

IN RE: PUBLISHERS CIRCULATION  
FULFILLMENT, INC.

STATE OF NEW JERSEY  
DEPARTMENT OF LABOR AND  
WORKFORCE DEVELOPMENT

AGENCY NO. GE-688-0824-MAC

**SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”) is hereby entered into between the New Jersey Department of Labor and Workforce Development, Division of Wage and Hour Compliance (“NJDOL”), Publishers Circulation Fulfillment, Inc. (“PCF”), Kevin Daly, Michael Giordana, Gerard Giordana, and Thomas Foard, in their official and individual capacities (collectively, the “Parties”), in which all Parties agree to be bound by the following terms and conditions:

WHEREAS, NJDOL administers and enforces, among other laws, the New Jersey Wage and Hour Law, N.J.S.A. 34:11-56a to -56a38, Wage Payment Law, N.J.S.A. 34:11-4.1 to -4.14, and Earned Sick Leave Law, N.J.S.A. 34:11D-1 to -11, and all respective implementing regulations (collectively, “NJ Wage and Hour Laws”);

WHEREAS, PCF provides printed media delivery services; was incorporated in the State of Maryland in 1983, and registered to do business as a foreign corporation in New Jersey in 1985; and was and is headquartered in Hunt Valley, Maryland, during all relevant time periods;

WHEREAS, at all relevant times hereto, Kevin Daly, Michael Giordana, Gerard Giordana and Thomas Foard have each been owners, officers, and managers of PCF;

WHEREAS, PCF engaged and remunerated certain individuals (“Delivery Workers”) to provide delivery services on PCF’s behalf;

WHEREAS, PCF, in addition to the above, engaged individuals and/or entities to arrange delivery services (the “Distributor Model”), but has represented to NJDOL that it discontinued this practice in 2022;

WHEREAS, NJDOL commenced an investigation of PCF in 2021 concerning PCF’s compliance with NJ Wage and Hour Laws between 2019 to 2022 (the “Investigation”);

WHEREAS, NJDOL determined that PCF misclassified the Delivery Workers as independent contractors when, in fact, such Delivery Workers were employees under the NJ Wage and Hour Laws;

WHEREAS, NJDOL determined that, as a result of PCF's misclassification of the Delivery Workers, PCF violated the following laws:

1. Failing to pay wages due to employees, in violation of N.J.S.A. 34:11-4.2;
2. Withholding or diverting employee wages, in violation of N.J.S.A. 34:11-4.4;
3. Failing to maintain and provide records, in violation of N.J.S.A. 34:11-56a20;
4. Failing to provide employees earned sick leave, in violation of N.J.S.A. 34:11D-5;

WHEREAS, the Parties desire to settle all claims in lieu of litigation;

WHEREAS, the Parties individually and collectively acknowledge the existence of good and valuable consideration for this Agreement.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the Parties agree as follows:

1. **Settlement Amount.** PCF's total gross settlement obligation shall be \$2,750,000 to resolve any and all claims against PCF or any individual owner, shareholder, officer or director that NJDOL may have related to the Investigation from January 2019 through the Effective Date of this Agreement.
2. **Suspended Penalties.** \$700,000 of the Settlement Amount shall be suspended upon satisfaction of the obligations set forth in this Agreement. This sum represents penalties that, if not suspended, shall become due to NJDOL in accordance with Paragraph 4(b).
3. **Effective Date.** The Effective Date shall be the date that this Agreement is fully executed by all Parties.
4. **Payment Terms.** The Settlement Amount shall be distributed and recorded as follows:
  - a. ***Distribution of Payment to the Delivery Workers.*** PCF shall pay a total of \$1,640,000 to eligible Delivery Workers in six installments as follows: (1) \$400,000 by November 1, 2024; (2) \$250,000 by December 1, 2024; (3) \$250,000 by March 1, 2025; (4) \$250,000 by June 1, 2025; (5) \$250,000 by September 1, 2025; and (6) \$240,000 by December 1, 2025.
    - i. ***Enclosure.*** As specified by Appendix A, referenced and incorporated herein, PCF shall issue to each respective Delivery Worker a pro rata portion of each installment by check or direct deposit, made payable to the respective Delivery Worker, subject to N.J.S.A. 34:11-4.5. Payment shall be enclosed in an envelope that shall only contain: (a) the check, (b) a copy of this Agreement (without Appendices), and (c) a cover letter, referenced and incorporated herein as Appendix B to this Agreement.



