

CONFIDENTIAL SETTLEMENT AND GENERAL RELEASE AGREEMENT

This Confidential Settlement and General Release Agreement ("Agreement") is made and entered into by and between Rene Simmons, for herself and her heirs, successors and assigns (hereinafter "Plaintiff") and Pacific Fuel & Auto Services, Inc. for itself and its parents, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and all current and former employees (hereinafter "Defendant" or "Company"), (collectively, the "Parties"), with reference to the following facts:

RECITALS

WHEREAS, on or about March 1, 2023, Plaintiff provided a letter to the Labor and Workforce Development Agency, setting forth the facts and theories of the violations alleged against Defendant, as prescribed by Labor Code § 2698 et seq. Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of March 1, 2023. Plaintiff may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 et seq. ("PAGA") ("LWDA Notice Letter").

WHEREAS, on March 8, 2023, Plaintiff filed a Class Action Complaint against Defendant in Sacramento County Superior Court Case No. 34-2023-00335761 alleging the following causes of action: (1) failure to pay all minimum and overtime wages (Labor Code §§ 510, 1194, And 1194.2; IWC Wage Order 7-2001); (2) unlawful deductions from wages (Labor Code §§ 221, 510, And 1194; IWC Wage Order 7-2001) (3) failure to provide rest periods or compensation in lieu thereof (Labor Code § 226.7; IWC Wage Order 7-2001); (4) failure to provide meal periods or compensation in lieu thereof (Labor Code §§ 226.7 and 512; IWC Wage Order 7-2001); (5) knowing and intentional failure to comply with itemized employee wage statement provisions (Labor Code § 226(a), (e)); (6) failure to timely pay wages due at separation of employment (Labor Code §§ 201-2023); and (7) violation of Business and Professions Code § 17200.

WHEREAS, on or about May 5, 2023, Plaintiff filed a First Amended Class Action Complaint against Defendant in Sacramento County Superior Court Case No. 34-2023-00335761 alleging the following causes of action: (1) failure to pay all minimum and overtime wages (Labor Code §§ 510, 1194, And 1194.2; IWC Wage Order 7-2001); (2) unlawful deductions from wages (Labor Code §§ 221, 510, And 1194; IWC Wage Order 7-2001) (3) failure to provide rest periods or compensation in lieu thereof (Labor Code § 226.7; IWC Wage Order 7-2001); (4) failure to provide meal periods or compensation in lieu thereof (Labor Code §§ 226.7 and 512; IWC Wage Order 7-2001); (5) knowing and intentional failure to comply with itemized employee wage statement provisions (Labor Code § 226(a), (e)); (6) failure to timely pay wages due at separation of employment (Labor Code §§ 201-2023); (7) violation of Business and Professions Code § 17200; and (8) penalties pursuant to Labor Code § 2699(f) [hereinafter "PAGA"] for violations of Labor Code §§ 201, 202, 212, 221, 226(a), 226.7, 510, and 1194 and Pursuant To Labor Code § 2699(a) For Violations Of Labor Code §§ 225.5, 226.3, 432.5, and 558 (hereinafter the "Action").

WHEREAS, Defendant denies all of Plaintiff's allegations and denies that it has any legal or equitable responsibility for the damages alleged by Plaintiff;

WHEREAS, there has been no determination on the merits of Plaintiff's individual claims or the class or PAGA allegations, but in order to avoid additional cost and in light of the uncertainty of further

litigation, Plaintiff and Defendant desire to compromise, settle and release all claims arising out of the claims alleged individually by Plaintiff in the Action, Plaintiff's employment with Company, and any and all other claims, whether known or unknown, arising out of or based on any fact, matter or event which occurred prior to the date of this Agreement;

WHEREAS, any claims alleged by individuals other than Plaintiff, including all PAGA claims, will be dismissed without prejudice, and will not be affected in any way by this Settlement;

WHEREAS, the Parties now wish to fully and finally resolve all differences and disputes between them including, but not limited to, any and all claims which were raised or could have been raised by Plaintiff individually in the Action and including any claims for costs and attorneys' fees; and

NOW, THEREFORE, in exchange for the good and valuable consideration set forth herein, the adequacy of which is specifically acknowledged, the Parties hereby agree as follows:

TERMS AND CONDITIONS

IT IS HEREBY AGREED, by and among the Parties, as follows:

1. **Incorporation and Acknowledgement of Recitals.** The Recitals and identification of the Parties to this Agreement are incorporated by reference as though fully set forth herein.

