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Attorneys for Plaintiffs, SALVADOR RINCON and  
SAUL ERNESTO CEDILLOS, on behalf of  
themselves and all others similarly situated and aggrieved

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

SALVADOR RINCON and SAUL  
ERNESTO CEDILLOS, on behalf of  
themselves and all others similarly situated  
and aggrieved

Plaintiffs,

v.

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

[Assigned to the Hon. Maren Nelson in Dept.  
17]

**PLAINTIFFS' SUPPLEMENTAL BRIEF  
IN SUPPORT OF MOTION FOR  
PRELIMINARY APPROVAL;  
DECLARATIONS OF PLAINTIFFS AND  
DAVID D. BIBIYAN IN SUPPORT  
THEREOF**

HEARING INFORMATION:

DATE: April 11, 2022

TIME: 9:00 am

DEPT: 17

1           **I.       FIRST AMENDED COMPLAINT**

2           The First Amended Complaint was filed with the Court on March 11, 2022 pursuant to  
3 the Court's Order.

4           **II.       DUNK/KULLAR ANALYSIS**

5               **A.   Records Reviewed**

6           The Court has asked: for further detail as to the investigation and discovery conducted by  
7 Plaintiff's counsel, including: (1) the specific documents and class data reviewed prior to agreeing  
8 to settle the case; (2) all formal discovery, if any, undertaken; (3) the number of Class Members  
9 identified through mediation; (4) whether the data reviewed was for the entire class, or a portion;  
10 and (5) if a portion was utilized, whether the sampling was statistically significant and whether  
11 expert analysis supported the conclusion that it was sufficient to provide useful data.

12           There were approximately 649 non-exempt, hourly-paid employees identified by plaintiffs  
13 Salvador Rincon and Saul Ernesto Cedillos (collectively, "Plaintiffs") working for defendants  
14 New-Indy TriPAQ LLC ("New Indy"), Triple A Containers, Inc. ("Triple A"), Montebello  
15 Container Company LLC ("Montebello"), Proactive Packaging and Display, LLC ("Proactive")  
16 and Brad McCroskey (collectively, "Defendants") from April 30, 2016 through mediation in  
17 California. Plaintiff contends that Defendants are joint employers. While Plaintiffs served twelve  
18 sets of discovery on New Indy, Triple A, and Brad McCroskey, and while three sets of formal  
19 discovery were propounded upon Plaintiff, no formal responses were ever provided by any Party  
20 as the Parties agreed to attend mediation.

21           Rather, hire dates, termination dates and rates of pay were provided for all employees of  
22 New-Indy and Triple A. Class data points were provided for Montebello and Proactive. With  
23 that information, Plaintiff was able to determine the average rate of pay for putative class  
24 members, as well as the number of workweeks worked from April 30, 2016 through mediation,  
25 the number of putative class members, the number of putative class members who worked during  
26 the relevant statutory period for waiting time penalties, wage statement violations, and the  
27 statutory period for recovery of civil penalties under the Labor Code Private Attorneys General  
28

1 Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”), as well as the number of pay  
2 periods in the relevant statutory period for wage statement violations and PAGA.

3 Time and payroll records were provided for 293 of the approximately 649 putative class  
4 members through mediation, which were provided for analysis to expert consultants that  
5 determined the sampling was significant enough to be sufficient to provide useful data to gauge  
6 the reasonableness of the settlement terms. Moreover, policy documents and contact information  
7 for 66 former employees were provided to gauge the certifiability, manageability, and merits of  
8 the class and PAGA actions.

9 Plaintiff reviewed the time and payroll records, data points, hire and termination dates,  
10 policy records, and spoke with putative class members prior to attending mediation to gauge the  
11 reasonableness of the settlement terms and determined the settlement terms reached to be fair,  
12 reasonable and adequate.

