Memorandum of Understanding ("MOU")
Esquibel Arias v. Domain Services, LLC
Superior Court for the County of Napa
Case Number 24CV000298

1. This is a settlement of a wage-and-hour representative action brought pursuant to the Labor Code Private Attorneys General Act of 2004 ("PAGA") entered into between **(1)** Plaintiff Esquibel Arias ("Plaintiff"), individually and in his representative capacity as a private attorney general on behalf of the State of California; and **(2)** Defendant Domain Services, LLC ("Defendant"). Plaintiff and Defendant are collectively referred to herein as the "Parties." All terms in this MOU are subject to Court approval.

2. The "PAGA Settlement Class" is defined as: *all individuals who are or were employed by Defendants as non-exempt employees in California during the PAGA Period.* The "PAGA Period" is defined to mean the period from February 28, 2023, through the the date of court approval of the settlement. Defendant represents that the PAGA Settlement Class consists of approximately 230 employees that worked a total of approximately 8,931 pay periods during the PAGA Period, excluding pay periods of non-work time including, but not limited to: vacation, holiday, sick, and leave time.

3. The non-reversionary Gross Settlement Amount ("GSA") is **$107,172.00** to be paid by Defendant in full settlement of the claims described below. The Parties agree to deductions from the GSA on the following terms:

   a. Defendant will not object to a request for attorneys' fees by Plaintiff's counsel of up to one-third of the GSA.

   b. Defendant will not object to reimbursement of Plaintiff's counsel's actual out-of-pocket costs from the GSA.

   c. Defendant will not object to a request for a representative enhancement award to Plaintiff in the amount of up to $5,000.00. In exchange for the enhancement award, the long-form settlement agreement shall contain a release of any and all wage and hour claims by Plaintiff, excluding any non-wage claims, and including a waiver of claims pursuant to Civil Code section 1542 and as further consideration, Plaintiff shall confirm in a separate writing that he is voluntarily resigning his employment as of the date of the execution of this Agreement.

   d. The Parties agree that reasonable settlement administration costs will be deducted from the GSA and the Parties agree that Simpluris, Inc., Phoenix Settlement Administrators, and CPT Group, Inc. are mutually acceptable settlement administrators.

   e. The Parties agree that the remaining portion of the GSA, after deductions, will be allocated to PAGA penalties. Of this amount, 75% shall go to the State of California, and 25% shall be distributed to the PAGA Settlement Class based on the proportional number of pay periods worked by each PAGA Settlement Class member during the PAGA Period. For tax purposes, the Parties agree that 100% of each PAGA Settlement Class members' individual payment amount shall constitute penalties and interest (and each PAGA Settlement Class member will be issued an IRS Form 1099 for such payment to him or her).

4. The Parties will work together in good faith to prepare, finalize, and execute a formal, long-form settlement agreement within 30 days from the date the Parties sign this MOU. Defendant agrees to not oppose Plaintiff's Motion for PAGA Approval to the extent it comports with this MOU and the long-form settlement agreement.

5. Plaintiff, individually and in his representative capacity as a private attorney general on behalf of the State of California, will release the Released Parties of the Released Claims, defined as follows:

   a. The "Released Parties" is defined to mean Defendant and all of Defendant's subsidiaries, affiliates, shareholders, members, agents, predecessors, successors, and assigns.

   b. The "Released Claims" is defined to mean those claims arising out of or related to the allegations set forth in the operative complaint and/or PAGA notice to the California Labor and Workforce Development Agency that arose during the PAGA Period, including but not limited to claims for: **(1)** failure to pay minimum wage for all hours worked in violation of Labor Code sections 1194 and 1194.2, and the applicable IWC Wage Order(s); **(2)** failure to pay proper overtime wages in violation of Labor Code sections 510, 1197, and 1198, and the applicable IWC Wage Order(s); **(3)** failure to provide compliant rest periods and pay missed rest break premiums in violation of Labor Code section 226.7 and the applicable IWC Wage Order(s); **(4)** failure to provide compliant meal periods and pay missed meal period premiums in violation of Labor Code sections 226.7 and 512, and the applicable IWC Wage Order(s); **(5)** failure to maintain accurate employment records in violation of Labor Code section 1174; **(6)** failure to pay timely wages during employment in violation of Labor Code sections 204, 210; **(7)** failure to pay all wages due and owing at separation in violation of Labor Code sections 201, 202, and 203; **(8)** failure to reimburse business expenses in violation of Labor Code sections 2802 and 2804; **(9)** failure to provide complete and accurate wage statements in violation of Labor Code sections 226 and 226.3; **(10)** deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing in violation of California's Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210);

(11) statutory penalties based on the foregoing pursuant to PAGA (Lab. Code, §§ 2698-2699.6); and **(12)** all claims for liquidated damages, penalties, interest, fees, costs based on the foregoing.

6. If the number of pay periods worked by the Aggrieved Employees is greater than 10% above that estimated by Defendant(s) (8931 x 10% = 9824 total), when taking into account the removal of nonworking pay periods reflecting vacation, sick, holiday or leaves of absence, then Defendant will have the option to either increase proportionately for each additional pay period worked above 9824 or use the date upon which pay periods reach 9824 as the effective date of the release of claims with no increase of GSA. If this provision is triggered so as to increase the GSA, the Parties agree that the portion of the GSA allocated to attorneys' fees will increase proportionally such that the total amount of attorneys' fees remains one-third of the GSA after the upward adjustment required by this provision is implemented.

7. Any funds associated with uncashed checks shall be distributed pursuant to California to Code of Civil Procedure section 384 to the California State Controller for deposit in the Unclaimed Property Fund in the name of the individual whose check was uncashed.

8. Notwithstanding anything else contained herein, this MOU shall be enforceable under California Code of Civil Procedure section 664.6 and admissible under California Evidence Code section 1123, subdivision (a). Regardless of any settlement privilege or other rules of evidence, this MOU may be admitted in Court and enforceable even if a finalized settlement document cannot be agreed upon.

9. Neither this MOU, nor any final form of the settlement agreement, will constitute an admission by Defendant of any form of liability or allegation against it.

10. The Parties agree that this MOU is confidential (except for purposes of enforcement) and that neither party will issue any press release or other public or non-public representation regarding the settlement other than as necessary to obtain Court approval and effectuate the terms of the settlement.

11. The Parties agree that the formal settlement agreement will contain an integration clause.

APPROVAL AND EXECUTION BY PARTIES

PLAINTIFF:

Dated: 12/11/2024

DocuSigned by:
Esquibel Yanez Arias
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Esquibel Arias
Plaintiff and Private Attorney General

DEFENDANT:

Dated: 12/18/2024

Domain Services, LLC

Cory Empting

By: Cory Empting

Title: Manager

APPROVED AS TO FORM BY COUNSEL

PLAINTIFF'S COUNSEL:

Dated: 12/11/2024

Melmed Law Group P.C.

Jonathan Melmed
Attorneys for Plaintiff

DEFENDANT'S COUNSEL:

Dated: December 19, 2024

Dickenson Peatman & Fogarty

Jennifer E. Douglas
Attorneys for Defendant