2. **Settlement Payment.** Subject to (a) Plaintiff signing this Agreement and returning to the Company's counsel (1) a copy of the signed Agreement; and (2) completed IRS Form W-2 for herself and IRS Forms W-9 for herself and her attorney, and (b) the court entering an order approving dismissal of the Action with prejudice as to Plaintiff's individual claims and without prejudice as to all class and PAGA claims, the Company shall pay to the gross sum of Fifteen Thousand Dollars and No Cents (\$15,000.00) ("Settlement Payment"). Payment shall be considered timely provided that the checks are postmarked no later than ten (10) calendar days after the Effective Date as defined below. The Settlement Payment shall be made by three checks as follows:

(a) One check in the gross amount of \$750.00, less usual payroll withholdings, made payable to "Rene Simmons" and reported on an IRS Form W-2 and its state and local equivalents; and

(b) One check in the amount of \$6,750.00 made payable to "Rene Simmons" and reported on an IRS Form 1099 and its state and local equivalents, without deductions or withholdings; and

(c) One check in the amount of \$7,500.00 made payable to Rene Simmons' counsel, Gaines & Gaines, A Professional Law Corporation, 4550 East Thousand Oaks Blvd., Suite 100, Westlake Village, CA 91362, reported on an IRS Form 1099 and its state and local equivalents, without deductions or withholdings.

3. **No Tax Advice.** The Parties acknowledge that they have obtained no advice from each other with respect to taxes and that neither Plaintiff, Defendant, nor either Party's attorneys have made any representations regarding the tax consequences, if any, of this settlement. Plaintiff understands that

the taxability of these benefits shall be governed by applicable federal, state, and local tax laws and regulations, and that Plaintiff shall be solely responsible for any taxes, interest and penalties that she might owe with respect to the benefits made to her under Paragraph 2. Plaintiff agrees to hold the Releasees, as defined herein, harmless from any and all liability, obligations, claims or actions, as well as any and all taxes, interest or penalties, if any, owed by them arising out of any claim which may be made by the Internal Revenue Service and/or the California Franchise Tax Board (or any other governmental agency administering applicable state and federal tax laws) with respect to the tax treatment by Plaintiff of the payments provided under Paragraph 2.

4. **Total Consideration.** Plaintiff agrees that the payments described in Paragraph 2 shall constitute the entire amount of monetary and other consideration provided to her under this Agreement and that neither she nor anyone else on her behalf will seek from the Releasees any further compensation or any other consideration for any other claimed obligation, entitlement, damage, penalty, interest, cost, or attorneys' fees in connection with the matters encompassed by this Agreement.

5. **Release of Claims.** In consideration of the promises and commitments undertaken herein by Defendant, and for other good and valuable consideration receipt of which is hereby acknowledged, subject to Defendant's payment of the Settlement Payment, Plaintiff hereby releases, discharges, and covenants not to sue or file any claim against Defendant, including its parents, subsidiaries, affiliates, predecessors, and related companies, including but not limited to all of its and their respective past and present employees, directors, officers, shareholders, trustees, beneficiaries, partners, representatives, insurers, agents, attorneys, successors, and assigns (individually and collectively the "Releasees") from and with respect to any and all actions, causes of action, suits, liabilities, claims, and demands whatsoever (upon any legal or equitable theory, whether contractual, in tort, common law, statutory, federal, state, local or otherwise), and each of them, whether known or unknown, from the beginning of time up to and including the date Plaintiff signs this Agreement. The Parties intend Plaintiff's release to be general and comprehensive in nature and to release all claims and potential claims against the Releasees to the maximum extent permitted at law. Claims being released include specifically by way of description, but not by way of limitation, any and all claims:

(a) arising out of or in any way related to Plaintiff's employment with Defendant;

(b) arising out of or in any way related to any federal, state, or local law prohibiting harassment, retaliation, wrongful termination, or discrimination on the basis of race, color, religion, disability, sexual orientation, national origin, or citizenship, including without limitation claims under Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Age Discrimination in Employment act, as amended by the Older Worker Benefit Protection Act, the Healthy Workplace Healthy Family Act of 2014, the Health Insurance Portability and Accountability Act of 1996, the Americans with Disabilities Act of 1990, 42 U.S.C. Section 1981, the Employee Retirement Income Security Act of 1974, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Family Medical Leave Act, and the Equal Pay Act. The Released Claims also include, but are not limited to, claims arising under the California Constitution, California Labor Code, including but not limited to Cal. Lab. Code §§ 200 *et seq.*, 970 *et seq.*, 1198; any applicable California Industrial Welfare Commission Order; the California Business and Professions Code; the California Fair Employment and Housing Act, including, but not limited to, the

California Family Rights Act; and any other law, rule, regulation, or ordinance within the state of California, and any similar laws of any state or governmental entity;

(c) for breach of contract (express or implied), breach of promise, wrongful discharge, unjust dismissal, retaliation, whistleblowing, breach of fiduciary duty, breach of implied covenant of good faith and fair dealing, defamation, claims relating to stock or stock options, wrongful denial of benefits, intentional and negligent infliction of emotional distress, negligence, and any intentional torts;

(d) for any alleged unpaid wages due, as to which Plaintiff agrees that there is a good-faith dispute as to whether such wages are due, and, based on this good-faith dispute, Plaintiff releases and waives any and all claims regarding any alleged unpaid wages and any corresponding penalties, interest, or attorneys' fees, in exchange for the consideration provided in this Agreement; and

(e) for attorneys' fees and costs, except as provided for in this Agreement;

(f) for any remedies available at law or in equity, including damages, penalties, restitution, liens, injunctive relief, or the recovery of attorneys' fees, costs, or expert witness fees.

The only claims that Plaintiff are not releasing under this Agreement are claims Plaintiff may have for violation of any federal, state or local law that, by operation of law, are not waivable, including but not limited to unemployment and state disability insurance benefits, and any and all claims alleged in the Action on behalf of other employees and the State of California, which shall not be affected in any way by this Agreement.

This release of claims does not prevent Plaintiff or the Defendant from seeking a judicial determination as to the validity of this Agreement or bringing an action to enforce this Agreement. Nothing in this Agreement is intended or shall be construed to prohibit Plaintiff from filing a charge or participating in any investigation or proceeding conducted by the Equal Employment Opportunity Commission, National Labor Relations Board, or other federal, state, or local agency. By signing this Agreement Plaintiff agrees to waive their right to recover individual relief based on any claims asserted in such a charge or complaint; provided, however, that nothing in this Agreement limits Plaintiff's right to receive an award for information she provides to any government agency that is authorized to provide monetary or other awards to eligible individuals who come forward with information that leads to an agency enforcement action.

Plaintiff understands and expressly recognizes and agrees that, by entering into this Agreement, she is aware of the contents and significance of all the provisions of this Agreement and knowingly and voluntarily agree to the terms of this Agreement and intends to be legally bound by them.

Plaintiff agrees that the release set forth above shall be and remain in effect in all respects as a complete general release as to the matters released. Plaintiff represents and warrants that they have not assigned or given away any of the Released Claims.

