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Counsel of Record Continued on Following Page

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

SALVADOR RINCON, on behalf of himself and
all others similarly situated,

Plaintiff,

vs.

NEW-INDY TRIPAQ, LLC, a Delaware limited
liability company; TRIPLE A CONTAINERS,
INC., a California corporation; MCDONALD
PACKAGING, INC., a surrendered Delaware
corporation; BRAD MCCROSKEY, an
individual; and DOES 1 through 100, inclusive,
Defendants.

Case No. 20STCV17118

**JOINT STIPULATION RE: CLASS
ACTION AND REPRESENTATIVE
ACTION SETTLEMENT**

[Assigned for all purposes to
The Honorable Maren E. Nelson,
Dept. 17, SSC]

Action Filed: April 30, 2020
Trial Date: None

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6 Attorneys for Defendants
TRIPLE A CONTAINERS, INC. and
7 BRAD MCCROSKEY
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1 **TO THE COURT AND TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL**
2 **OF RECORD:**

3 This Joint Stipulation Re: Class Action and Representative Action Settlement (hereinafter,
4 “Stipulation” or “Settlement”) is made and entered into by and between plaintiffs Salvador Rincon
5 and Saul Ernesto Cedillos (“Plaintiffs”), on behalf of themselves and on behalf of others similarly
6 situated and aggrieved; and defendants New-Indy TriPAQ LLC (“New-Indy”); Triple A
7 Containers, Inc. (“Triple A”); and Brad McCroskey (“McCroskey”), hereinafter collectively
8 referred to as the “Parties.” Subject to the approval of the Court, the Action is hereby being
9 compromised and settled pursuant to the terms and conditions set forth in this Stipulation. This
10 Settlement shall be binding on the Plaintiffs and the class they purport to represent, Defendants,
11 and on their respective counsel, subject to the terms and conditions hereof and the approval of the
12 Court.

13 **I. DEFINITIONS**

14 1. The following terms, as used throughout this Stipulation are defined as follows:

15 a) Action. The term “Action” shall mean and refer to *Salvador Rincon v. New-Indy*
16 *TriPAQ LLC, et al.*, Case No. 20STCV17118 (filed April 30, 2020), as the same shall be amended
17 pursuant to this Agreement.

18 b) Aggrieved Employees. The term “Aggrieved Employees” shall mean Class
19 Members working during the PAGA Period, defined as November 17, 2019 through April 26,
20 2021.

21 c) Check Cashing Deadline. The term “Check Cashing Deadline” shall mean one
22 hundred eighty (180) days after an Individual Settlement Award is issued to a Class Member by
23 check.

24 d) Class. The term “Class” shall mean and refer, collectively, to all Class Members.

25 e) Class Counsel. The term “Class Counsel” shall mean and refer to David D. Bibiyan
26 and Diego Aviles of Bibiyan Law Group P.C.

27 f) Class Members. The term “Class Members” shall mean: All current and former
28 non-exempt, hourly employees of Defendants who worked in the State of California from April 30,

1 2016 through April 26, 2021.

2 g) Class Period. The term "Class Period" shall mean from April 30, 2016 through
3 April 26, 2021.

4 h) Class Representatives. The term "Class Representatives" shall mean and refer to
5 plaintiffs Salvador Rincon and Saul Ernesto Cedillos. The term "Class Representatives" shall be
6 synonymous with the term "Plaintiffs".

7 i) Court. The term "Court" shall refer to the Honorable Maren E. Nelson of the
8 Superior Court of California for the County of Los Angeles, before whom the Action is pending.

9 j) Defendants. The term "Defendants" shall mean and refer to New-Indy TriPAQ
10 LLC, Triple A Containers, Inc., Brad McCroskey, additional defendants named by Plaintiffs in the
11 Action (including, but not limited to, Montebello Container Company LLC, and Proactive
12 Packaging and Display, LLC), and their past, present and/or future, direct and/or indirect, officers,
13 directors, members, managers, employees, agents, representatives, attorneys, insurers, partners,
14 investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions,
15 predecessors, successors, assigns, and joint venturers.

16 k) Defendants' Counsel. The term "Defendants' Counsel" shall refer to Alexander M.
17 Chemers and Kristin N. Kovacich of Ogletree, Deakins, Nash, Smoak & Stewart, P.C, and Edson
18 K. McClellan and Kimberly A. Nayagam of Rutan and Tucker, LLP.

19 l) Document Receipt Deadline. The term "Document Receipt Deadline" shall mean
20 forty five (45) days after the Notices are originally mailed to Class Members by the Settlement
21 Administrator.

22 m) Effective Date. The term "Effective Date" shall mean the date on which the Court's
23 Judgment becomes final, as further detailed in Paragraph 9, herein.

24 n) Final Settlement Approval Hearing. The term "Final Settlement Approval Hearing"
25 shall mean and refer to a hearing before the Court to finally approve the Settlement as fair,
26 reasonable, and adequate, as further detailed in Paragraph 28, herein.

27 o) Final Settlement Papers. The term "Final Settlement Papers" shall refer to and
28 include, without limitation, a Motion for Final Approval of Settlement, Motion for Attorneys' Fees

1 and Costs, and [Proposed] Final Settlement Order.

2 p) Individual Settlement Amount. The term "Individual Settlement Amount" shall
3 mean a Class Member's share of the Net Settlement Amount, as further detailed in Paragraph 18,
4 subparagraph (f), herein.

5 q) Net Settlement Amount. The term "Net Settlement Amount" shall mean and refer
6 to the balance of the Total Class Action Settlement Amount, after all Court-approved deductions
7 for attorneys' fees and actual costs to Class Counsel, the Settlement Administrator's cost and fees,
8 the Class Representatives' enhancement awards, and the PAGA Allocation. The Net Settlement
9 Amount is the maximum amount that will be available for distribution to Class Members.

10 r) Notice. The term "Notice" shall mean the Notice of Class Action Settlement,
11 attached hereto as Exhibit 1.

12 s) PAGA Period. The term "PAGA Period" shall mean from November 17, 2019
13 through April 26, 2021.

14 t) Parties. The term "Parties" shall mean and refer collectively to plaintiffs Salvador
15 Rincon and Saul Cedillos, on the one hand, and Defendants on the other.

16 u) Plaintiffs. The term "Plaintiffs" shall mean and refer to to plaintiffs Salvador
17 Rincon and Saul Cedillos. The term "Plaintiffs" shall be synonymous with the term "Class
18 Representatives".

19 v) Preliminary Approval Date. The term "Preliminary Approval Date" shall mean the
20 date that the Court enters the Preliminary Approval Order.

21 w) Released Parties. The term "Released Parties" shall mean and refer to Defendants
22 and all of Defendants' current or former parent companies, subsidiary companies, and/or related
23 companies, partnerships, joint ventures, affiliates, divisions, and, with respect to each of them, all
24 of their and/or such related entities' predecessors and successors, and, with respect to each such
25 entity, all of its past, present, and/or future, direct and/or indirect, employees, officers, partners,
26 principals, directors, stockholders, managers, owners, representatives, assigns, attorneys, agents,
27 insurers, employee benefit programs (and the trustees, administrators, fiduciaries, and insurers of
28 such programs), and investors.

1 x) Settlement Administrator. The term "Settlement Administrator" shall refer to
2 Phoenix Settlement Administrators, or any other third-party class action settlement administrator
3 agreed to by the Parties and approved by the Court for the purposes of administering this
4 Settlement. If a Settlement Administrator is not agreed upon by the Parties, Class Counsel shall
5 select a Settlement Administrator on the bases of cost and competence, with the best interest of the
6 Class in mind, subject to approval by the Court for purposes of administering this Settlement.