### 13 **B. Settlement Amount is a Significant Recovery**

14 The Court has requested further briefing as to why \$925,000 is a fair, reasonable and  
15 adequate settlement amount in light of the calculation that there may have been as much as  
16 \$16,381,513.81 available to Class Members pursuant to Plaintiffs’ calculations. Plaintiff’s  
17 calculation of \$16,381,513.81 was a loose calculation of the *maximum* possible recovery based on  
18 Plaintiff’s theories of recovery when going to mediation. Plaintiff did not brief the effect on the  
19 maximum available recovery after Plaintiffs learned further information at mediation, nor did  
20 Plaintiff brief in detail the effect Defendants’ defenses had on Plaintiffs’ initial valuation.  
21 Plaintiffs will so here at the Court’s request.

#### 22 **1. Unpaid Wages**

23 Plaintiffs’ most salient theory for failure to pay wages was an off-the-clock theory for  
24 failure to pay wages. Class Counsel theorized that Class Members were not paid for all time: (a)  
25 required to wait in line to clock in; (b) often required to start working up to an hour before their  
26 schedule shift to prepare for large orders; (c) often called outside of work hours to answer work  
27 related questions. Plaintiffs’ initial calculation at mediation was that Class Members were  
28 underpaid ten minutes *every* shift with 180,904 shifts in the Class Period, amounting to unpaid

1 wages of \$871,406 in light of an approximate average rate of pay of \$18.89 for Class Members.  
2 (180,904 shifts x .17/shift x \$18.89/hr. x 1.5 overtime rate.)

3       However, information regarding the staggering of shifts and the number of time clocks at  
4 Defendants' facilities learned at mediation caused Class Counsel to go back to Plaintiffs and Class  
5 Members who provided Class Counsel with questionnaire responses during mediation to gather  
6 further information regarding how often time was spent waiting in line, for what portions of the  
7 Class Period time spent waiting in line was more prevalent, what shifts had to wait in line more  
8 than others, and how long waiting time was depending on these variables. Also, based on  
9 information learned at mediation, Class Counsel revisited with Plaintiffs and Class Members  
10 details about which job positions may be required to come in early to perform work on large  
11 projects and/or called outside of work hours to answer work related questions, and during which  
12 portions of the Class Period this practice was maintained. Based on information learned from  
13 Defendants and further investigation done by Class Counsel with Plaintiffs and Class Members,  
14 Class Counsel, in conjunction with expert consultants to account for various permutations,  
15 performed various more calculations of time spent off-the-clock, all of which were significantly  
16 lower than ten minutes every shift.

17       Moreover, in light of learning that the variance between the timing of one's shift, the job  
18 position, and other factors, Plaintiffs had to value more than prior to mediation Defendant's  
19 defenses regarding certifiability as it pertains to commonality, predominance, and manageability.  
20 Plaintiffs had to provide significant consideration of these risks when valuing this claim for the  
21 purpose of settlement, as well.

22       Thus, while Plaintiffs listed a maximum value of \$871,406 for this claim as their  
23 calculation when attending mediation, a significant discount for the purpose of settlement was  
24 warranted in light of the information learned during mediation and the risks presented by  
25 Defendants' defenses in light thereof.

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1                                   **2. Failure to Provide Meal Periods**

2           Class Counsel included in the Motion for Preliminary Approval as a metric Defendants’  
3 exposure the number of unique meal period violations detected (*i.e.*, shifts without a timely, 30-  
4 minute meal period every five hours), which came to 58,029 unique violations and an exposure of  
5 \$1,096,167.81. (58,029 shifts x \$18.89.) This number, however, did not include a calculation of  
6 the meal premium payments made (at least \$23,650) by Defendants during the Class Period.

7           But, more saliently, it does not take into account that the meal period violations rest on  
8 two key disputes of fact which, if resolved against Plaintiffs, would almost eviscerate the value of  
9 this claim. The first is that approximately 42,798 meal periods were recorded after the fifth hour.  
10 Defendants point to written policies requiring Class Members to take their meal period before the  
11 fifth hour and refer to their failure to do so as voluntary, an individualized inquiry, and one not  
12 manageable for trial.

13           The second is that approximately 92,931 shifts between ten and twelve hours did not  
14 include a second meal period, which Plaintiffs calculate as a violation and Defendants insist reflect  
15 waived meal periods. However, Defendants vehemently state that Class Members voluntarily  
16 waived their entitlement to meal periods between ten and twelve hours in length, as they may by  
17 law and that, thus, these are not meal period violations. Defendants point to written policies  
18 permitting for their waiver and insist that any question regarding whether a waiver occurred is an  
19 individualized inquiry and therefore not manageable at trial.

