

PAGA SETTLEMENT AND RELEASE AGREEMENT

This PAGA Settlement and Release Agreement ("Agreement") is made and entered into by and between RISSE CONSTRUCTION, INC. ("Defendant") and JUAN JUAREZ ("Juarez") (Defendant and Juarez are collectively referred to as the "Parties"), for the following purposes and with reference to the following facts, and is subject to approval of the Court.

I. DEFINITIONS

1. "Action" means and refers to Juarez v. Risse Construction, Inc., et al., Sacramento County Superior Court, Case No. 23CV002971, and those claims identified by Plaintiff in his letters to the Labor Workforce Development Agency regarding Defendant.
2. "Covered Employees" means and refers to all current and former non-exempt employees of Defendant in California at any time between February 16, 2022 and September 23, 2024.
3. "Covered Employees' Settlement Proceeds" means and refers to the twenty-five percent (25%) of the Net Settlement Amount that shall be paid to the Covered Employees.
4. "Covered Period" means and refers to the period between February 16, 2022 and September 23, 2024.
5. "Court" means and refers to the Sacramento County Superior Court.
6. "Defendant" means and refers to Risse Construction, Inc.
7. "Defendant's Counsel" means and refers to Alexander M. Medina and Kyle W. Owen of Medina McKelvey, LLP.
8. "Effective Date" means and refers to the date the Court approves this PAGA Settlement and Release Agreement.
9. "Incentive Award" means and refers to monetary amounts to be paid to Plaintiff in the amount of up to \$5,000.
10. "LWDA" means the California Labor and Workforce Development Agency.
11. "LWDA Settlement Proceeds" means and refers to the seventy-five percent (75%) of the Net Settlement Amount that shall be paid to the Labor Workforce and Development Agency.
12. "Net Settlement Amount" means and refers to the Settlement Amount less the Plaintiff's Counsel's attorneys' fees and litigation costs, Incentive Award, and the Settlement Administrator costs.

13. "Notice" means and refers to the notice that will be sent to the Covered Employees after the Court's entry of its Order approving this PAGA Settlement and Release Agreement.

14. "Parties" means and refers to the Plaintiff and the Defendant, collectively.

15. "Plaintiff" means and refers to Juan Juarez.

16. "Plaintiff's Counsel" means and refers to John A. Lofton of Aiman-Smith & Marcy, P.C.

17. "Released Parties" means and refers to, Risse Construction, Inc., and its respective past, present, and future officers, directors, employees, board members, shareholders, attorneys, insurers, reinsurers, customers, partners, investors, members, representatives, predecessors, parent companies, subsidiaries, affiliates, divisions, successors, agents and principals, and its and their members, heirs, estates, executors, administrators, servants, insurers, attorneys, and assigns.

18. "PAGA Released Claims" mean any and all claims, debts, liabilities, demands, obligations, guarantees, damages, wages, benefits, penalties, interest, attorney's fees, costs, expenses, actions or causes of action, in law or equity, whether known or unknown, which have been or could have been asserted by each of the Plaintiff and/or any of the Aggrieved Persons and/or that could have been assessed upon and collected from the Released Parties under PAGA, based on the factual allegations in the Complaint, including, but not limited to, purported violations of California Labor Code §§ 201–204, 226, 226.7, 247.5, 510, 558, 1197, and IWC Wage Order No. 16-2001 (8 C.C.R. §11160) arising during the PAGA Period, from: failure to pay all wages owed, including minimum and overtime wages for all hours; failure to provide accurate, itemized wage statements; failure to maintain accurate records; failure to provide compliant rest periods; and failure to timely pay wages upon termination/separation.

19. "Settlement Administrator" means and refers to the entity that will administer this PAGA Settlement and Release Agreement and which will be mutually selected by the parties.

