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Attorneys for Plaintiff David Jacquez, on behalf of himself and all “aggrieved employees” pursuant to Labor Code § 2698 *et seq.*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

DAVID JACQUEZ, on behalf of himself and
all “aggrieved employees” pursuant to Labor
Code § 2698 *et seq.*,

Plaintiff,

v.

KSI HOLDINGS, LLC, a Delaware limited
liability company, MCMURRAY STERN,
LLC, a Delaware limited liability company,
and DOES 1 through 10, inclusive,

Defendants.

Case No. 23NWCV01244

*Assigned for all purposes to Judge Olivia
Rosales, Dept. F*

**DECLARATION OF DANIEL F. GAINES
IN SUPPORT OF REQUEST FOR
DISMISSAL**

[Filed Concurrently: Request for Dismissal]

Complaint Filed: April 25, 2023

1 I, Daniel F. Gaines, declare as follows:

2 1. I am an attorney duly admitted to practice law in the State of California and I am a
3 managing shareholder at Gaines & Gaines, APLC, counsel of record for Plaintiff David Jacquez
4 (“Plaintiff”) in this matter. The matters set forth herein are of my own personal knowledge, and if
5 sworn as a witness, I could and would testify competently thereto.

6 2. On April 25, 2023, Plaintiff filed the instant Action seeking penalties on a
7 representative basis, on behalf of himself and all “aggrieved employees,” for KSI Holdings LLC’s
8 and McMurray Stern, LLC’s (collectively, “Defendants”) violations of California Labor Code and
9 the Private Attorneys General Act of 2004 (“PAGA”), codified as § 2698, *et seq.*, by failing to pay
10 all wages due, failing to timely pay all wages due during employment, failing to provide rest periods,
11 or compensation in lieu thereof, failing to reimburse for all business-related expenses, failing to issue
12 complete and accurate wage statements, and failing to timely pay all wages due at separation of
13 employment. The alleged violations occurred when Plaintiff worked for Defendants in Los Angeles
14 County, California.

15 3. Following conversations with Defendants’ counsel and a mediation with Steve Pearl,
16 Esq., my office has ascertained that Plaintiff’s claims are quite individual. Furthermore, liability is
17 disputed. This determination is based on information provided by Defendants’ counsel through
18 discussions in this matter and informal discovery provided to my office.

19 4. The Parties have negotiated a settlement of Plaintiff’s individual claims only, and the
20 PAGA representative claims will be dismissed without prejudice, as set forth in the concurrently-filed
21 request for dismissal. A true and correct copy of the Parties’ Settlement Agreement and General
22 Release (the “Settlement Agreement”) is attached hereto as **Exhibit A**.

23 5. The settlement does not contemplate the waiver of any claims by anyone other than
24 Plaintiff and does not provide for the waiver of PAGA representative claims asserted on behalf of any
25 employee or the State, such that there is no allocation of civil penalties in the Settlement.

26 6. Plaintiff, therefore, requests that the Court enter a dismissal of this action *with*
27 *prejudice* as to Plaintiff’s individual claims and *without prejudice* as to the PAGA representative
28 claims, pursuant to the request submitted concurrently herewith.

7. Concurrent with the filing of this Request for Dismissal, Plaintiff has submitted the Settlement Agreement to the LWDA in compliance with Labor Code section 2699(1)(2).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and was executed on May 10, 2024, at Westlake Village, California.


DANIEL F. GAINES

EXHIBIT A

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release ("Agreement") is made and entered into as of 04 / 29 / 2024, 2024, between David Jacquez for himself and his heirs, successors, and assigns ("Jacquez") on the one hand, and KSI Holdings, LLC and McMurray Stern, LLC and all related parties including but not limited to their parent entities, subsidiaries, and other corporate affiliates and its/each of their respective present and former employees, officers, directors, owners, shareholders, and agents, individually and in their official capacities ("the Company") on the other (collectively, as the "Parties"), with reference to the following facts:

A. Jacquez was employed with the Company for less than two months and resigned his position.

B. Jacquez filed a civil claim in Los Angeles County Superior Court, Case No. 23NWCV01244 against the Company relating to alleged wage and hour/PAGA claims (the "Action"). Jacquez has agreed to dismiss the PAGA claim, without prejudice to other potentially aggrieved employees and the State of California and resolve only his individual claims.