7 y) Stipulation. The term "Stipulation" shall refer to this document, entitled "Joint
8 Stipulation Re: Class Action and Representative Action Settlement", including all exhibits attached
9 hereto.

10 z) Total Class Action Settlement Amount. The term "Total Class Action Settlement
11 Amount" shall mean Nine Hundred Twenty-Five Thousand Dollars and no cents (\$925,000.00)
12 ("Gross Settlement Amount"). This is the maximum possible amount that may be paid by
13 Defendants to resolve the Action. The Total Class Action Settlement Amount is a common fund,
14 non-reversionary amount.

15 aa) Workweek. The term "Workweek" shall mean the number of weeks of employment
16 for each Class Member as an hourly-paid, non-exempt employee during the Class Period. The
17 Settlement Administrator will calculate the number of Workweeks by calculating the number of
18 days each Class Member was employed using their original hire date and final termination date,
19 excluding any time they were unemployed in between during that time period. However, should
20 Defendants identify weeks in which Class Members did not perform any work, those weeks may be
21 excluded from the definition of Workweek.

22 2. Date Of This Stipulation: This Stipulation is made as of the date set forth below by
23 and between Plaintiffs, on behalf of themselves and the Class, on the one hand, and Defendants, on
24 the other hand, subject to approval of the Court.

25 II. **BACKGROUND OF THE LEGAL ACTION**

26 3. Brief Procedural History. The Parties briefly summarize the procedural history in
27 the Action.

28 a) Plaintiff Salvador Rincon filed the lawsuit entitled *Salvador Rincon v. New-Indy*

1 *TriPAQ LLC, et al.*, Case No. 20STCV17118, on April 30, 2020 in the Superior Court for the
2 County of Los Angeles. Therein, the Class Action Complaint for Damages (the "Class Action
3 Complaint") alleged the following causes of action against defendants New Indy, Triple A, and
4 McCroskey: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to
5 provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to pay wages due
6 at termination; (6) failure to issue accurate itemized wage statements; and (7) violations of
7 Business and Professions Code § 17200.

8 b) On November 17, 2020, plaintiff Saul Cedillos filed a *Notice Letter of Saul Ernesto*
9 *Cedillos* with the Labor and Workforce Development Agency ("LWDA") against defendants New-
10 Indy, Montebello Container Company LLC, and Proactive Packaging and Display, LLC,
11 threatening to bring a claim under the Private Attorneys General Act, Cal. Lab. C. §§ 2698, *et seq.*
12 ("PAGA").

13 4. Mediation And Settlement Agreement Reached By The Parties. On February 10,
14 2020, the Parties, by and through their counsel, participated in a private mediation before Louis
15 Marlin, Esq. Those mediation efforts were ultimately successful with the Parties agreeing to
16 resolve the Action in principle and on a class-wide and representative basis against Defendants.
17 This Stipulation formalizes the settlement agreement reached by the parties.

18 5. Investigation. The Parties have conducted a detailed and comprehensive
19 investigation of the claims asserted against Defendants and of the applicable law. The Parties each
20 exchanged and responded to formal and informal discovery, which included: (a) analysis by the
21 Parties of certain records, data, and policies pertaining to Plaintiffs, Class Members, and the claims
22 asserted in the Action; (b) research of the law applicable to Plaintiffs' claims and Defendants'
23 affirmative defenses, as well as the damages alleged by Plaintiffs; (c) examination and analysis of
24 information and documents; and (d) consideration of information disclosed at and in connection
25 with mediation.

26 6. Benefits of Settlement. The Class Representatives and Class Counsel recognize the
27 uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in
28 such litigation. The Class Representatives and Class Counsel also are aware of the burdens of

1 proof necessary to establish liability for the claims asserted in the Action, the defenses thereto, and
2 the difficulties inherent in the Action. Based on the foregoing, the Class Representatives and Class
3 Counsel have determined that the Settlement set forth in this Stipulation is a fair, adequate, and
4 reasonable settlement, and that it is in the best interest of the Class Members. Based on their
5 discovery and investigation, Class Counsel has determined that the Settlement is well within the
6 range of reasonableness. The settlement embodied and documented in this Stipulation is the
7 product of extensive, arms-length negotiations, and is not the product of collusion. Likewise,
8 Defendants have concluded that any further defense of the Action would be protracted and
9 expensive. Substantial amounts of time, energy, and resources have been, and will continue to be,
10 devoted to the defense of the Action unless this Settlement is made. Therefore, Defendants have
11 agreed to settle, in the manner and upon the terms set forth in this Stipulation, in order to fully and
12 finally resolve the claims asserted in the Action.

13 7. Denial of Wrongdoing. Defendants denied and continue to deny each of the claims asserted
14 by Plaintiffs in the Action, as the same may be amended pursuant to Paragraph 8 below.
15 Defendants contend, among other things, that they complied at all times with the California Labor
16 Code and applicable California Wage Orders, that they paid all wages owed to Plaintiffs and Class
17 Members, and that any claim for wage payments or penalties owed is not actionable and/or does
18 not give rise to any liability under the California Labor Code. Defendants further contend that they
19 complied at all times with the provisions of the California Business & Professions Code § 17200 *et*
20 *seq.* Neither this Stipulation nor any action taken to carry out the Settlement may be construed as
21 an admission by Defendants of any fault, wrongdoing, or liability whatsoever.

22 8. Amendment of Complaint. As part of this Stipulation, Plaintiff has agreed to file an
23 amended complaint in *Salvador Rincon v. New-Indy TriPAQ LLC, et al.*, Case No. 20STCV17118
24 in the Superior Court for the County of Los Angeles. The amended complaint shall add
25 Montebello Container Company LLC and Proactive Packaging and Display, LLC as defendants
26 and Saul Cedillos as an additional representative. The amended complaint shall allege the
27 following causes of actions against Defendants: (1) failure to pay overtime wages; (2) failure to
28 pay minimum wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest

1 breaks; (5) failure to pay wages due at termination; (6) failure to issue accurate itemized wage
2 statements; (7) failure to reimburse business expenses; (8) violations of Business and Professions
3 Code § 17200; (9) failure to pay wages during employment; (10) failure to provide written notice
4 of paid sick leave; and (11) civil penalties under PAGA, all of which were investigated prior to
5 mediation as to Defendants, and each of them.

6 **III. DATE OF SETTLEMENT**

7 9. Effective Date. The Court's Judgment shall become final when all of the following
8 events have occurred:

9 a) The Stipulation has been executed by all Parties, Class Counsel, and Defendants'
10 Counsel;

11 b) The Court has given preliminary approval to the Settlement;

12 c) The Court has held a Final Settlement Approval Hearing and has entered a Final
13 Order and Judgment;

14 d) Class Representatives and Class Counsel have confirmed in writing that they do not
15 plan at this time to appeal any portion of the Final Order and Judgment; and

16 e) In the event that written objections are presented prior to the Final Settlement
17 Approval Hearing which are not later withdrawn, or upon Class Representatives and/or Class
18 Counsel reserving the right to appeal any portion of the Final Order and Judgment, upon the later
19 of:

20 i. The date of final affirmance on an appeal of the Judgment; the
21 expiration of the time for a petition to review the Judgment; and, if
22 review is granted, the date of final affirmance of the Judgment
23 following review; or

24 ii. The date of final dismissal of any appeal from the Judgment or the
25 final dismissal of any proceeding to review the Judgment; or

26 iii. If no appeal is filed, the expiration date for filing any appeal from the
27 Judgment.