6. **Waiver of Unknown Claims.** Plaintiff expressly waives any and all rights or benefits conferred by the provisions of Section 1542 of the California Civil Code and consents that this Agreement

shall be given full force and effect according to each and all of its express terms and conditions, including those relating to unknown and unsuspected claims, demands and causes of action, if any. Section 1542 of the Civil Code states:

"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 acknowledges that she may later discover claims or facts in addition to or different to those which she now knows or believes to exist with respect to the subject matter of this Agreement and which, if known or suspected at the time of executing this Agreement, may have materially affected this settlement. Nevertheless, Plaintiff waives any right, claim or cause of action that might arise as a result of such different or additional claims or facts and agree to fully, finally, and forever settle and release any and all claims, known or unknown, suspected or unsuspected, that exist or may exist on Plaintiff's behalf against the Releasees at the time of execution of this Release. Plaintiff acknowledges that she understands the significance and consequence of this release and waiver of Section 1542 of the Civil Code.

7. **Abandonment of PAGA Claim and Dismissal of the Action.** Plaintiff shall abandon her claims with the LWDA and shall submit a request for dismissal of the Action with prejudice as to Plaintiff's individual claims and without prejudice as to the claims of other employees and the State of California. In support of the request for dismissal, Plaintiff shall submit a copy of this Agreement to the Court. Concurrently, in compliance with PAGA, she shall submit a copy of this Agreement to the LWDA.

8. **No Admission of Liability.** Neither this Agreement, nor anything contained in it, shall constitute or shall be used as an admission or as evidence of any liability or wrongdoing. Defendant expressly denies and disavows liability for Plaintiff's claims in the Action.

9. **Confidentiality.** Except as provided below and in paragraph 7 above, Plaintiff agrees that she will not disclose to others, either directly, indirectly, or by implication, the fact of this Agreement, the terms of this Agreement, that any monetary consideration has been involved in any resolution, the amounts referred to in this Agreement (either by specific dollar amount, by number of "figures," or the amount), or the settlement discussions leading up to this settlement, and that she will keep all such matters completely confidential and will not hereafter disclose any information in this Agreement to anyone or anything, except as required by law, or for legitimate law enforcement or compliance purposes, or to her immediate family members, respective tax or legal advisors (if any), provided such persons are advised of the confidentiality obligations imposed by this Agreement and that they are required to maintain the confidentiality obligations of this agreement. Nothing in this Agreement prevents Plaintiff from discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that Plaintiff has reason to believe is unlawful. Nothing in this provision shall prevent Plaintiff from complying with or providing truthful testimony as a result of a court order and/or lawfully issued subpoena, or as otherwise permitted by law or regulation, or to enforce the terms of this Agreement.

Plaintiff specifically agrees that her obligation to maintain the confidentiality of this Agreement is a material term of this Agreement without which the Company would not have entered into this Agreement.

Upon inquiry regarding this action the Parties and their attorneys and representatives shall state only that this matter has been resolved. If contacted by the press or media, Plaintiff may only state that the case has been resolved.

10. **Non-Disparagement.** Plaintiff agrees to refrain from causing, whether by herself or any other person, any publication or any type of communication, oral or written, of a disparaging nature pertaining to the Defendant, or its owners, employees, or representatives, to the maximum extent permitted by law. Plaintiff also agrees and covenants that the same restrictions shall apply with respect to representatives of the media and any social media accounts, including without limitation Facebook, Twitter, X, Instagram, Snapchat, LinkedIn, TikTok, Glassdoor, or any other similar social media platform, or in any other private or public forum, with regard to Defendant, its owners, employees, agents or representatives or with regard to any entity with which Defendant has a relationship, that may be considered derogatory or detrimental to the good name or business reputation of Defendant. Nothing in this Agreement shall prevent Plaintiff from discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that she has reason to believe is unlawful. Nothing in this provision shall prevent Plaintiff from complying with or providing truthful testimony as a result of a court order and/or lawfully issued subpoena, or as otherwise permitted by law or regulation, or to enforce the terms of this Agreement.

Plaintiff specifically agrees that her obligation not to disparage Defendant or others or cause others to disparage Defendant or others as set forth in this paragraph 10 of this Agreement is a material term of this Agreement without which the Company would not have entered into this Agreement.