C. The Company denies any wrongdoing related to the claims, including specifically any wage claims as Jacquez was paid in full upon his resignation.

NOW, THEREFORE, in consideration of the covenants and promises contained herein, the Parties agree as follows:

1. **Effective Date.** This Agreement shall be effective upon full execution of the Parties and conclusion of the revocation period as set forth in Section 4, below.

2. **Non-Admission of Liability.** Jacquez acknowledges that the Company has not committed any wrongdoing whatsoever in connection with his working relationship with it or any related entities. It is expressly understood and agreed that nothing contained in this Agreement shall constitute or be treated as an admission of any wrongdoing or liability on the part of the Company.

3. **Settlement Benefits and Tax Liability.** The Company agrees to pay Jacquez and his lawyers \$25,000.00 in the form of three (3) settlement payment checks. For purposes of this Agreement, this total amount is identified as the "Settlement Payment" and includes Plaintiff's attorney's fee share. One payment check in the amount of \$1,000 will be paid to David Jacquez as wages, reported on an IRS Form W-2, from which all legally required withholdings and deductions shall be taken; one payment check in the amount of \$6,500 will be paid to David Jacquez as penalties and interest, and not wages, reported on an IRS Form 1099, with no withholdings or deductions; and one payment check in the amount of \$17,500 will be paid to Gaines & Gaines, APLC as attorneys' fees and costs, reported on an IRS Form 1099, with no withholdings or deductions. All three checks shall be mailed to Gaines & Gaines, APLC, attention Daniel F. Gaines, Esq., 4550 E. Thousand Oaks Blvd., Suite 100, Westlake Village, CA 91362.

This Settlement Payment will be paid within ten (10) days of the Effective Date of this Agreement, as set forth in Section 4, below. Prior to providing the Settlement Payment, Jacquez and Gaines & Gaines, APLC shall each provide an IRS Form W-9 to the Company, together with an executed version of this Agreement.

Jacquez acknowledges and agrees that he shall be solely responsible for the payment of any taxes owed, if any, as a result of the Settlement Payment. Jacquez agrees to indemnify, hold harmless, and defend the Company, and the shareholders, owners, officers, directors, employees, lenders, administrators, agents, assigns, and successors of each, against any and all claims or liabilities that may be asserted by any governmental agency (including but not limited to any local, state, or federal taxing authority or agency) with respect to any local, state, or federal taxes or penalties that may be payable by Jacquez or the Company as a consequence of payment of the Settlement Payment, in whole and each part.

Jacquez also acknowledges and agrees that the Settlement Payment by the Company constitutes adequate legal consideration for the promises and representations made by him in this Agreement.

4. Dismissal of Action. Within five (5) days after this Agreement is executed by all Parties, Plaintiff shall file a Notice of Settlement with the Court. No later than ten (10) calendar days after the Settlement Payment has been received by Plaintiff's counsel, so long as the funds are good, Plaintiff shall dismiss the Action, with prejudice as to his individual claims, and without prejudice as to the PAGA claims alleged on behalf of other employees and the State of California. In compliance with PAGA, he shall attach a copy of this Agreement with his request for dismissal, and shall concurrently submit the request for dismissal (and a copy of this Agreement) to the Labor and Workforce Development Agency.

5. Older Worker's Benefit Protection Act Compliance. This Agreement is intended to release and discharge any claims of Jacquez, if any, under the Age Discrimination in Employment Act. To satisfy the requirements of the Older Workers' Benefit Protection Act, 29 U.S.C. section 626(f), the parties agree as follows:

a. Jacquez acknowledges that he has read and understands the terms of this Agreement.

b. Jacquez acknowledges that he is entering into this Agreement freely and voluntarily and without coercion, duress, fraud, or undue influence of any kind whatever.

c. Jacquez acknowledges that he has been given at least twenty-one (21) days in which to consider whether or not to enter into this Agreement. He understands that, at his option, he may elect not to use the full 21-day period (including the time period associated with the prior version of this Agreement).