- ii. **Method of Delivery.** PCF shall make at least two attempts to issue payments to all eligible Delivery Workers by certified mail, return receipt requested, hand delivery, or by direct deposit.
1. **Certified Mail.** If using certified mail, the first attempt shall be made to the respective Delivery Worker's last known address. If such certified mail is returned undeliverable, then PCF shall make a second attempt by attempting to determine the respective Delivery Worker's mailing address by, including, but not limited to, calling the Delivery Worker at all phone numbers available to PCF, and emailing the Delivery Worker at all known email addresses available to PCF. If PCF is able to identify an address for the Delivery Worker, it shall make a second attempt to deliver payment to the Delivery Worker by certified mail, return receipt requested.
  2. **Hand Delivery.** If using hand delivery, the time, place, and recipient of hand deliveries shall be recorded in the Claims Ledger in accordance with Paragraph 4(d).
  3. **Direct Deposit.** If using direct deposit, PCF shall retain proof of deposit and make it available to the NJDOL upon request.
- b. **Distribution of Payment to NJDOL.** PCF shall pay the total sum of \$410,000 to NJDOL in satisfaction of all fees (excluding suspended penalties, but including other penalties, administrative fees, attorneys' fees, and costs) due pursuant to this Agreement. PCF shall pay in two installments as follows: (1) \$250,000 by March 1, 2026, and (2) \$160,000 by June 1, 2026. Any and all payments due to NJDOL under this Agreement shall be issued by check made payable to "Commissioner, New Jersey Department of Labor and Workforce Development" and delivered to Director David Biglin, Division of Wage and Hour Compliance, P.O. Box ~~289~~, 389 Trenton, New Jersey 08625-0389.
- c. **Interest.** In addition to the above amounts, interest shall accrue beginning November 1, 2024 at the rate of 0.25% for each month or partial month that occurs before payment is made to a Delivery Worker or to NJDOL. For example, if an installment payment is made on October 15, 2025, then PCF will owe and pay 3.0% interest on such payment in addition to the payments described above.
- d. **Records and Reporting.** PCF shall maintain a Claims Ledger, that documents: (a) each Delivery Worker's contact information and all contact attempts made by PCF in accordance with Paragraph 4(a)(ii); (b) certified mail return receipts, record of hand delivery, or record of direct deposit, for each respective Delivery Worker; and (c) the payments made to and cashed by the Delivery Workers. Within 120 days after the first installment, PCF shall produce the Claims Ledger to NJDOL. PCF shall produce an updated Claims Ledger to NJDOL every 120 days thereafter, until all installments have been paid in accordance with Paragraph 4(a) and PCF has

provided the final Claims Ledger to NJDOL showing the same. PCF shall also produce all respective correspondence with Delivery Workers pursuant to this Agreement with each respective Claims Ledger.

- e. ***Undistributed Funds.*** The term “Undistributed Funds” shall refer to any monies due under Paragraph 4(a) that are: (a) undeliverable by hand delivery, (b) undeliverable by certified mail, or (c) any check issued that remains uncashed within 90 days of the Delivery Worker’s receipt. PCF shall notify NJDOL of the amount of Undistributed Funds within 120 days after each installment made under Paragraph 4(a), to the extent not already notified by the Claims Ledger. PCF shall cancel all uncashed checks and make a payment to NJDOL in the amount of the Undistributed Funds within 120 days after each installment paid under Paragraph 4(a).

If any payment due to an eligible Delivery Worker is undeliverable as required by Paragraph 4(a)(ii), any monies owed to such Delivery Worker under any subsequent installment shall be deemed “Undistributed Funds” to be made immediately payable to NJDOL within 120 days of such undeliverable payment in accordance with Paragraph 4(e). For example, if PCF is unable to deliver the third installment to an eligible Delivery Worker in accordance with Paragraph 4(a), the monies due to such Delivery Worker under the third, fourth, fifth, and sixth installments shall be included in Undistributed Funds to be distributed to NJDOL within 120 days of the third installment.