20           While Class Counsel believes that the meal period claim is certifiable (particularly on the  
21 theory of lateness and on a failure to provide second meal periods *en masse*), Class Counsel had  
22 to provide appropriate discounts in light of Defendants’ defenses in connection with commonality,  
23 predominance, manageability, and the merits of the claims, which were considered when  
24 accepting the settlement amount in this matter.

25                                   **3. Failure to Provide Rest Periods**

26           Plaintiff’s theory for failure to provide rest period violations is based on Class Counsel’s  
27 theory that: (1) Class Members often were not permitted to take a third rest period; and (2)  
28 Defendants’ policies requiring that they remain on premises makes each shift a violation. Class

1 Counsel measured Defendants' exposure for this claim by taking the number of shifts over ten  
2 (10) hours (approximately 101,663) and stating that even if only half included non-compliant rest  
3 periods, it would amount to an exposure of \$960,207. (101,663 shifts x .5 x \$18.89.) Based on  
4 the responses by Class Members to questionnaires regarding whether they had to stay on premises,  
5 which seemed to vary during the Class Period, Class Counsel theorized that it was more prudent  
6 to calculate damages in connection with third rest periods. And based on responses by Class  
7 Members to questionnaires regarding how often third rest periods were taken, Class Counsel  
8 theorized that a 50% violation rate was fitting.

9 Of course, Defendants contend that their rest period policy is compliant; that rest periods  
10 do not have to be off premises; that Class Members actually were able to leave the premises during  
11 rest periods; and that Class Members received all of their rest periods. To the extent Class  
12 Members elected not to take third rest periods, Defendants contend that they did so to leave work  
13 earlier, which is their election and creates no liability for Defendants, destroys commonality and  
14 predominance, and makes any trial unmanageable. While Class Counsel maintains its position  
15 that the rest break claim is certifiable and meritorious, it had to consider the risks inherent in this  
16 claim when considering the settlement amount.

#### 17 **4. Wage Statement Violations**

18 Class Counsel conducted a very rudimentary calculation of the maximum exposure for  
19 wage statements violations. With approximately 7,242 pay periods in the relevant time period,  
20 and with a \$100 subsequent violation rate for wage statement violations, Class Counsel calculated  
21 the maximum exposure to be \$724,200. But there is no question that the true maximum exposure  
22 would necessarily have been less because this calculation, made for ease of discussion, does not  
23 take into account: (1) the initial violation rate is only \$50; (2) there is a maximum penalty of  
24 \$4,000 per Class Member. More saliently, because this is a *derivative* claim, it relies on Plaintiff's  
25 success on its failure to pay wage theories. And, if the case of *Naranjo v. Spectrum Security*  
26 *Services, Inc.* (2019) 40 Cal.App.5th 444 is upheld on appeal, it will rely solely on Plaintiff's off-  
27 the-clock claim's success, the risks of which are detailed above. And, even then, the maximum  
28 exposure here assumes a violation *every* pay period. Thus, even if Plaintiff is only partially

1 successful, the damages may be much lower than the maximum damage amount shown here. As  
2 such, Plaintiff had to discount this claim in accordance with the real risk that nothing, or something  
3 much lower than the maximum amount reflected here, may be recovered on this claim.

#### 4 **5. Waiting Time Penalties**

5 With 248 Class Members in the relevant time period, Class Counsel calculated a maximum  
6 exposure of \$1,124,333 for waiting time penalties by assuming that every one of those employees  
7 were not unpaid all of their wages prior to termination. However, as is the case with wage  
8 statements, because this is a *derivative* claim, it relies on Plaintiff's success on its failure to pay  
9 wage theories. And, if the case of *Naranjo v. Spectrum Security Services, Inc.* (2019) 40  
10 Cal.App.5th 444 is upheld on appeal, it will rely solely on Plaintiff's off-the-clock claim's success,  
11 the risks of which are detailed above. And, even then, the maximum exposure here assumes a  
12 violation for *every* Class Member for the full statutory period of 30 days. Thus, even if Plaintiff  
13 is only partially successful, the damages may be much lower than the maximum damage amount  
14 shown here. As such, Plaintiff had to discount this claim in accordance with the real risk that  
15 nothing, or something much lower than the maximum amount reflected here, may be recovered  
16 on this claim.