d. This Agreement shall not become effective or enforceable until the eighth day after both parties fully and completely execute this Agreement. In other words, Jacquez may revoke his acceptance of this Agreement within seven (7) days after the date he signs it. Jacquez's revocation must be in writing and received by the Company by 5:00 p.m. on the seventh day in order to be effective (email notification is acceptable to the Company's counsel, C.J. Pearl – cj@pearl-legal.com). If Jacquez does not revoke his acceptance within the seven (7) day period, Jacquez's acceptance of this Agreement shall become binding and enforceable on the eighth day ("Effective Date").

e. This Agreement does not waive or release any rights or claims that Jacquez may have under the Age Discrimination in Employment Act that arises after the execution of this Agreement.

6. General Release of All Claims. Subject to the Company's payment of the Settlement Payment, for and in consideration of the Company's commitments set forth herein, Jacquez on behalf of himself, representatives, administrators, heirs, successors, assigns, and each and all of them, knowingly and voluntarily hereby releases, acquits, and forever discharges the Company and each of its respective parent(s), subsidiaries, and other corporate affiliates and each of their respective present and former employees, officers, directors, owners, shareholders, members and agents, individually and in their official capacities (collectively, "Releasees"), of and from any and all obligations, debts, claims, liabilities, demands, and causes of action of every kind, nature and description whatsoever, whether or not now known, suspected or claimed, which he ever had, now has or may hereafter acquire, by reason of any matter, cause, event or thing whatsoever occurring or arising at any time before the execution of this Agreement, including, but not limited to, any and all claims arising out of or in any way, directly or indirectly, connected with Jacquez's contractual relationship with, and severance from, the Company. This includes, but is not limited to, any claims based on federal, state, and/or local statute or regulation and/or common law as to the Company and the Releasees, including but not limited to any and all claims for breach of contract or any alleged employment claim, including wrongful termination, defamation, injuries, employment discrimination, harassment, retaliation, fraud, misrepresentation, unjust enrichment, conversion, wages, overtime, meal/rest breaks, expense reimbursements, medical benefits, commissions, bonuses, accrued vacation, expense payments and other compensation or benefits and any other tort, contract, common law, constitutional or other statutory claims arising under any state, federal, or local laws, including but not in any way limited to alleged or actual violations of the California Labor Code, including his individual claims under the Labor Code Private Attorneys General Act, any applicable California Industrial Welfare Commission order, the California Business and Professions Code, the California Department of Industrial Relations, including the Wage Standards Division, Title VII of the Civil Rights Act of 1964, Sections 1981 and 1983 of the Civil Rights Act of 1866, the Fair Labor Standards Act, the California Fair Employment and Housing Act (FEHA), the Americans with Disabilities Act (ADA), the Equal Pay Act (EPA), the Employee Retirement Income Security Act (ERISA) (with respect to unvested benefits), the Civil Rights Act of 1991, the Consumer Credit Protection Act of 1968, the Fair Credit Reporting Act (FCRA), the Family Medical Leave Act (FMLA), the Worker Adjustment and Retraining Notification (WARN) Act, the Genetic Information Nondiscrimination Act (GINA), the Immigration Reform and Control Act (IRCA), the Age Discrimination in Employment Act (ADEA), the Uniform Services Employment and Reemployment Rights Act (USERRA), all as amended.

7. Waiver of Unknown Claims. It is understood and agreed by Jacquez that he may have sustained damages, losses, costs, or expenses for which he might have made claims that are presently unknown or unsuspected, and that such damages, losses, costs or expenses may give rise to additional damages, losses, costs or expenses in the future.

It is hereby specifically acknowledged by Jacquez that the foregoing releases and the waiver set forth below have been agreed upon and given in light of such facts and that this Agreement is intended to release the Company and the Releasees from potential liability for all such damages,

losses, costs and/or expenses. In addition to a full waiver and release under any applicable state law, Jacquez UNDERSTANDS AND AGREES AS PART OF THE INDUCEMENT FOR THE CONSIDERATION GIVEN FOR THIS AGREEMENT THAT HE SPECIFICALLY WAIVES THE PROVISIONS OF SECTION 1542 OF THE CALIFORNIA CIVIL CODE, WHICH SECTION READS AS FOLLOWS, AND ANY OTHER STATE OR FEDERAL STATUTE OR COMMON LAW PRINCIPLE OF SIMILAR EFFECT:

“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or his favor at the time of executing the release and that, if known by him or her, would have materially affected his or his settlement with the debtor or released party.”