28 f) In the event that no written objections are presented prior to the Final Settlement

1 Approval Hearing, or that any filed written objections are withdrawn prior to the Final Settlement
2 Approval Hearing, the Court's Judgment shall become final when the conditions set forth in
3 subparagraphs (a) through (d) of this Paragraph 9, hereinabove, have been fulfilled.

4 **IV. CLASS MEMBERS INCLUDED IN THE SETTLEMENT**

5 10. Scope Of The Class. The Class is defined as follows: "All current and former non-
6 exempt, hourly employees of Defendants who worked in the State of California from April 30,
7 2016, through the Preliminary Approval Date."

8 11. Class Members' Objection To This Settlement. Any Class Member may object to
9 the Settlement by serving a written objection on the Settlement Administrator, which shall include
10 the case name and case number, the Class Member's name, the last four digits of the Class
11 Member's Social Security Number and/or employee ID, the Class Member's address, the specific
12 reasons for the objection, and the Class Member's signature, along with whether the Class Member
13 wishes to speak at the Final Settlement Approval Hearing. Any such objection shall be served by
14 mail and post-marked on or before the Document Receipt Deadline. Within forty-eight (48) hours
15 of receipt of any objection, the Settlement Administrator shall forward that objection by email to
16 Class Counsel and Defendants' Counsel. Defendants' Counsel shall lodge the objection with the
17 Court within five (5) days after receipt from the Settlement Administrator. Class Counsel and
18 Defendants' Counsel shall respond to any written objection by the deadline to file the Final
19 Approval Papers. Any Class Member who does not object to the Settlement in the manner
20 provided for in this Stipulation may not appeal the Final Judgment. In the event that the Court
21 approves this Settlement notwithstanding the objections of any Class Members, Class Members
22 who object to the Settlement will nonetheless be bound by the Settlement. Class Members who
23 have validly opted out of the Settlement as set forth herein do not have standing to object to the
24 Settlement or to file an appeal for purposes of Paragraph 9

25 12. Class Members' Exclusion ("Opt-Out") From This Settlement. Any Class Member
26 may request to be excluded ("opt-out") from this Settlement by mailing a written Request for
27 Exclusion to the Settlement Administrator as prescribed herein. Each Class Member who submits
28 a valid Request for Exclusion shall not be bound by the Settlement. Each Class Member who has

1 not validly and timely opted-out as prescribed herein will be subject to the full Release.

2 13. Termination Provision. Defendants reserve the right to revoke this Stipulation and
3 the Settlement provided for herein prior to the Final Settlement Approval Hearing in the event that
4 five percent (5%) or more Class Members opt out of the Settlement by submitting timely and valid
5 Requests for Exclusion in the manner set forth herein, in which case this Stipulation will not have
6 any force and/or effect. Class Counsel and the Class Representatives agree not to oppose any
7 application by Defendants and/or their Counsel that is consistent with this paragraph. Class
8 Counsel and the Class Representatives agree not to oppose any application by Defendants and/or
9 their Counsel that is consistent with this paragraph. Defendants shall make their election within
10 seven (7) calendar days of receipt from the Settlement Administrator of the total percentage of opt-
11 outs. If the Settlement is voided, no payment will be made by Defendants to Plaintiffs, any Class
12 Member, or Class Counsel; and all Parties and third parties referenced in this Stipulation will bear
13 their own costs, fees, and expenses associated with the Litigation. However, Defendants will be
14 responsible for the costs incurred by the Settlement Administrator.

15 14. Pro Rata Increase. Triple A represents that there are no more than 5,621
16 Workweeks through the date of the parties' mediation. The New-Indy Defendants represent that
17 there are no more than 31,250 Workweeks through the date of the parties' mediation. In the event
18 the number of workweeks worked increases by more than 5% through the date of the parties'
19 mediation, for either Triple A, on the one hand, or the New-Indy Defendants, on the other hand,
20 then the Gross Settlement Amount shall be increased proportionally by the Workweek Value and
21 be paid by the party or parties' whose Workweeks were in excess. The Workweek Value shall be
22 calculated by dividing the Gross Settlement Amount (\$925,000.00) by the number of Workweeks
23 worked (36,871), which amounts to a Workweek Value of \$25.09. ($\$925,000 / 36,871$ workweeks.)
24 Thus, for example, should there be 34,000 Workweeks worked for the New-Indy Defendants by
25 Class Members through the date of the parties' mediation, then the Gross Settlement Amount shall
26 be increased by \$29,781.83 and paid by the New-Indy Defendants. ($34,000$ workweeks $- 31,250$
27 workweeks $- 1,563$ workweeks $\times$ $\$25.09/\text{workweek}$.)

28 15. Finality Of Settlement. As of the Effective Date, the Settlement contained herein,

1 including the Release outlined below, shall be final and binding upon all Class Members who do
2 not exclude themselves from the Settlement.

3 **V. RELEASES**

4 16. Release By Plaintiffs And Class Members. Upon final approval of this Settlement,
5 as well as the receipt by the Settlement Administrator of the full Gross Settlement Amount and the
6 employer's share of payroll taxes, Plaintiffs and Class Members release the Released Parties from
7 the following, collectively referred to as the "Released Class Claims," during the period from April
8 30, 2016 through April 26, 2021, any and all claims, actions, demands, causes of action, suits,
9 debts, obligations, damages, rights or liabilities that have been asserted by Plaintiffs in the Action,
10 and any claims that could have been asserted based on the facts and/or theories alleged in the
11 Action, including, but not limited to: claims for unpaid wages (including claims for minimum wage
12 and overtime compensation), for failure to provide meal and rest periods and for any and all unpaid
13 meal and unpaid rest period premiums (including premiums pursuant to Labor Code section 226.7),
14 for unreimbursed business expenses, for interest, for penalties (including waiting time penalties
15 pursuant to Labor Code sections 201, 202, and 203, pay stub penalties pursuant to Labor Code
16 section 226, for claims pursuant to Labor Code sections 200, 201, 202, 203, 226, , 226.7, 510, 512,
17 1174, 1194, 1194.2, 1197, and 2802, for claims under Business and Professions Code section
18 17200 *et seq.* arising from the facts and/or theories asserted in the Action, as well as for claims for
19 attorneys' fees, costs, interest, restitution, injunctive or equitable relief, and any other remedies
20 available at law or equity arising from the facts and/or theories asserted in the Action. In addition,
21 for Aggrieved Employees, during the period from November 17, 2019 through April 26, 2021, the
22 release includes all claims for civil penalties under PAGA arising out of Labor Code sections 210,
23 226.3, 558, 1197.1, and 2699 based on the facts and/or theories alleged to have been violated in the
24 First Amended Complaint, which includes, without limitation, Labor Code sections 200, 201, 202,
25 203, 204, 226, 227.3, 404, 432, 510, 1174, 1194, 1197, 1198, 1198.5, 2802, and 2810.5.