#### 17 **6. PAGA Penalties**

18 Class Counsel performed an overly rudimentary calculation of PAGA penalties, in  
19 retrospect, when calculating PAGA penalties. Specifically, Class Counsel merely multiplied the  
20 subsequent violation rate for the default PAGA penalty (*i.e.*, Labor Code section 2699) by the  
21 number of theories pursued (eight) as well as the pay period count in the PAGA Period (7,242)  
22 and came to an exposure amount of \$11,587,200. (7,242 pay periods x \$200/pay period x 8  
23 violations.)

24 While reasonable minds differ with regard to calculation of PAGA penalties, Class  
25 Counsel believe a further examination will show that the likely recoverable penalties are almost  
26 certainly lower. The first step in the analysis is the violation rates used. PAGA penalties include  
27 penalties for initial violations and subsequent violations. Defendants contend that only initial  
28 violation rates may be used instead of the subsequent violation rates initially used by Class

1 Counsel. Specifically, Defendants contend that until “notified that it is violating a Labor Code  
2 provision ... the employer cannot be presumed to be aware that its continuing underpayment of  
3 employees is a “violation” subject to penalties.” (*Amaral v. Cintas Corp. No. 2 [Amaral]* (2008)  
4 163 Cal. App. 4th 1157, 1209.) Thus, Defendants contend that subsequent violations in the PAGA  
5 context means not just later in time but following notice to the employer that it is in violation of  
6 the Labor Code. With this in mind, and because Class Counsel, despite initially calculating  
7 penalties with the subsequent violation rate, through investigation and discovery did not conclude  
8 that Defendants at any time were notified by any governmental entity that they violated any Labor  
9 Code sections presented in the PAGA Notice and PAGA claims, Class Counsel adjusts the  
10 exposure model for Defendants to include only initial violation rates.

11 The second step is the penalty amount used. Labor Code section 2699 sets forth the amount  
12 of penalties owed when there is not a more specific provision already provided, such as Labor  
13 Code sections 210, 226.3, 558, 1174.5, and 1197.1, which provide for PAGA penalties for specific  
14 violations.

15 The third step is that Class Counsel originally calculated a violation for every pay period  
16 when some of the allegations (*i.e.*, waiting time penalties, failure to provide notice under Labor  
17 Code section 2810.5) do not arise every pay period and, perhaps, for only one pay period.

18 When considering these details in connection with PAGA penalties, Class Counsel  
19 recalculates the maximum exposure for PAGA penalties, as follows:

20 a. Overtime Violations: Labor Code section 558 prescribes penalties of \$50 for an  
21 initial violation and \$100 for each subsequent violation. Using the initial pay period rate for all  
22 violations, and a violation every single pay period for every single non-exempt employee in the  
23 Settlement Period, this amounts to a maximum exposure of \$362,100. (7,242 pay periods x \$50.)

24 b. Minimum Wage Violations: Labor Code section 1197.1 prescribes penalties of  
25 \$100 for an initial violation and \$250 for each subsequent violation. Using the initial pay period  
26 rate for all violations, and a violation every single pay period for every single Aggrieved Employee  
27 in the PAGA Period, this amounts to a maximum exposure of \$724,200. (7,242 pay periods x  
28 \$100.)

1           c.       Meal Period Violations: Labor Code section 558 prescribes penalties of \$50 for an  
2 initial violation and \$100 for each subsequent violation. Using the initial pay period rate for all  
3 violations, and a violation every single pay period for every single non-exempt employee in the  
4 Settlement Period, this amounts to a maximum exposure of \$362,100. (7,242 pay periods x \$50.)

5           d.       Rest Period Violations: Labor Code section 558 prescribes penalties of \$50 for an  
6 initial violation and \$100 for each subsequent violation. Using the initial pay period rate for all  
7 violations, and a violation every single pay period for every single non-exempt employee in the  
8 Settlement Period, this amounts to a maximum exposure of \$362,100. (7,242 pay periods x \$50.)