Jacquez acknowledges that he has read all of this Agreement, including the above Civil Code section, and that he fully understands both the Agreement and the Civil Code section. Jacquez waives any benefits and rights granted to him pursuant to Civil Code section 1542. Jacquez understands that he is a “releasing party” as to the Company and the Releasees within the meaning of Section 1542.

8. **Attorneys’ Fees and Costs.** Except for the Settlement Payment set forth in Paragraph 3, the Parties shall bear their own attorneys’ fees and costs incurred in connection with Jacquez’s employment, the Action, and this Agreement, including those incurred in the negotiation, preparation, and execution of this Agreement. Nothing in this paragraph prohibits any party from seeking reasonable attorneys’ fees and costs incurred in a separate action to enforce any term of this Agreement.

9. **Neutral Reference/Non-Disparagement.** The Company agrees that if it receives a request for an employment reference from a prospective employer of Jacquez, the Company shall only provide the prospective employer with information regarding Jacquez’s dates of employment and job titles. Additionally, Jacquez agrees not to, at any time in the future, in any way disparage the Company or its current and former officers, directors and employees, verbally or in writing, or make any statements to the press or to third parties that may be derogatory or detrimental to the Company name or business reputation.

10. **Confidentiality.** Jacquez shall not affirmatively seek to disclose to, discuss with, or communicate to any third party, including other employees of the Company, the terms of this Agreement unless necessary to fulfill the obligations herein. Jacquez further agrees not to make this Agreement available to any other person, firm, or entity, except as required by law; to a lawyer, accountant, or other person in connection with the preparation of any tax or information return; or to fulfill the obligations herein.

This Confidentiality provision does not supersede any prohibitions against disclosure of subject matter information protected under California law (including those prohibitions set forth in SB 331 and accompanying California statutes). This Confidentiality provision does not impair Plaintiff’s right and obligation to transmit a copy of this Agreement to the Labor and Workforce Development Agency, as required by the PAGA, or to file a copy of it with the Court, as required by PAGA.

11. **Receipt of Compensation.** Except for the consideration provided in this Agreement, Jacquez acknowledges that he has received all compensation to his from the Company, including, but not limited to, wages, commissions, retirement plan contributions, bonuses, expense reimbursements, medical benefits, and all other payments and benefits.

12. **Knowing and Voluntary Release; Advice of Counsel.** Jacquez agrees and acknowledges that he has had the right and full opportunity to seek and consult legal counsel in conjunction with the negotiation and execution of this Agreement, and that he did in fact do so or waives his ability to do so. Jacquez further agrees that he had adequate time and opportunity to review, evaluate, and negotiate this Agreement. Jacquez intends and agrees that this Agreement be complete, binding, and not subject to any claim of mistake or incapacity.

13. **Severability.** If any provision in this Agreement is found to be unenforceable, it shall not affect the enforceability of the remaining provisions and the court shall enforce the remaining provisions to the extent permitted by law.

14. **Integrated Agreement.** The Parties acknowledge and agree that no promises or representations were made to them which do not appear written herein, and that this Agreement contains the entire agreement of the Parties on the subject matter thereof and supersedes all prior written or oral agreements or understanding on such matters with the exception of those confidentiality obligations previously entered to by Jacquez during his employment with the Company. The Parties further acknowledge and agree that parol evidence shall not be required to interpret the intent of the Parties.

15. **Good Faith Execution.** The Parties agree to do all things necessary and to execute all further documents necessary and appropriate to carry out and effectuate the terms and purposes of this Agreement.

16. **Modifications.** This Agreement may be amended only by a written instrument executed by all Parties hereto.

17. **Binding on Successors and Assigns.** It is expressly understood and agreed by the Parties that this Agreement and all its terms shall be binding upon each Parties' representatives, heirs, executors, administrators, successors, and assigns.