20. "Settlement Administrator Costs" means and refers to the fees and costs incurred or charged by the Settlement Administrator in connection with its duties under this Agreement, including but not limited to fees and costs associated with: (1) performing a national change of address search for Covered Employees; (2) establishing and maintaining the Qualified Settlement Fund for the disbursement of the Settlement Amount; (3) computing the amount of the settlement and other payments to be made from the Settlement Amount; (4) processing and mailing the settlement and other payments, including the Notice to the Covered Employees, under this Settlement and Release Agreement; (5) printing and providing Plaintiffs, Plaintiffs' Counsel and the Covered Employees with IRS 1099 forms as required by this Agreement and applicable law; (6) preparing, issuing, and filing any tax returns and information returns and other filings required by any governmental taxing authority or other governmental agency; and (7) for such other tasks as the Parties mutually agree upon or the Court orders the Settlement Administrator to perform.

21. "Settlement Amount" means and refers to the maximum settlement amount of Two Hundred Twenty Thousand Dollars (\$220,000) that Defendant will pay under this Agreement.

II. PROCEDURAL HISTORY

22. On February 16, 2023, Plaintiff Juarez submitted his PAGA claim notice to the LWDA notifying it of his claims against Defendant on behalf of himself and similarly aggrieved employees. On March 8, 2023, Plaintiff submitted an amended PAGA claim notice to the LWDA. On June 8, 2023, Plaintiff filed this Action in Sacramento County Superior Court on behalf of himself, the State of California, and other similarly aggrieved employees. The Action contained individual and PAGA-based claims concerning violations of Labor Code §§201–204, 226, 226.7, 247.5, 510, 558, 1197, and WC Wage Order No. 16-2001 (8 C.C.R. §11160).

23. Defendant denies Plaintiff's claims and allegations, denies any liability or wrongdoing of any kind associated with the claims alleged in the Action, and denies that Plaintiff can proceed with his claims on a representative basis.

24. The Parties have conducted a thorough investigation of the Action, including but not limited to conducting formal and informal discovery. On July 25, 2024, the Parties participated in a mediation before experienced mediator Michael Young, Esq., which resulted in the settlement of the Action.

25. Based on the foregoing and on their own independent investigation and evaluation, Plaintiff's Counsel is of the opinion that the settlement with Defendant for the consideration and on the terms set forth in this Agreement is fair, reasonable, and adequate and is in the best interest of the Plaintiff, the LWDA, and the Covered Employees in light of all known facts and circumstances, including the risk of significant delay, the uncertainty associated with litigation, the various defenses asserted by Defendant. Defendant and Defendant's Counsel also agree that the settlement is fair, reasonable, and adequate and in the best interest of the Plaintiff, the LWDA, and the Covered Employees.

26. The Parties agree that neither the Parties' settlement, nor this PAGA Settlement and Release Agreement, nor the acts to be performed or the orders to be entered pursuant to the terms of this Settlement and Release Agreement, shall be construed as an admission by Defendant of any wrongdoing, any violation of any statute or law, or any liability arising from the claims or allegations in the Action.

NOW, THEREFORE, in consideration of the promises and covenants set forth herein and other good and valuable consideration, receipt of which is acknowledged herein, it is hereby agreed by and between the Parties as follows:

III. TERMS OF SETTLEMENT

27. The financial terms of the settlement are as follows:

(a) **Settlement Amount:** The Parties agree that, subject to the Court's review and approval, Defendant will pay a total of Two Hundred Twenty Thousand Dollars (\$220,000) under this Agreement ("Settlement Amount"). This Settlement Amount is inclusive of the PAGA settlement payments to Plaintiff, the State of California, the Covered Employees, Plaintiff's Counsel's attorneys' fees and litigation costs, Plaintiff's Incentive Awards, and the Settlement Administrator costs. Defendant will have no other monetary obligations under this Settlement and Release Agreement and no portion of the Settlement Amount will revert to Defendant.

(b) **Pro Rata Increase:** For settlement purposes, Defendant represents that the total number of pay periods in the Covered Period is estimated to be 15,028. If the actual number of pay periods during the PAGA Period exceeds 15,028 by more than 10% (i.e., 16,530 pay periods or greater), the gross Settlement Amount shall be increased by the amount over that percentage. For example, if the actual pay periods increase by 15%, then the gross Settlement Amount shall be increased by 5%. However, Defendant may elect to shorten the Covered Period so that it ends at the time the number of Pay Periods reaches 16,530 Pay Periods.