26 17. General Release By The Class Representatives. In addition to the release set forth
27 in the above Paragraph 16, upon final approval of this Settlement, as well as the receipt by the
28 Settlement Administrator of the full Gross Settlement Amount and the employer's share of payroll

1 taxes, the Class Representatives make the additional general release of their individual claims
2 arising during the Class Period as follows: The Class Representatives release the Released Parties
3 from any and all claims, actions, demands, causes of action, suits, debts, obligations, damages,
4 rights, or liabilities of any nature and description whatsoever, known or unknown, that the Class
5 Representatives individually may possess against the Released Parties arising from the Class
6 Representatives' employment with Defendants. The Class Representatives hereby acknowledge
7 that, upon receiving the sums provided pursuant to this Stipulation, they will have received all
8 potential wages, damages, and penalties owing to them by the Released Parties, and, further, that
9 they are not owed any additional wages, penalties, or damages from the Released Parties.

10 Upon final approval of this Settlement, as well as the receipt by the Settlement
11 Administrator of the full Gross Settlement Amount and the employer's share of payroll taxes, the
12 Class Representatives also agree to expressly waive the provisions of California Civil Code section
13 1542, which provides as follows:

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

18 **VI. AMOUNT AND DISTRIBUTION OF SETTLEMENT**

19 18. Settlement Amount. The Gross Settlement Amount shall be Nine Hundred Twenty-
20 Five Thousand Dollars and no cents (\$925,000.00), as the same may be escalated pursuant to
21 Paragraph 14 of this Agreement.

22 a) The Total Class Action Settlement Amount will be paid as follows: \$850,000 to be
23 paid by New-Indy and \$75,000 to be paid by Triple A. Defendants will pay the Total Class Action
24 Settlement Amount within twenty-one (21) calendar days following the Effective Date by wiring
25 that amount to the Settlement Administrator. Except as set forth in Paragraph 14 above,
26 Defendants shall not be obligated to pay more than the amount of \$925,000 as a result of this
27 Settlement.

28 b) The payments in this paragraph recognize that Triple A and McCroskey are

1 potentially liable for the period from April 30, 2016 through December 31, 2016, and that New-
2 Indy is potentially liable for the period from January 1, 2017 through the present.

3 19. In the event that either Triple A or New-Indy do not fund their portion of the Total
4 Class Action Settlement Amount as described in this paragraph or otherwise fail to comply with
5 their respective obligations in this Stipulations, the Stipulation shall be void as to the breaching
6 defendant only. The Stipulation shall remain in effect as to the non-breaching defendant, provided
7 that it pays its portion of the Total Class Action Settlement Amount, and with the Stipulation only
8 applying to that defendant's liability period, i.e., payment by New-Indy would serve to settle
9 claims during the period since January 1, 2017. Deduction From Settlement Amount. Deductions
10 from the Total Class Action Settlement Amount, all subject to Court approval, shall be made for:

11 a) Attorneys' Fees. Class Counsel may apply for an award of attorneys' fees, not to
12 exceed 33% of the Gross Settlement Amount which, unless escalated by Paragraph 14 of this
13 Agreement, shall be Three Hundred and Eight Thousand and Three Hundred and Thirty Three
14 Dollars and Thirty Three Cents Cents (\$308,333.33.) The attorneys' fees award shall be paid from
15 the Gross Settlement Amount. Defendants agree not to oppose any such applications which are
16 consistent with this paragraph. The amount of attorneys' fees shall include all past and future
17 attorneys' fees incurred in the Action – including, without limitation, all time expended by Class
18 Counsel in the Action or in defending the Settlement and securing final approval of the Settlement.

19 b) Attorneys' Costs. In addition to attorneys' fees, Class Counsel may apply for an award of
20 costs, not to exceed the sum of Twenty Thousand Dollars and Zero Cents (\$20,000.00). The costs
21 award shall be paid from the Gross Settlement Amount. Defendants agree not to oppose any such
22 applications which are consistent with this paragraph. The amount of costs shall include all past
23 and future costs associated with the Action – including, without limitation, all costs expended by
24 Class Counsel in the Action on in defending the Settlement and securing final approval of the
25 Settlement.

26 c) Class Representatives' Enhancement Award. Class Counsel may apply for an
27 enhancement award to the Class Representatives in an amount not to exceed Five Thousand
28 Dollars and no cents (\$5,000.00) to each of the Class Representatives. The enhancement award

1 shall be paid from the Gross Settlement Amount. Defendants agree not to oppose any such
2 application which is consistent with this paragraph.

3 d) Settlement Administration Costs and Fees. All actual costs for settlement
4 administration, including related accounting costs, in an amount not to exceed \$10,000,00, shall be
5 paid from the Gross Settlement Amount. The Parties contemplate that the Settlement
6 Administrator shall be Phoenix Settlement Administrators, or any other third-party class action
7 settlement administrator agreed to by the Parties and approved by the Court for the purposes of
8 administering this Settlement. If a Settlement Administrator is not agreed upon by the Parties,
9 Class Counsel shall select a Settlement Administrator on the bases of cost and competence, with
10 the best interest of the Class in mind, subject to approval by the Court for purposes of
11 administering this Settlement. Defendants agree not to oppose any such applications which are
12 consistent with this paragraph.

13 e) PAGA Allocation. The Parties agree to allocate Twenty Thousand Dollars and Zero Cents
14 (\$20,000.00) of the Gross Settlement Amount to resolve Aggrieved Employees' claims under
15 PAGA (the "PAGA Allocation"). Pursuant to PAGA, seventy-five percent (75%) of the PAGA
16 Allocation, or Fifteen Thousand Dollars and Zero Cents(\$15,000.00), shall be paid to the State of
17 California Labor and Workforce Development Agency (the "LWDA"), with the remaining twenty-
18 five percent (25%), or Five Thousand Dollars and Zero Cents (\$5,000.00), allocated to the Net
19 Settlement Amount.

20 f) Payment of Individual Settlement Awards To Class Members. After the amounts described
21 in Paragraph 19, subparagraphs (a) through (e), above, have been deducted from the Gross
22 Settlement Amount, the remainder – the Net Settlement Amount – shall be distributed to each
23 "Participating Class Member," who are defined as all Class Members who do not submit a timely
24 and valid Request for Exclusion, in the following manner:

- 25 a. Individual Settlement Payments (*i.e.*, a payment to a Participating Class Member
26 of his or her net share of the Net Settlement Amount, excluding any PAGA
27 Payment to which he or she may be entitled if he or she is also an Aggrieved
28 Employee), will be calculated and distributed to Participating Class Members

1 from the Net Settlement Amount on a *pro rata* basis, based on the Participating
2 Class Members' respective number of Workweeks during the Class Period.
3 PAGA Payments to Aggrieved Employees will be calculated and distributed to
4 Aggrieved Employees from the PAGA Payment on a *pro rata* basis based on
5 Aggrieved Employees' respective number of Workweeks during the PAGA
6 Period. Workweek means the number of workweeks that a Class Member was
7 employed by Defendant in a non-exempt, hourly position during the Class
8 Period. If a Class Member disputes his/her Individual Settlement Share (*i.e.*, the
9 gross amount of the Net Settlement Amount that a Class Member is eligible to
10 receive based on the number of Workweeks that he or she worked as a Class
11 Member during the Class Period if he or she does not submit a timely and valid
12 Request for Exclusion, excluding any PAGA Payment to which he or she may
13 be entitled if he or she is also an Aggrieved Employee), it shall be termed a
14 "Workweek Dispute." Specific calculations of the Individual Settlement Shares
15 and PAGA Payments to PAGA Aggrieved Employees will be made as follows:

- 16 i. The Settlement Administrator will determine the total number of
17 Workweeks worked by each Class Member during the Class Period
18 ("Class Member's Workweeks"), as well as the aggregate number of
19 Workweeks worked by all Class Members during the Class Period
20 ("Class Workweeks"). Additionally, the Settlement Administrator will
21 determine the total number of Workweeks worked by each Aggrieved
22 Employee during the PAGA Period ("Aggrieved Employee's
23 Workweeks"), as well as the aggregate number of Workweeks worked
24 by all Aggrieved Employees during the PAGA Period ("PAGA
25 Workweeks").
- 26 ii. To determine each Class Member's Individual Settlement Share, the
27 Settlement Administrator will use the following formula: Individual
28 Settlement Share = (Class Member's Workweeks ÷ Class Workweeks) ×

1 Net Settlement Amount.

- 2 iii. To determine each Participating Class Member's Individual Settlement
3 Share, the Settlement Administrator will determine the aggregate number
4 of Workweeks worked by all Participating Class Members during the
5 Class Period ("Participating Class Workweeks") and use the following
6 formula: Individual Settlement Share = (Participating Class Member's
7 Workweeks ÷ Participating Class Workweeks) × Net Settlement
8 Amount.
- 9 iv. The net amount of the Individual Settlement Share is to be paid out to
10 Participating Class Members by way of check and is referred to as
11 "Individual Settlement Payment(s).
- 12 v. To determine each Aggrieved Employee's PAGA Payment, the
13 Settlement Administrator will use the following formula: Aggrieved
14 Employee's PAGA Payment = (Aggrieved Employee's Workweeks ÷
15 PAGA Workweeks) x \$2,500.00 (the portion of the PAGA Payment paid
16 to PAGA Aggrieved Employees). This amount is to be paid out to
17 Aggrieved Employees by way of check.

18 Non-Reversionary Settlement. There will be no reversion to Defendants of any amounts
19 contributed toward the settlement after distribution. Class Members who do not submit a timely
20 and valid Request for Exclusion (*i.e.*, Participating Class Members) will receive an Individual
21 Settlement Payment. All PAGA Aggrieved Employees, regardless of whether they submit a valid
22 Request for Exclusion or not, will receive their portion of the PAGA Payment. Individual
23 Settlement Payment checks and checks to Aggrieved Employees for their portion of the PAGA
24 Payment shall remain valid and negotiable for one hundred and eighty (180) calendar days after
25 the date of their issuance. Within seven (7) calendar days after expiration of the 180-day period,
26 checks for such payments shall be canceled and funds associated with such checks shall be
27 considered unpaid, unclaimed or abandoned cash residue pursuant to Code of Civil Procedure
28 section 384 ("Unpaid Residue"). The Unpaid Residue plus accrued interest, if any, as provided in

Code of Civil Procedure section 384, shall be transmitted as follows: to Legal Aid at Work, 180 Montgomery St., Suite 600, San Francisco, California 94104 for use in Los Angeles County. The Settlement Administrator shall prepare a report regarding the distribution plan pursuant to Code of Civil Procedure section 384 and the report shall be presented to the Court by Class Counsel along with a proposed amended judgment that is consistent with the provisions of Code of Civil Procedure section 384.

VII. SETTLEMENT ADMINISTRATION

20. Settlement Administrator's Duties. The Settlement Administrator shall be responsible for (a) processing the data provided by Defendants to be used in calculating Individual Settlement Payments; (b) preparing, printing, and mailing to Class Members the Notice (attached hereto as **Exhibit 1**) as well as following up with reasonable skip tracing; (c) notifying the Parties of the identity of Class Members who submit timely Requests for Exclusion; (d) calculating and mailing Individual Settlement Payments to Class Members and PAGA Payments to Aggrieved Employees; (e) filing any required federal and state tax forms and related agency reporting; (f) filing any required reports with the Court; and (g) any and all such other tasks as to which the Parties mutually agree, or which the Court orders the Settlement Administrator to perform.

Specifically, the Settlement Administrator shall perform the following duties:

a) Processing Of Data Provided By Defendants Regarding Class Members. Upon receipt of the data provided by Defendants, the Settlement Administrator shall determine, for each Class Member: (i) the Class Member's name, (ii) the Class Member's last known address, (iii) the last four digits of the Class Member's social security number, (iv) the Class Member's number of Workweeks worked during the Class Period (and PAGA Period, if applicable); and (v) the Class Member's Individual Settlement Share (and PAGA Payment, if applicable).

b) Mailing Of Documents. Within ten (10) calendar days of receipt of the database containing the information to be provided by Defendants, the Settlement Administrator shall mail a copy of the Notice to all Class Members by first class regular U.S. Mail, using the most current mailing address information provided by Defendants and/or obtained by the Settlement Administrator. The Settlement Administrator will engage in address searches consistent with its

1 normal practices in administering settlements of wage claims, including skip tracing. Such search
2 efforts shall include, where necessary, using social security numbers to obtain better address
3 information and attempting to call such Class Members. Any returned envelopes from this mailing
4 with forwarding addresses will be utilized by the Settlement Administrator to forward the Notices
5 to the Class Members.

6 c) Re-Mailing Of Returned Notices. Notices returned to the Settlement Administrator
7 as non-delivered shall be re-sent to the forwarding address, if any, on the returned envelope. A
8 returned Notice will be forwarded only once per Class Member by the Settlement Administrator.
9 Upon completion of these steps by the Settlement Administrator, the Parties shall be deemed to
10 have satisfied their obligation to provide the Notice to the affected Class Member. The affected
11 Class Member shall remain a Class Member and shall be bound by all the terms of this Stipulation
12 and the Court's Final Order and Judgment.

13 d) Challenges To Estimated Qualified Weeks And/Or Weekly Settlement Value. On
14 or before the Document Receipt Deadline, which is forty five (45) calendar days after the date that
15 the Settlement Administrator originally mails Notices to Class Members, any Class Member can
16 dispute the number of Workweeks attributed to them in the Class Period and/or PAGA Period, as
17 well as the Individual Settlement Share and/or PAGA Payment attributed to them (*i.e.*, Workweek
18 Dispute). Any such Workweek Dispute shall be mailed or faxed to the Settlement Administrator,
19 along with any evidence that the Class Member has to support the Workweek Dispute. The
20 Settlement Administrator shall notify Class Counsel and Defendants' Counsel of its receipt of a
21 valid Workweek Dispute within five (5) business days after having received each such Workweek
22 Dispute, and shall inform the Class Member how it will resolve any such Workweek Dispute
23 within ten (10) business days after having received the Workweek Dispute. The Settlement
24 Administrator's decision will be communicated to the Class Member by mail (along with any
25 alternate form of communication provided by the Class Member in connection with the Dispute)
26 and shall be binding and final.

27 e) Processing Requests For Exclusion ("Opt-Outs") From Settlement. In the event that
28 a Class Member requests to be excluded (*i.e.*, opts out) of the Settlement provided herein, he or she

1 must mail a written Request for Exclusion to the Settlement Administrator by first class U.S. Mail,
2 or equivalent, postage paid and postmarked, by no later than the Document Receipt Deadline,
3 which is forty five (45) calendar days after the date that the Settlement Administrator originally
4 mails Notices to Class Members. To be valid, the written Request for Exclusion must include (i)
5 the Class Member's name, (ii) the Class Member's address, (iii) the last four digits of his or her
6 social security number, (iv) the statement: "Please exclude me from the Settlement Class in the
7 *Salvador Rincon v. New-Indy Tripaq* matter" or something to that effect, and (iv) the Class
8 Member's signature. The Settlement Administrator shall notify Class Counsel and Defendants'
9 Counsel of its receipt of all valid Requests for Exclusion within five (5) business days after having
10 received each such Request for Exclusion. A Class Member can only request to be excluded from
11 the class portion of the settlement, which will result in he or she not receiving his or her Individual
12 Settlement Share. A Class Member cannot opt out of the settlement of the PAGA claim and,
13 should settlement of the PAGA claim be approved, he or she will receive a PAGA Payment
14 whether or not he or she opts out if he or she is an Aggrieved Employee.