5. **Forward Compliance.** As of the Effective Date, or October 15, 2024, whichever is later, PCF shall treat all current and future Delivery Workers as employees under all NJ Wage and Hour Laws, and under all other applicable state labor and employment laws, including, but not limited to, the New Jersey Unemployment Compensation Law, N.J.S.A. 43:21-1 to -24.4 and the Temporary Disability Benefits Law, N.J.S.A. 43:21-25 to -71. Additionally, PCF shall not utilize or reinstate the Distributor Model, or similarly engage individuals and/or entities to provide delivery services on PCF's behalf unless: (1) any entity so engaged agrees in writing to treat any Delivery Worker as an employee as described in this section, (2) PCF provides notice of each such agreement to NJDOL within 14 days of their execution, and (3) if requested by NJDOL, PCF makes such agreements available for inspection by NJDOL.
6. **Reporting.** By February 15 of 2025, 2026, and 2027, PCF shall provide to NJDOL a list of all Delivery Workers, including all individuals and/or entities who performed delivery services or provided individuals to perform delivery services for PCF, in New Jersey, during the preceding calendar year, and corresponding copies of: all W-2s and 1099s issued for the preceding calendar year, and a summary paystub for the preceding calendar year for each Delivery Worker. PCF shall also furnish within 45 days of a request from NJDOL, Delivery Worker payroll records, time records, and to the extent practicable, routes, and schedules.



7. **Breach.** PCF agrees and understands that its failure to materially comply with any of the terms or provisions of this Agreement shall constitute a Breach of this Agreement, which shall include any material misrepresentation or material omission with respect to any information provided to NJDOL in connection with the resolution of this matter. The Parties reserve the exclusive right to enforce performance under the Agreement or seek remedies for any Breach under the Agreement.
8. **Cure Period.** If PCF Breaches any term of this Agreement, NJDOL shall issue a Notice of Noncompliance. PCF shall cure such Breach within 45 days of receiving a Notice of Noncompliance (the "Cure Period").
9. **Penalty for Material Noncompliance.** If PCF fails to cure a Breach of any term of this Agreement within the Cure Period, the entire Settlement Amount, including Suspended Penalties under Paragraph 2, will become immediately due and payable, minus any payment already made by or on behalf of PCF.
10. **Certificate of Debt.** If PCF fails to cure a material breach within the Cure Period, NJDOL reserves its right to file a Certificate of Debt for any balance due under the Agreement.
11. **Individual Liability.** In the event of a Breach under Paragraph 7 that is not cured within the Cure Period as defined by Paragraph 8, Kevin Daly, Michael Giordana, Gerard Giordana, and Thomas Foard (the "Individuals") shall be jointly and severally liable in their individual capacities for any amounts that remain unpaid at the expiration of the Cure Period, and shall be bound under this Agreement in their individual capacity.
12. **Agreement for Settlement Purposes Only.** This Agreement is entered into by the Parties for settlement purposes only. Neither the fact of this Agreement nor any provision contained herein shall constitute an approval, sanction, or authorization by any governmental unit of the State of New Jersey of any act or practice referenced herein. This Agreement shall not constitute an admission of liability, wrongdoing, or violation of law by any aforementioned Party.
13. **Submissions to NJDOL.** For any provisions in this Agreement that require PCF to furnish any documentation to NJDOL, PCF shall furnish such documents in electronic copy to Director David Biglin at [David.Biglin@dol.nj.gov](mailto:David.Biglin@dol.nj.gov), or by hard copy to the Division of Wage and Hour Compliance, P.O. Box 389, Trenton, NJ 08625-0389. PCF shall also copy Deputy Attorneys General Jeffrey L. Olshansky, at [Jeff.Olshansky@law.njoag.gov](mailto:Jeff.Olshansky@law.njoag.gov), Nadya A. Comas, at [Nadya.Comas@law.njoag.gov](mailto:Nadya.Comas@law.njoag.gov), and Marc Peralta, at [Marc.Peralta@law.njoag.gov](mailto:Marc.Peralta@law.njoag.gov) on all such submissions.
14. **Notice to PCF.** Any Notice of Noncompliance or other notice contemplated by this Agreement from NJDOL shall be sent by e-mail to [REDACTED] and [REDACTED]. This shall constitute notice to PCF and the Individuals, unless any Individual who is no longer associated with PCF provides to NJDOL, in accordance with Paragraph 13, a request to be notified at a different e-mail address, then e-mail by NJDOL to such address shall constitute notice to that Individual.