(c) **Attorneys' Fees and Costs:** The Parties agree that, subject to the Court's review and approval, Plaintiff's Counsel will be paid a maximum of one-third of the Settlement Amount as attorneys' fees (\$73,333), plus its reasonable litigation costs (estimated to be no greater than \$12,000), based on actual costs to be submitted to the Court, both of which will be paid from the Settlement Amount. Defendant will not oppose a request for Court approval of these payments, provided they do not exceed these amounts. If the Court approves Plaintiff's counsel's payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Plaintiff's Counsel arising from any claim to any portion of the fees and expenses. Defendant agrees not to oppose any contention by Plaintiff's Counsel that attorneys' fees should be based on the common fund and/or catalyst theory.

(d) **Settlement Administrator Costs:** The Parties agree that the Settlement Administrator Costs shall be paid from the Settlement Amount and are not anticipated to exceed Five Thousand Dollars (\$5,000).

(e) **Incentive Award:** The Parties agree that, subject to the Court's review and approval, Plaintiff will request an Incentive Awards in the amount of Five Thousand Dollars (\$5,000).

(f) **Allocation of Net Settlement Amount:** After deducting the amounts specified in items (c) through (e) from the Settlement Amount, the balance remaining will form the Net Settlement Amount and will be paid to the LWDA and the Covered Employees as follows:

(i) Seventy-five percent (75%), estimated to be approximately Ninety-Three Thousand Five Hundred Dollars and Twenty-Five Cents (\$93,500.25), will be paid to the LWDA.

(ii) Twenty-five percent (25%) of the Net Settlement Amount, estimated to be approximately Thirty-One Thousand One Hundred Sixty-Six Dollars and Seventy-Five Cents (\$31,166.75) will fund the Covered Employees' Settlement Proceeds. Each Covered Employee's share will be based on the following formula: Each of the Covered Employees will receive a pro rata share of the Covered Employees' Settlement Proceeds based on the number of pay periods during the Covered Period each worked during the Covered Period as compared to the total pay periods of the entire Covered Period. Specifically, a total value per pay period will be derived by dividing the Covered Employees' Settlement Proceeds by the total number of pay periods that all the Covered Employees worked within the Covered Period, and each Covered Employee will have their respective number of pay periods multiplied by the total value per pay period to derive their respective share of the Covered Employees' Settlement Proceeds.

IV. RELEASE BY PLAINTIFFS AND COVERED EMPLOYEES

28. Plaintiff, and his representatives, agents, attorneys, heirs, administrators, successors, and assigns, and the Covered Employees, release all claims for PAGA penalties arising out of or directly related to the allegations in the Action, including but not limited to the PAGA Released Claims, individual PAGA claims, all PAGA claims asserted in Plaintiff's February 16, 2023, LWDA claim notice, and/or March 8, 2023, amended LWDA claim notice, interest, attorneys' fees, costs, and all other PAGA claims and penalties alleged in the Action based on the allegations in the Complaint for the entirety of the Covered Period ("Released Claims") and in particular the Covered Employees have released their right to participate in or bring a claim under the PAGA for said claims. Plaintiff acknowledges that he may discover facts or law different from, or in addition to, facts or law that Plaintiff now knows or believes to be true, but nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

29. Each Covered Employee will be deemed to have made the foregoing Release as if by manually signing it.

30. Plaintiff is contemporaneously providing a full and complete releases of claims against Defendant and affiliated entities pursuant to a settlement of his individual claims, including waivers of the protections of California Civil Code §1542. California Civil Code § 1542 provides:

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.

Plaintiff hereby reaffirms those releases and all other obligations contained in his settlement agreement in exchange for the consideration set forth therein.

V. SETTLEMENT APPROVAL AND IMPLEMENTATION PROCEDURES

31. Plaintiff will file a motion and proposed order with the Court requesting the Court to approve this PAGA Settlement and Release Agreement, including the amounts to be paid to

the LWDA, Plaintiff, the Plaintiff's Counsel for their attorneys' fees and costs, and the settlement administrator. Defendant will not oppose Plaintiff's motion upon review of the motion prior to submission to the Court.