15 f) Payment of Individual Settlement Payments. The Settlement Administrator shall be
16 solely responsible for the disbursement of the Individual Settlement Payments.

17 g) Declaration Of Due Diligence. No later than ten (10) calendar days prior to the
18 Final Settlement Approval Hearing, the Settlement Administrator shall provide both Parties with a
19 declaration of due diligence to be filed with the Court.

20 h) Allocating Portions Of the Individual Settlement As Wages. The Settlement
21 Administrator shall be responsible for calculating the portion of each Individual Settlement
22 Payment to be allocated as wages. 33.334% of each Individual Settlement Award shall be
23 allocated as wages, and 66.666% of each Individual Settlement Award shall be allocated as interest
24 and penalties.

25 i) Taxation Of Individual Settlement Awards. The portion of each Individual
26 Settlement Award allocated as wages shall be subject to payroll withholding. The Settlement
27 Administrator shall be responsible for paying the employees' share of federal, state, and local
28 payroll and income taxes. Appropriate withholding of the employee's share of income taxes shall

1 be deducted from each Individual Settlement Awards. The employer's share of payroll taxes shall
2 be paid outside of the Gross Settlement Amount by Defendants, and each of them.

3 i. Federal Tax Reporting. The Settlement Administrator shall issue an IRS Form
4 W-2 to each Class Member for the portion of the Individual Settlement Payment
5 that is designated as wages. The Settlement Administrator shall issue an IRS
6 Form 1099 to each Class Member for the portion of the Individual Settlement
7 Payments that is not designated as wages, as well as the PAGA Payments. The
8 Settlement Administrator shall issue an IRS Form 1099 to the Class
9 Representatives for any enhancement award paid in connection with his role as
10 the Class Representative.

11 ii. State Tax Reporting. The Settlement Administrator shall file, with the
12 California Employment Development Department ("EDD"), the required reports
13 of Personal Income Tax ("PIT") wages withheld from the Individual Settlement
14 Payments, as well as the amounts to be paid as Unemployment Insurance ("UI"),
15 Employment Training Tax ("ETT"), and State Disability Insurance ("SDI"). For
16 purposes of this reporting, prior to disbursement of the Individual Settlement
17 Payments, the Settlement Administrator shall provide Defendants with a list of
18 all Class Members, and Defendants shall provide to the Settlement
19 Administrator the following information: (1) their Form DE 2088, Notice of
20 Contribution Rates and Statement of UI Account, for the current calendar year
21 (if unavailable, Defendants may provide instead their California State
22 Employer's Identification Number and applicable UI and ETT Rates); and (2)
23 the year-to-date earnings of each Class Member who received any wages from
24 Defendants during the current calendar year.

25 iii. Responsibility For Tax Obligations. All Class Members and the Class
26 Representatives will be responsible for correctly characterizing the
27 compensation they receive for tax purposes and for paying any taxes on the
28 amounts received, except for the employer contributions which will be

1 handled as provided by this Stipulation.

2 j) Mailing Of Individual Settlement Awards. Within ten (10) calendar days after
3 Defendants' transfer of funds to the Settlement Administrator, the Settlement Administrator shall
4 mail all Class Members their Individual Settlement Payments and PAGA Payments.

5 k) Payments To Class Counsel. Within ten (10) calendar days after Defendants'
6 transfer of funds to the Settlement Administrator, the Settlement Administrator shall pay the
7 attorneys' fees and costs.

8 l) Payment Of PAGA Allocation. Within ten (10) calendar days after Defendants'
9 transfer of funds to the Settlement Administrator, the Settlement Administrator shall pay the
10 portion of the PAGA Allocation owed to the LWDA.

11 21. Disputes Regarding The Settlement Administrator's Performance of Duties. All
12 disputes relating to the Settlement Administrator's performance of its duties shall be referred to the
13 Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this
14 Stipulation until all payments and obligations contemplated by this Stipulation have been fully
15 carried out.

16 **VIII. DUTIES OF THE PARTIES PRIOR TO PRELIMINARY COURT APPROVAL**

17 22. Submission Of Stipulation To Court. The Parties shall promptly submit this
18 Stipulation to the Court in support of Plaintiffs' motion for preliminary approval and determination
19 by the Court as to the fairness, adequacy, and reasonableness of this Stipulation, and shall apply to
20 the Court for the entry of an order substantially in the following form:

21 a) Scheduling a fairness hearing on the question of whether the proposed Settlement –
22 including payment of attorneys' fees, attorneys' costs, appointment of the Class Representatives
23 and the amount of their enhancement awards, the PAGA Allocation, and the method of
24 determining Individual Settlement Payments to be paid to Class Members – should be finally
25 approved as fair, reasonable, and adequate as to the Class;

26 b) Approving as to form and content the proposed Notice (attached as Exhibit 1);

27 c) Directing the mailing to Class Members of the Notice, by first class U.S. Mail,
28 pursuant to the terms specified herein; and

1 d) Preliminarily approving the Settlement, subject only to the objections of Class
2 Members and final review by the Court;

3 23. Amendment Of This Stipulation To Conform To The Court's Order. To the extent the
4 Court does not approve this Stipulation, or any term contained herein, and instead allows the
5 Parties to amend this Stipulation, the Parties agree to cooperate in good faith to amend the
6 Stipulation in accordance with the Court's direction, and to retain all other terms of the Stipulation
7 that the Court approves.

8 **IX. DUTIES OF THE PARTIES FOLLOWING PRELIMINARY COURT APPROVAL**

9 24. Timely Approval Of Documents To Be Mailed By The Settlement Administrator.
10 Counsel for the Parties shall respond to requests by the Settlement Administrator to approve all
11 settlement administration documents, including the Notice to be mailed to the Class, within four (4)
12 business days of the Settlement Administrator's request for approval.

13 25. Defendants' Provision Of Class Member Data To Settlement Administrator. No
14 later than fourteen (14) calendar days following preliminary approval of this Settlement by the
15 Court, Defendants shall provide the Settlement Administrator with data that is within each
16 Defendants' possession containing, for each Class Member: (a) the Class Member's name; (b) the
17 Class Member's last known address; (c) the Class Member's social security number; (d) the Class
18 Member's first date of employment in California in a non-exempt job position; and (e) the Class
19 Members' last date of employment (if any) in California in a non-exempt job position. This Class
20 information is confidential and not to be disclosed to anyone other than the Settlement
21 Administrator. Defendants may also provide more detailed information identifying weeks in which
22 Class Members did not record any hours, including due to leaves of absence, vacation, and other
23 weeks not actually worked. This information shall be based on Defendants' payroll and other
24 business records, and shall be in a format readily accessible to Defendants. Within fourteen (14)
25 calendar days of receipt of the information from Defendants, the Settlement Administrator will
26 mail the Notice to the Class Members, provided that counsel for the Parties have approved the
27 documents. In the event that approval of the documents takes more than fourteen (14) calendar
28 days, the Settlement Administrator shall mail the Notice to the Class Members within three (3)

1 business days of receiving approval of the documents.