9           e,       Waiting Time Penalties: Labor Code section 2699 prescribes penalties of \$100 for  
10 an initial violation and \$200 for each subsequent violation. Because this violation is merited only  
11 at separation of employment, a 100% violation rate would likely include just one violation per  
12 employee. The data produced by Defendants indicates that there are 248 Aggrieved Employees  
13 whose employment was separated during the PAGA Period. This amounts to a maximum  
14 exposure of \$24,800. (248 Aggrieved Employees x \$100.)

15           f.       Wage Statement Violations: According to *Gunther v. Alaska Airlines, Inc.* (2021)  
16 287 Cal.Rptr.3d 229, in this instance, Labor Code section 2699 would be the appropriate penalty  
17 for wage statement violations that are inaccurate, which prescribes penalties of \$100 for an initial  
18 violation and \$200 for each subsequent violation. (*Id.* at 247-248.) Using the initial pay period  
19 rate for all violations, and a violation every single pay period for every single Aggrieved Employee  
20 in the PAGA Period, this amounts to a maximum exposure of \$724,200. (7,242 pay periods x  
21 \$100.)

22           h.       Violation of Labor Code § 2810.5: Upon hire, Defendants must provide each  
23 Aggrieved Employee a notice under Labor Code section 2810.5 with the information set out under  
24 that Labor Code section. Labor Code section 2699 prescribes penalties of \$100 for an initial  
25 violation and \$200 for each subsequent violation. Plaintiff understands Defendants to concede  
26 that no such notices were provided. There were, according to the data provided by Defendants,  
27 approximately 428 Aggrieved Employees hired during the PAGA Period. This amounts to a  
28

1 maximum exposure, using the initial violation rate, of \$42,800. (428 Aggrieved Employees x  
2 \$100.).

3 g. Violation of Labor Code § 246: Labor Code section 246 states that Defendants  
4 must provide paid sick leave for employees who have worked more than 30 days within one year  
5 of employment. Labor Code section 2699 prescribes penalties of \$100 for an initial violation and  
6 \$200 for each subsequent violation. This amounts to a maximum exposure, using the initial  
7 violation rate, of \$724,200. (7,242 pay periods x \$100.)

8 g. Conclusion: In sum, when details regarding PAGA in this matter and generally are  
9 applied, the maximum exposure for PAGA penalties is, in fact, more likely \$3,326,500.

10 And this does not take into account Defendants' available defenses, either. Defendants  
11 contend that no PAGA penalties are likely to be awarded and, even if they were, the maximum  
12 exposure calculated by Class Counsel is vastly overstated. First, Defendants defend that PAGA  
13 penalties cannot and should not be stacked and that, even if they could, very few Courts have ever  
14 exercised discretion to stack them. Second, Defendants will likely assert that individualized issues  
15 predominate the PAGA claims, making the claims unmanageable for trial pursuant to *Wesson v.*  
16 *Staples the Office Superstore, LLC* (2021) 68 Cal.App.5th 746. Third, Defendants deny that a  
17 violation for each pay period can be established. Defendants state that because the PAGA  
18 penalties rely upon substantially similar allegations made in the Action, they are subject to the  
19 same defenses, and, thus, for the same reason Defendants believe there will be no damages  
20 collectible in the class action and no PAGA penalties would be awarded. Fourth, Defendants  
21 contend that a Court is unlikely to exercise its discretion to award civil penalties under PAGA  
22 where, as here, there is no conduct shown by Plaintiff that would show any Labor Code violation  
23 by Defendants is knowing and intentional that would justify PAGA penalties. Defendants insist  
24 that this is especially true in this Action where class action damages are available to Class  
25 Members, rendering an award of PAGA penalties in addition to class action damages an unjust,  
26 arbitrary, oppressive, or confiscatory double recovery. Thus, Defendants contend that the Court  
27 cannot, should not, and will not exercise its discretion to award any penalties under PAGA.

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1 Class Counsel had to account for the risks inherent should the Court not exercise its  
2 discretion to grant any PAGA penalties, in addition to potential issues on the merits, trial  
3 manageability, and issues the possibility that the Court does not use permit stacking of penalties or  
4 permit the use of the subsequent violation rate when providing penalties when considering a  
5 settlement.