32. At least seven (7) calendar days prior to filing the motion and proposed order with the Court, Plaintiff's Counsel will provide Defendant's Counsel with a draft of the motion and proposed order for Defendant's review and comment. In accordance with Labor Code §2699(1)(2), Plaintiff's Counsel shall also submit the motion and proposed order and this Agreement to the LWDA on the same day it files the motion and proposed order with the Court.

33. Within fifteen (15) calendar days after the Effective Date, Defendant will provide the Settlement Administrator a list setting forth the names, last known addresses, Social Security number, and number of pay periods worked by each Covered Employee in the Covered Period. The Settlement Administrator will perform a National Change of Address ("NCOA") search on all the Covered Employees to update the addresses of the Covered Employees.

34. Upon receiving the information described in Paragraph 33 from Defendant, the Settlement Administrator will perform all settlement administration duties, including (i) performing a National Change of Address ("NCOA") search on all former Covered Employees to update his/her address, (ii) issuing the letter and payments to the Covered Employees, (iii) issuing any required IRS forms, and (iv) issuing payments to the LWDA, Plaintiff's Counsel and Plaintiff, in accordance with the timeframe provided herein.

35. Within forty-five (45) calendar days after the Effective Date, Defendant shall wire transfer the Settlement Amount to the Settlement Administrator, who will deposit the funds into the bank account of the Qualified Settlement Fund established by the Settlement Administrator for purposes of this settlement. All amounts to be paid to the Covered Employees, Plaintiff, Plaintiff's Counsel, the Settlement Administrator, and the LWDA shall be paid from this Qualified Settlement Fund.

36. After the Settlement Administrator has received the full Settlement Amount from Defendant, it shall deduct the amount of Plaintiff's Counsel's approved attorneys' fees and costs, Plaintiff's Incentive Award, and the Settlement Administrator's costs from the Settlement Amount, the remaining balance will constitute the Net Settlement Amount, which will be distributed as set forth herein.

37. Within fifteen (15) calendar days after receiving the full Settlement Amount from Defendant, the Settlement Administrator shall mail the settlement checks to the Covered Employees and the LWDA, and will wire to Plaintiff's Counsel its approved attorneys' fees and costs as specified in this agreement and send Plaintiff his Incentive Award. The settlement checks mailed to the Covered Employees will be accompanied with a letter explaining the payment and deadline to cash the check, and this letter will be in a format that the Parties shall agree upon in good faith.

38. The Covered Employees shall have 120 calendar days after mailing to cash their settlement checks. If any Covered Employee's check is not cashed within that period, the check will be void and a stop-payment will be issued. In such event, the Covered Employee will be

transfer, or encumber, to any person or entity any portion of any liability, claim, demand, action, cause of action or rights released and discharged by this Agreement.

46. **No Admission:** Defendant's agreement to enter into this Agreement is not and shall not be claimed to be, construed as, or deemed an admission by Defendant as to the truth or merit of the allegations in the Action or that they have any liability to Plaintiffs or the Covered Employees as a result of the allegations in the Action. Defendant denies that they have engaged in any unlawful activity, have failed to comply with the law in any respect, or have any liability to anyone based on the allegations in the Action. Defendant has entered into this Agreement solely for the purpose of compromising highly disputed claims.

47. **Dismissal:** Within 30 days after the 120-day check cashing deadline, or as soon as is practicable after any compliance hearing set by the Court, Plaintiff shall request dismissal of the Action with prejudice.

48. **Binding Settlement:** This Agreement is a settlement document and shall, pursuant to California Evidence Code §1152 and/or Federal Rule of Evidence 408, be inadmissible in evidence in any proceeding, except an action or proceeding to approve the settlement and/or interpret or enforce the Agreement. To be clear, the Parties shall have the right to submit this Agreement in order to enforce the terms of this Agreement or for the Court's approval of this Agreement without regard to California Evidence Code §1152 and/or Federal Rule of Evidence 408 or other restriction from disclosure herein.