2 26. Disputes Arising From Settlement Administration. Any disputes arising during the
3 settlement administration process must be resolved informally by counsel for the Parties and, if the
4 Parties cannot agree, by the Settlement Administrator, within ten (10) calendar days of the
5 Document Receipt Deadline.

6 27. Motions By Class Counsel.

7 a) Motions Required For Final Approval Of The Settlement. Class Counsel shall timely
8 prepare Final Settlement Papers in conformance with the terms of this Settlement, including (1) a
9 motion for final approval of the Settlement; (2) a motion for award of attorneys' fees and costs; (3)
10 a motion for the Class Representatives' enhancement award; (4) the [Proposed] Final Settlement
11 Order; and (5) any other documents, petitions, or motions required to effectuate this Settlement –
12 including, but not limited to, any additional proposed orders requested by the Court.

13 b) [Proposed] Final Settlement Order. The [Proposed] Final Settlement Order shall include a
14 proposed Final Order and Judgment ordering:

15 i. Approval of the Settlement, adjudging the terms thereof to be fair, reasonable,
16 adequate, and directing consummation of its terms and provisions;

17 ii. Approval of Class Counsel's application for an award of attorneys' fees and
18 costs (Class Counsel will separately submit a motion for award of attorneys'
19 fees and costs);

20 iii. Approval of the enhancement award to the Class Representatives;

21 iv. Dismissal of the Action; and

22 v. Reserving jurisdiction over the construction, interpretation, implementation, and
23 enforcement of the Parties' Settlement, and over the administration and
24 distribution of the Settlement amounts.

25 28. Fairness Hearing. Upon expiration of the Document Receipt Deadline, the Parties
26 shall attend a Final Settlement Approval Hearing with the Court to finally approve the Settlement
27 as fair, reasonable, and adequate as to (a) Class Members; (b) attorneys' fees and costs to Class
28 Counsel; (c) the enhancement awards to the Class Representatives; (d) the costs and fees for

1 settlement administration; (e) the PAGA Allocation, and (f) the Individual Settlement Payments to
2 be paid to the Class Members, including the methodology used to calculate such awards.

3 **X. DUTIES OF THE PARTIES FOLLOWING COURT APPROVAL**

4 29. Final Settlement Approval, And Entry Of Judgment. At or before the Final
5 Settlement Approval Hearing, Class Counsel shall submit the [Proposed] Final Settlement
6 Approval Order and Judgment to the Court for the Court's approval and entry. After entry of the
7 Final Settlement Approval Order and Judgment, the Court shall have continuing jurisdiction over
8 the administration of the Settlement.

9 30. Payment Of Settlement Amount. Not later than twenty-one (21) calendar days
10 following the Effective Date, Defendants shall deposit the Gross Settlement Amount, as the same
11 may be escalated pursuant to this Agreement, in addition to the employer's share of payroll taxes
12 necessary to effectuate the Settlement, into an account established by the Settlement Administrator.
13 The Settlement Administrator will retain authority over the deposited funds, which are to be used
14 in accordance with this Stipulation and any orders of the Court. The Settlement Administrator
15 shall make all payments and other disbursements required by this Stipulation from the Gross
16 Settlement Amount (as the same may be escalated pursuant to this Agreement), as well as the
17 employer's share of taxes provided by Defendants.

18 31. Provision Of Final Settlement Approval Order And Judgment To Settlement
19 Administrator. Within two (2) business days of final approval by the Court of the Settlement
20 provided for in this Stipulation, Class Counsel shall provide the Settlement Administrator with a
21 copy of the Final Settlement Approval Order and Judgment.

22 **XI. ADDITIONAL TERMS**

23 32. Nullification Of Settlement. This Stipulation shall be null and void, and any order of
24 judgment entered by the Court in furtherance of the Settlement shall be vitiated *nunc pro tunc*, if
25 any of the following occurs:

- 26 a) The Court does not enter the Final Settlement Approval Order and Judgment as provided
27 for herein or contemplated by this Stipulation;
28 b) The Court does not finally approve the Settlement as provided for herein;

1 c) The Court does not enter a Final Settlement Approval Order and Judgment as provided for
2 herein that becomes final as a result of the occurrence of the Effective Date; or

3 d) The Settlement does not become final for any other reason. In such a case, the Parties shall
4 be returned to their respective statuses prior to the settlement, and the Parties shall proceed in all
5 respects as if this Stipulation had not been executed. If an appeal is filed from the Court's Final
6 Settlement Approval Order and Judgment prior to the Effective Date, administration of the
7 Settlement shall be immediately stayed pending final resolution of the appeal process.

8 33. No Admissions. Nothing contained herein is to be construed or deemed to be an
9 admission of liability or wrongdoing by Defendants. This Stipulation and the attached exhibits are
10 settlement documents, and, pursuant to California Evidence Code section 1152, these documents
11 shall be inadmissible in any proceeding except in an action or proceeding to approve, interpret, or
12 enforce this Stipulation.

13 34. Amendment Or Modification. This Stipulation may be amended or modified only
14 by a written instrument signed by counsel for all Parties.

15 35. Entire Agreement. This Stipulation and the accompanying exhibits constitute and
16 comprise the entire agreement between the Parties. No oral or written representations, warranties,
17 or inducements have been made to any of the Parties concerning this Stipulation other than the
18 representations, warranties, and covenants contained and memorialized herein.

19 36. Construction. The Parties agree that the terms of this Stipulation and the
20 accompanying exhibits are the result of lengthy, arms-length negotiations, and that this Stipulation
21 shall not be construed in favor of or against any of the Parties by reason of the extent to which any
22 of the Parties or their respective counsel participated in the drafting of this Stipulation.

23 37. Parties' Authority. The signatories to this Stipulation represent that they are fully
24 authorized to enter into this Stipulation and to bind the Parties hereto to the terms and conditions
25 hereof.

26 38. Successors And Assigns. This Stipulation is binding upon, and inures to the benefit
27 of, the Parties' successors and assigns. The Parties represent and warrant that they have not,
28 directly or indirectly, assigned, transferred, or encumbered to any person or entity any portion of

1 any claim, demand, action, cause of action, or rights herein released and discharged except as set
2 forth herein.

3 39. Enforcement Of Actions. In the event that any of the Parties to this Stipulation
4 institutes any legal action, arbitration, or other proceeding against any of the other Parties to
5 enforce the provisions of this Stipulation or to declare rights or obligations under this Stipulation,
6 the successful Party shall be entitled to recover from the unsuccessful Party or Parties, reasonable
7 attorneys' fees and costs, including expert witness fees, incurred in connection with any such
8 enforcement proceedings.

9 40. Governing Law. All terms of this Stipulation shall be governed by and interpreted
10 according to the laws of the State of California.

11 41. Jurisdiction Of The Court. The Court shall retain jurisdiction with respect to the
12 interpretation, implementation, and enforcement of the terms of this Stipulation and all orders and
13 judgments entered in connection with it pursuant to Section 664.6 of the California Code of Civil
14 Procedure.

15 42. Counterparts. This Stipulation may be executed in one or more counterparts. All
16 executed counterparts, and each of them, shall be deemed to be one and the same instrument.
17 Signatures may be affixed either by original signatures, PDF, or facsimile.