15. **Governing Law.** This Agreement, and the enforcement thereof, shall be governed and interpreted in all respects in accordance with the laws of New Jersey, without regard to principles of conflicts of law.
16. **Modification.** This Agreement may only be amended or modified in writing executed by the Parties.
17. **Merger.** Once executed, this Agreement shall operate as a complete and final disposition of this matter and contains the entire agreement between the Parties, including all material terms, and is binding on the Parties. This Agreement sets forth all the promises, covenants, agreements, conditions, and understandings between the Parties, and it supersedes all prior and contemporaneous agreements, understandings, inducements, or conditions, express or implied. There are no representations, arrangements, or understandings, oral or written, between the Parties relating to the subject matter of this Agreement that are not fully expressed herein, incorporated by reference, or attached hereto. Each Party specifically warrants that this Agreement is executed without reliance upon any statement or representation by any other Party hereto, except as expressly stated herein, incorporated by reference, or attached hereto.
18. **No Waiver.** Failure by NJDOL to seek enforcement of any provision of this Agreement shall not be construed as a waiver of such provision, or a waiver of any other provision of this Agreement.
19. **Knowing and Voluntary.** This Agreement is entered into by all Parties freely and voluntarily and with full knowledge and understanding of the obligation and duties imposed by this Agreement.
20. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, predecessors, successors, and assigns.
21. **Severability.** If any clause, provision, or paragraph of this Agreement shall, for any reason, be held illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect any other clause, provision, or paragraph of this Agreement and this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable clause, paragraph or other provision had not been contained therein.
22. **No Inference Against the Drafter.** No Party shall be considered the drafter of this Agreement, or of any of its provisions, for the purpose of any statute, caselaw, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.
23. **Counterparts.** This Agreement may be executed in any number of counterparts and by different signatories on separate counterparts, each of which shall constitute an original counterpart hereof and all of which together shall constitute one and the same document.



One or more counterparts of this Agreement may be delivered by facsimile or electronic transmission with the intent that it or they shall constitute an original counterpart thereof.

WHEREFORE, the Parties, intending to be bound by this Agreement, through their signatories below, certify that they are fully authorized to enter into this Agreement and execute this document on behalf of NJDOL, PCF, Kevin Daly, Michael Giordana, Gerard Giordana, and Thomas Foard to bind NJDOL, PCF, Kevin Daly, Michael Giordana, Gerard Giordana, and Thomas Foard to the terms and conditions of this Agreement.

[SIGNATURES ON NEXT PAGE]



For NJDOL:

*Joseph Petrecca*

Joseph Petrecca, Assistant Commissioner  
New Jersey Department of Labor and Workforce Development,  
Division of Wage and Hour Compliance

10/11/24

Dated

For PCF:

*Thomas D. Foard*

Thomas D. Foard  
Executive Vice President & Chief Financial Officer

10/10/2024

Dated

On behalf of Themselves as Individuals and in Their Official Capacities:

*Gerard A. Giordana*

Gerard A. Giordana  
Chairperson

10/9/24

Dated

*Michael Giordana*

Michael Giordana  
Chief Executive Officer

10/10/24

Dated President &

*Kevin M. Daly*

Kevin M. Daly  
Executive Vice President & Chief Operations Officer

10/10/24

Dated

*Thomas D. Foard*

Thomas Foard  
Executive Vice President & Chief Financial Officer

10/10/2024

Dated