49. **Enforcement Actions:** Except as otherwise provided in this Agreement, in the event that a Party to the Agreement institutes any legal action or other proceeding against the other Party to enforce the provisions of this Agreement or to declare rights and/or obligations under this Agreement, the prevailing Party shall be entitled to recover from the other Party its or his or their reasonable attorneys' fees and costs incurred in connection with any such action or proceeding. This Settlement and Release Agreement is enforceable pursuant to California Code of Civil Procedure §664.6.

50. **Notices:** Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, or on the second business day after emailing, the physical or email addresses below:

To Plaintiffs:

John A. Lofton, Esq.
Aiman-Smith & Marcy, P.C.
7677 Oakport Street, Suite 1150
Oakland, CA 94621
Email: jal@asmlawyers.com

To Defendant:

Alexander M. Medina, Esq.
Kyle W. Owen, Esq.
Medina McKelvey LLP
925 Highland Pointe Drive, Suite 300
Roseville, CA 95678
Email: alex@medinamckelvey.com
kyle@medinamckelvey.com

51. **Construction:** The Parties hereto agree that the terms and conditions of this Agreement are the result of lengthy, intensive arm's length negotiations between the Parties and that this Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or her or their or its counsel participated in the drafting of this Agreement.

52. **Captions and Interpretations:** Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any provision thereof. Each term of this Agreement is contractual and not merely a recital.

53. **Modification:** This Agreement may not be changed, altered, or modified, except in writing signed by the Parties hereto, and approved by the Court. This Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by all of the Parties hereto.

54. **Choice of Law:** This Agreement shall be governed by and construed, enforced, and administered in accordance with the laws of the State of California, without regard to its conflicts-of-law rules.

55. **Integration Clause:** Aside from the separate individual settlement agreement entered into separately between the parties, this Agreement contains the entire agreement between the Parties relating to the settlement and transaction contemplated hereby with respect to the PAGA claim alleged by Plaintiff in the Action, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

56. **Binding On Assigns:** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

57. **Counterparts:** This Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully-signed Agreement, which shall be binding upon and effective as to all Parties. Electronic delivery shall be deemed an original.

58. **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.

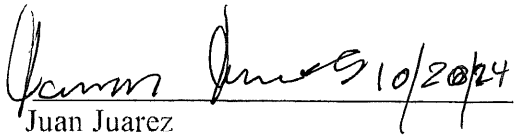
59. **Severability:** If any term or provision of this Settlement Agreement is held to be invalid or unenforceable, the remaining portions of this Settlement Agreement will continue to be valid and will be performed, construed, and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the Parties, as determined from the face of the Settlement Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

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THE SIGNATORIES HAVE CAREFULLY READ THIS ENTIRE AGREEMENT. ITS CONTENTS HAVE BEEN FULLY EXPLAINED TO THEM BY THEIR ATTORNEYS. THE SIGNATORIES FULLY UNDERSTAND THE FINAL AND BINDING EFFECT OF THIS AGREEMENT. THE ONLY PROMISES MADE TO ANY SIGNATORY ABOUT THIS AGREEMENT, AND TO SIGN THIS AGREEMENT, ARE CONTAINED IN THIS AGREEMENT. THE SIGNATORIES ARE SIGNING THE AGREEMENT VOLUNTARILY.

IN WITNESS WHEREOF, the Parties hereto have executed this PAGA Settlement Agreement and General Release.

DATED: September __, 2024

By  9/10/2024
Juan Juarez

DATED: September 30, 2024

By 
Authorized Representative for Risse
Construction, Inc.

APPROVED AS TO FORM:

October 30, 2024

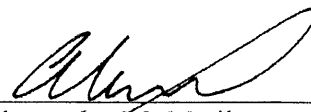
DATED: ~~September __~~, 2024

AIMAN-SMITH & MARCY, P.C.

By 
John A. Lofton
Attorneys for Plaintiffs

DATED: October 8, 2024

MEDINA MCKELVEY LLP

By 
Alexander M. Medina
Attorneys for Defendant