18. **Interpretation; Construction.** The headings set forth in this Agreement are for convenience only and will not be used in interpreting this Agreement. Legal counsel representing The Company prepared an initial draft of this Agreement, but Jacquez participated in the negotiation of its terms, including with, if applicable, his own counsel (or with the right to use his own counsel which he waived). Jacquez acknowledges he has had an opportunity to review and discuss each term of this Agreement with legal counsel and, therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement.

19. **Applicable Law.** This Agreement, in all respects, shall be interpreted, enforced, and governed by and under the laws of the State of California. Should either Party file an action or seek to interpret and/or enforce this Agreement, said action and/or proceeding shall be filed or held in a venue located within Los Angeles County, California.

20. **Enforcement of Agreement; Retention of Jurisdiction Pursuant to C.C.P. Section 664.6.** The Parties agree that in any action at law or equity between the Parties seeking enforcement of any of the terms and provisions of this Agreement, the prevailing party in such action shall be awarded, in addition to damages or other relief, its reasonable costs and expenses, including, but not limited to, reasonable attorneys' fees and costs. The Court shall retain jurisdiction over the Action to enforce this Agreement, pursuant to Code of Civil Procedure section 66.46 and as otherwise allowed by law.

21. **Counterparts.** This Agreement may be executed in counterparts. A faxed or scanned signature shall have the same force and effect as an original signature.

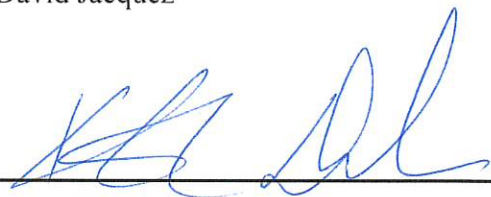
JACQUEZ ACKNOWLEDGES AND AGREES THAT HE HAS FULLY READ, UNDERSTANDS, AND VOLUNTARILY ENTERS INTO THIS AGREEMENT, INCLUDING ALL RELEASE PROVISIONS INCLUDED HEREIN. JACQUEZ ACKNOWLEDGES AND AGREES THAT HE HAS HAD AN OPPORTUNITY TO ASK QUESTIONS AND CONSULT WITH AN ATTORNEY OF HIS CHOICE BEFORE SIGNING THIS AGREEMENT AND THAT HE SIGNS THIS AGREEMENT OF HIS OWN ACCORD.

IN WITNESS WHEREOF, the Parties hereto have executed this Settlement Agreement and General Release on the date(s) indicated below.

DATED: 04 / 29 / 2024
April __, 2024

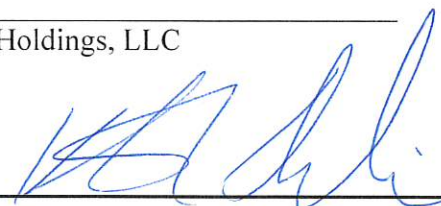
By: 
David Jacquez

DATED: April 22, 2024

By: 

KSI Holdings, LLC

DATED: April 22, 2024

By: 

McMurray Stern, LLC

By: _____

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_____ (For messenger) my business address is:

Carmine J. Pearl, II, Esq.
cj@pearl-legal.com
Jenifer A. Pearl, Esq.
jen@pearl-legal.com
PEARL LEGAL, APC
9891 Irvine Center Drive, Suite 200
Irvine, CA 92618
Cc: Jennifer Allison
jallison@pearl-legal.com

____ (BY FEDERAL EXPRESS OR OTHER OVERNIGHT SERVICE) I deposited the sealed envelope in a box or other facility regularly maintained by the express service carrier or delivered the sealed envelope to an authorized carrier or driver authorized by the express carrier to receive documents.

 X (UPLOADED TO LWDA WEB PORTAL) I caused the above-described documents to be delivered to the Labor & Workforce Development Agency via online process at the PAGA Filing website (www.dir.ca.gov) in accordance with the procedure imposed by the LWDA.

I declare under penalty of perjury that the foregoing is true and correct.

Amelia Booth
AMELIA BOOTH