periods worked during the Settlement Period; and any other relevant information needed to calculate settlement payment distributions.

22. Funding of the Settlement. Within 21 calendar days after Defendants receive notice of entry of the Order and Judgment, Moreno & Associates, Inc. will deposit the Gross PAGA Settlement Amount into the QSF to be established by the Settlement Administrator. Within 14 calendar days of the funding of the Settlement, the Settlement Administrator will issue payments to: (a) PAGA Employees; (b) the Labor and Workforce Development Agency; (c) Plaintiff's Counsel; and (d) itself. The Settlement Administrator, and not Defendants, will issue the appropriate tax forms for all payments issued under this Settlement.

23. Settlement Payments to PAGA Employees. The Settlement Administrator will issue each PAGA Employee one check for his or her share of the PAGA Penalties Fund along with an explanatory letter in a form substantially similar to that attached as **Exhibit A**. Prior to mailing, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via regular 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 PAGA Employee involved, and will then perform a single re-mailing. Checks will remain negotiable for 180 days. Any un-cashed checks which remain outstanding 180 days after the mailing of the Settlement checks by the Settlement Administrator will be tendered to the State Controller's Unclaimed Property Fund. All settlement payments to PAGA Employees will be treated as miscellaneous income for which a 1099 will be issued.

24. Settled PAGA Claims. Upon entry of the Order and Judgment, Plaintiff, as a representative for the State of California, and all PAGA Employees will be forever barred from pursuing against Released Parties any and all Settled PAGA Claims during the Settlement Period. PAGA Employees will not be deemed to have released any non-PAGA individual wage and hour claims by virtue of this Settlement.

25. No Right to Exclusion or Objections by Representative Action Members. Because this settlement resolves claims and actions brought pursuant to PAGA by Plaintiff acting as a proxy and as a Private Attorney General of, and for, the State of California and the LWDA, the Parties agree that no PAGA Employee has the right to exclude himself or herself from the Settlement. PAGA Employees will be bound by the terms of the Settlement Agreement, upon its approval by the Court, regardless of whether he or she cashes any payment received as a result of this Settlement. The Parties also agree that no PAGA Employee has the right to object to the terms of the Settlement Agreement.

26. No Credit Toward Benefit Plans. Payments to PAGA Employees as referenced herein will not be utilized to calculate any additional benefits under any benefit plans to which any PAGA Employee may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties'

intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which any PAGA Employee may be entitled under any benefit plans.

27. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or right herein released and discharged.

28. Nullification of Settlement Agreement. In the event that: (a) the Court does not approve the Settlement as provided herein, except as provided below; or (b) the Settlement does not become final for any other reason, then this Settlement Agreement, 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. A request by the Court for additional brief, or a preliminary denial pending additional briefing, shall not be deemed to trigger (i), above.

29. Judgment and Continued Jurisdiction. After entry of the Order and Judgment, the Court will have continuing jurisdiction solely for purposes of addressing: (a) the interpretation and enforcement of the terms of the Settlement, (b) settlement administration matters, and (c) such post-Judgment matters as may be appropriate under court rules or as set forth in this Settlement.

30. Entire Agreement. This Settlement Agreement constitutes the entirety of the Parties' settlement terms as to a claim for civil penalties under PAGA. No other prior or contemporaneous written or oral agreements may be deemed binding on the Parties.

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

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

33. Binding on Successors and Assigns. This Settlement Agreement will be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

34. California Law Governs. All terms of this Settlement Agreement will be governed by and interpreted according to the laws of the State of California.

35. Counterparts. This Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them, including electronic signatures (e.g., DocuSign), facsimiles, and scanned copies of the signature pages, will be deemed to be one and the same instrument.

36. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this Settlement after arm's-length and adversarial negotiations by experienced counsel and with the assistance of a skilled and experienced mediator. 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.

37. Waiver of Certain Appeals. The Parties agree to waive appeals; except, however, that Plaintiff may appeal any reduction to the attorneys' fees and costs below the amount they request from the Court, and either party may appeal any court order that materially alters the Settlement's terms.

38. Invalidity of Any Provision. Before declaring any provision of this Settlement Agreement 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 Agreement valid and enforceable.

39. Captions. The captions and section numbers in this Settlement Agreement are inserted for the reader's convenience, and in no way define, limit, construe or describe the scope or intent of the provisions of this Settlement Agreement.

40. Waiver. No waiver of any condition or covenant contained in this Settlement Agreement 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.

41. Enforcement Action. The Parties agree that following entry of the Final Judgment, this Agreement shall be enforceable by the Court and the Court shall retain exclusive and continuing jurisdiction of the Action over all parties and the PAGA Employees to interpret and enforce the terms, conditions, and obligations of the Agreement pursuant to California Code of Civil Procedure section 664.6. 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.

42. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement 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 and adversarial negotiations between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

43. Representation By Counsel. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and that this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed in full.

44. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.

45. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement Agreement 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.

46. Denial of Liability. The Parties expressly recognize that the making of this agreement does not in any way constitute an admission or concession of wrongdoing on the part of Defendants. 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 pendency of the Action, is intended by the Parties to, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in 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. Notwithstanding the foregoing, this agreement may be used in any proceeding in the Court that has as its purpose the interpretation, implementation, or enforcement of the Settlement or any orders or judgments of the Court entered into in connection therewith.

Dated: 05/07/2024

Jose Lopez
Jose Angel Lopez (May 7, 2024 19:58 PDT)
Jose Angel Lopez

Moreno & Associates, Inc.

Dated: _____

By Ernesto Moreno
Chief Executive Officer

Dated: _____

Ernesto Moreno

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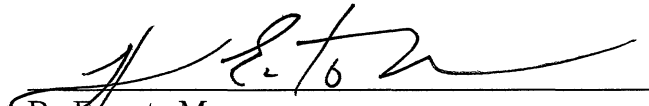
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Dated: _____

Jose Angel Lopez

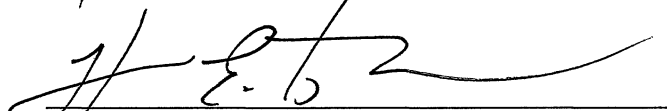
Moreno & Associates, Inc.

Dated: 5-7-2024



By Ernesto Moreno
Chief Executive Officer

Dated: 5-07-2024



Ernesto Moreno

NOTICE OF PAGA SETTLEMENT

Lopez v. Moreno & Associates, Inc., et al.
Santa Clara County Superior Court, Case No. 23CV422622

<<Simpluris Group, Inc.>>

[]

[]

Telephone: []

«Barcode» «BarcodeString»

SIMID «SIMID»

«FirstName»

«LastName»

«Address1» «Address2»

«City» «State» «Zip»

You are receiving this notice as a result of lawsuits brought on a representative basis under the Private Attorneys General Act, Labor Code § 2698 et seq. (“PAGA”) (“the Action”). The plaintiff in the Action is Jose Angel Lopez (“Plaintiff”) and the Defendants are Moreno & Associates, Inc. and Ernesto Moreno. (“Defendants”). The Action seeks civil penalties for purported violations of the California Labor Code on behalf of all non-exempt California employees who worked for Defendants during the Settlement Period of December 1, 2021 to _____ (the “PAGA Employees”). Defendants deny all claims and allegations in the Action, deny that they owe any penalties, and assert that they have fully complied with all applicable Labor Code provisions. The Court has not ruled on the merits of the claims or defenses at issue in the case. Nevertheless, to avoid further costs and time in litigating the Action, the parties have settled the case and the Court has approved the settlement and release of claims. By settling the Action, Defendants are not admitting that they have done anything wrong as of and subject to the occurrence of the Effective Date of the Settlement. Upon the Effective Date of this Settlement, Plaintiff, the State of California (including, but not limited to, the LWDA), and the PAGA Employees will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Settled PAGA Claims with respect to Defendants and each of their officers, directors, members, partners, owners, shareholders, employees (excluding PAGA Employees), former employees, agents, servants, attorneys, assigns, affiliates, independent contractors, volunteers, predecessors, successors, parent companies and organizations. The Settled PAGA Claims shall include all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the Settlement Period facts stated in the Operative Complaint and the PAGA Notice, including but not limited to: California Labor Code Sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 233, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1198, 2802, and 3700.5.

By Order dated <<court approval order date>>, the Superior Court of the State of California, Santa Clara County approved the Settlement of the PAGA claims.

According to the Defendant's records, you are a PAGA Employee and therefore entitled to a share of the settlement based upon the Court approved allocation. Enclosed with this Notice is your check for your share. The settlement check shall remain valid for 180 days. Thereafter, all uncashed checks shall be distributed to California State Controller's Office Unclaimed Property Fund with an identification of the amount of unclaimed funds attributable to each PAGA Employee.

Please Note: One hundred percent (100%) of your individual PAGA payment under this Settlement will be considered penalties and may be subject to local, state, or federal tax withholdings and will be reported to the IRS and state tax authorities. You should rely on your own tax advisors as to the tax consequences of your individual PAGA payment. Neither Plaintiff nor Defendant have made any representations or warranties regarding the taxation of your individual PAGA payment. Nothing within this notice or any other communication shall constitute or be construed or relied upon as tax advice within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended). Enclosed are the appropriate tax forms pertaining to your payment.

Do not call or write the Court or Office of the Clerk to ask questions about the settlement or to ask questions about the claims process. If you have any questions, you may call or write to Simpluris Group, Inc. (the Settlement Administrator) using the contact information at the top of this correspondence.