18 43. Notices. Unless otherwise specifically provided in this Stipulation, all notices,
19 demands, and/or other communications will be in writing and will be deemed to have been duly
20 given as of the third (3rd) business day after mailing by U.S. Mail, addressed as follows:

21 To The Class:
22 BIBIYAN LAW GROUP, P.C.
23 David D. Bibiyan
24 Diego Aviles
25 Sara Ehsani-Nia
26 8484 Wilshire Blvd, Suite 500
27 Beverly Hills, California 90211
28 Facsimile: (310) 300-1705

To Defendant New-Indy TriPAQ LLC:
OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
Alexander M. Chemers
Kristin N. Kovacich
400 South Hope Street, Suite 1200
Los Angeles, CA 90071
Fax: (213) 239-9045

1 To Defendants Triple A Containers, Inc. and Brad McCroskey:
2 RUTAN & TUCKER, LLP
3 Edson K. McClellan
4 Kimberly A. Nayagam
5 611 Anton Boulevard, Suite 1400
6 Costa Mesa, California 92626-1931
7 Facsimile: 714-546-9035

8 44. Enforceability. The Parties intend for this Agreement to be enforceable in the
9 Superior Court of California for the County of Los Angeles, by and subject to the Court's pending
10 jurisdiction.

11 45. Interpretation. This Stipulation shall be construed as a whole according to its fair
12 meaning. It shall not be construed strictly for or against any Party. Unless the context indicates
13 otherwise, the term "or" shall be deemed to include the term "and," and the singular or plural
14 number shall be deemed to include the other. Captions and headings are intended solely for
15 convenience of reference and shall not be used in the interpretation of this Stipulation.

16 46. Confidentiality.

17 a) Media Comment. The Parties and their respective counsel agree that the terms of
18 this Settlement (including, but not limited to, any settlement amounts), the negotiations leading to
19 this Settlement, and all documents related to the Settlement, shall not be discussed with, publicized,
20 or promoted to the media in any manner that identifies Defendants, except as necessary in order to
21 enforce its terms. Class Counsel and/or Plaintiffs will not list or refer to the Action in any website,
22 mailing, publicity or similar materials – including, but not limited to, any radio or television
23 stations, newspapers, or magazines in any manner that identifies Defendants. In response to any
24 inquiries, including those from media outlets, concerning the settlement, the Parties and their
25 respective counsel agree that they shall simply respond by stating, "the matter has resolved."

26 b) Class Counsel Marketing And Adequacy Declarations. Class Counsel agrees not to
27 use Defendants' names in marketing materials. Class Counsel and the Class Representatives will
28 not make any posting on any website, instant message site, blog, or social networking site that uses
29 Defendants' name. However, for the limited purpose of allowing Class Counsel to prove adequacy
30 as class counsel in other actions, Class Counsel may disclose the name of the Parties, the

venue/case number of the Action, a brief description of the case and the fact of the settlement.

47. Exhibits Incorporated By Reference. The terms of this Stipulation include the terms set forth in any attached Exhibit, which are incorporated by this reference as though fully set forth herein. Any Exhibit to this Stipulation is an integral part of the Settlement.

48. Interim Stay Of Proceedings. The Parties agree to refrain from further litigation in the Action, except such proceedings necessary to implement and obtain an Order granting final approval of the terms of the Settlement. The Parties further agree that the mutual, voluntary cessation of litigation shall terminate either as of the Effective Date or the date upon which this Settlement has been denied by the Court and all subsequent attempts to cure deficiencies have ended.

49. Invalidity Of Any Provision. Before declaring any provision of this Stipulation invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Settlement valid and enforceable.

50. Class Certification For Settlement Purposes Only. The Parties agree to stipulate to class certification only for purposes of the Settlement. If, for any reason, the Settlement is not approved, the stipulation to certification will be void. The Parties further agree that certification for purposes of the Settlement is not an admission that class certification is proper under the standard applied to contested certification motions and that this Settlement will not be admissible in this or any other proceeding as evidence that (i) a class should or should not be certified or (ii) Defendants are or are not liable to the Class Representatives or the putative Class Members.

51. All Terms Subject To Final Court Approval. All amounts and procedures described in this Stipulation shall be subject to final Court approval.

52. Execution Of Necessary Documents. All Parties shall execute all documents reasonably necessary to effectuate the terms of this Settlement.

53. Binding Agreement. The Parties intend that this Settlement shall be fully enforceable and binding on all Parties, and that it shall be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that

1 otherwise might apply under federal or state law.

2

3

4 Dated: July 21, 2021

By: 
Salvador Rincon (Jul 21, 2021 13:44 PDT)
Salvador Rincon
Plaintiff

5

6

7

8 Dated: July 27, 2021

By: 
Saul Ernesto Cedillos
Plaintiff

9

10

11

12 Dated: July __, 2021

By: _____
For New-Indy TriPAQ LLC

13

14

15

16

17 Dated: July __, 2021

By: _____
For Triple A Containers, Inc.

18

19

20

21 Dated: July __, 2021

By: _____
Brad McCroskey

22

23

24

25

26

27

28 Dated: July __, 2021

By: _____
David D. Bibyan
Attorney for Plaintiffs

1 otherwise might apply under federal or state law.
2
3

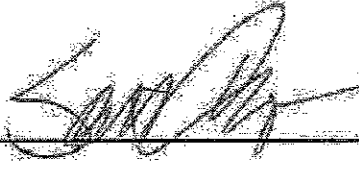
4 Dated: July __, 2021

By: _____
Salvador Rincon
Plaintiff

6
7
8 Dated: July __, 2021

By: _____
Saul Ernesto Cedillos
Plaintiff

10
11
12 Dated: July 21, 2021

By:  _____
For New-Indy TriPAQ LLC
SCOTT CONANT, CFO

13
14
15
16
17 Dated: July __, 2021

By: _____
For Triple A Containers, Inc.

18
19
20 Dated: July __, 2021

By: _____
Brad McCroskey

21
22
23
24 BIBYAN LAW GROUP P.C.

25
26
27 Dated: July __, 2021

By: _____
David D. Bibyan
Attorney for Plaintiffs

1 otherwise might apply under federal or state law.
2
3

4 Dated: July __, 2021

By: _____
Salvador Rincon
Plaintiff

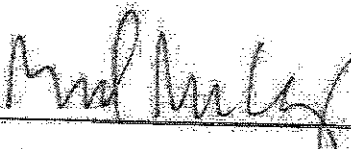
6
7
8 Dated: July __, 2021

By: _____
Saul Ernesto Cedillos
Plaintiff

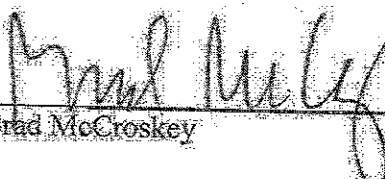
10
11
12 Dated: July __, 2021

By: _____
For New-Indy TriPAQ, LLC

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14
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17 Dated: July 26, 2021

By: 
For Triple A Containers, Inc.

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20 Dated: July 26, 2021

By: 
Brad McCroskey

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24 BIBYAN LAW GROUP P.C.,

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27 Dated: July __, 2021

By: _____
David D. Bibyan
Attorney for Plaintiffs

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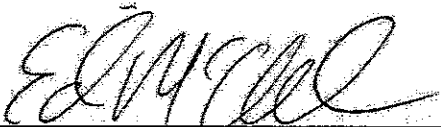
OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

Dated: July __, 2021

By: 
Alexander M. Chemers
Attorney for New-Indy TriPAQ LLC

RUTAN AND TUCKER, LLP

Dated: July 21, 2021

By: 
Edson McClellan
Attorney for Triple A Containers, Inc. and Brad
McCroskey

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