11. **Liquidated Damages for Breach of Confidentiality or Non-Disparagement Clauses.** Plaintiff agrees that, in the event that she breaches paragraphs 9 or 10 of this Agreement, such shall be a material breach of this Agreement and that it will be impracticable or extremely difficult to calculate the actual damages. Accordingly, Plaintiff agrees that upon such a breach, in addition to whatever rights and remedies the Company have at law and in equity, Plaintiff shall pay to the Company as liquidated damages, and not as a penalty, the sum of \$1,500.00, for each such breach and each repetition thereof.

12. **Protecting Plaintiff's Rights.** In understanding the terms of this Agreement and Plaintiff's rights, Plaintiff was advised to consult with attorneys of her choice prior to executing it and has done so. The only claims that Plaintiff is not waiving and releasing under this Agreement are claims Plaintiff may have for any right or entitlement that, by applicable law, is not waivable, including state disability, and Plaintiff represents and warrants that she is unaware of any such claims. To the extent Plaintiff was terminated from her employment with Defendant, she may make a claim for, and if applicable, continue to collect, unemployment.

13. **Governing Law and Venue.** The rights and obligations of the Parties hereunder shall be construed and enforced in accordance with, and shall be governed by, the laws of the State of California, without regard to principles of conflict of laws.

14. **Arbitration.** Plaintiff agrees that any controversy or claim arising out of or relating to this Agreement, or any dispute arising out of the interpretation or application of this Agreement, but specifically excluding any action or proceeding relating to Defendant's non-payment of the Settlement Payment (which may be heard in Court) shall be resolved by binding arbitration and shall be conducted in accordance with the provisions of the Federal Arbitration Act. In the event of any dispute between the Parties to this Agreement arising from any matter addressed by this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs in addition to any other relief to which that party may be entitled. The venue for any such arbitration shall be Sacramento County, California.

15. **Entire Agreement.** This Agreement constitutes and contains the entire agreement and understanding between the Parties concerning the subject matters specifically addressed herein, and supersedes and replaces all prior negotiations and all agreements proposed or otherwise, whether written or oral, concerning the subject matters specifically addressed herein.

16. **Severability.** If any provision of this Agreement is held invalid or unenforceable, such invalidation or unenforceability shall not affect other provisions of this Agreement and to this end, the provisions of this Agreement are declared to be severable.

17. **Execution and Copies.** This Agreement may be executed in counterparts, and each counterpart, when executed, shall have the same effect of a signed original. The execution of a signature page of this Agreement shall constitute the execution of the Agreement, and the Agreement shall be binding on each party upon that party's signing of such a counterpart.

18. **Modification.** Once effective and enforceable, this Agreement cannot be modified except in writing signed by all Parties.

19. **Cooperation.** 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.

20. **Effective Date.** This Agreement will become effective on the later of either (a) the date Plaintiff signs and delivers this Agreement to counsel for the Company provided, or (b) the date Court enters an order dismissing the Action as provided herein.

21. **No Prevailing Party; Retention of Jurisdiction; Time is of the Essence.** No party shall claim to be the prevailing party in the Action, and each party shall bear their own fees and costs. The court shall retain jurisdiction, pursuant to Code of Civil Procedure section 664.6 and as otherwise allowed by law, to enforce the payment provisions of this Agreement. The prevailing party in any proceeding to enforce this Agreement shall recover its reasonable attorneys fees and costs in connection with such proceeding. Time is of the essence with respect to all provisions of this Agreement.

IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound, have caused this Agreement to be executed as of the dates set forth below:



Plaintiff: Rene Simmons

Date: 08 / 14 / 2023

Defendant: Pacific Fuel & Auto Services, Inc.
Anwar Hugais

By: _____

Business Operations Manager

Its: _____

Date: 08 / 16 / 2023

Title	Simmons v Pacific Fuel Settlement Agreement W9 & W4
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08 / 16 / 2023
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IP: 98.210.62.182



08 / 16 / 2023
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Signed by Anwar Hugais (anwar@pacfuel.net)
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COMPLETED

08 / 16 / 2023
08:51:47 UTC

The document has been completed.