## 6 7. **Conclusion**

7 Thus, in retrospect, when including derivative penalties, such as waiting time penalties,  
8 wage statement violations, and discretionary PAGA penalties, Class Counsel theorizes that  
9 Defendants' maximum exposure is, in fact, approximately \$8,102,613.81, with over 40% of that  
10 exposure coming from the exposure of discretionary PAGA penalties. Plaintiffs achieved a  
11 settlement of \$925,000, amounting to a recovery of 11.4% of the maximum possible recovery.  
12 Particularly in light of the risks involving obstacles to class certification, all risks related to  
13 liability, the risks with manageability at trial, the manner in which the discretionary nature of  
14 PAGA penalties, and considering the case law regarding fair, reasonable, and adequate  
15 settlements, Class Counsel strongly believes that the settlement reached is fair, reasonable, and  
16 adequate and in the best interest of Class Members.

## 17 C. **Allocation to PAGA**

18 The Court has inquired why the \$20,000 allocated to PAGA civil penalties is fair to the  
19 LWDA and to aggrieved employees. While the maximum exposure appears high, this allocation  
20 was decided mutually by the Parties and the mutual decision was based on: (1) the fact that  
21 damages are available for the failure to pay wage claims while only penalties are available for the  
22 PAGA claims; (2) the risk that the Court may exercise its discretion to decline to stack PAGA  
23 penalties; (3) the risk that the Court may exercise its discretion to not award the full amount of  
24 PAGA penalties available; and (4) the risk that the Court may decline to award any PAGA  
25 penalties at all, particularly in light of the fact that damages are available for Class Members and  
26 it may find any further liability against Defendants may be unnecessarily punitive. Because the  
27 class claims, that are not discretionary in any manner, are what drove the value of settlement in  
28 this Action, and the class action achieves the goals of the LWDA (*i.e.*, incentivize employers to

1 pay all wages owed to employee, correct policies and practices that prevent full payment of wages,  
2 punishing the employer for any Labor Code violations, and providing relief to employees whose  
3 wages were taken), the amount allocated to PAGA in this Action in which class claims were  
4 available is fair, reasonable and adequate.

5 **D. Declaration of David D. Bibiyan**

6 The Court has inquired as to the propriety of the testimony in the Declaration of David D.  
7 Bibiyan that is stated under information and belief. The Declaration at issue included five  
8 categories of information under information and belief: (1) information provided by expert  
9 consultants; (2) information provided by counsel for Defendants; (3) attorneys and staff from my  
10 office who helped litigate the action to fruition; (4) information provided by co-counsel; and (5)  
11 information provided by the mediator. Plaintiff has revised the Declaration and submits herewith  
12 a Declaration that supports the evidence set forth in the brief and that in the original Motion in a  
13 manner that Class Counsel is hopeful will resolve the Court's concerns.

14 **III. COMMUNITY OF INTEREST**

15 Filed concurrently herewith are Declarations of both Plaintiffs setting forth that each: (1)  
16 understands the obligations of being an adequate class representative; (2) the details of what he or  
17 she has done or will do to demonstrate the adequacy of his or her representation; and (3) the  
18 substantial burden he or she will undertake or has undertaken in order to represent the putative  
19 class in this Action.

20 **IV. CLASS SIZE**

21 Based on documents and information provided by Defendants, there were approximately  
22 649 Class Members in the Settlement Class as of mediation and 428 Aggrieved Employees in the  
23 PAGA Period as of mediation.

24 **V. CLASS PERIOD**

25 The reference to the Class Period ending at the time of preliminary approval instead of  
26 April 26, 2021 is a vestige from a previous version of the Settlement Agreement. Paragraph 10  
27 has been revised to reflect that the Class Period ends on April 26, 2021 in an Amended Settlement  
28 Agreement, a redlined version which is attached as Exhibit "1" to the Declaration of David D.

1 Bibiyan in support of this Brief. The fully executed version of the Amended Settlement  
2 Agreement is attached to the Declaration as Exhibit “2” thereto.

3 **VI. SCOPE OF RELEASE**

4 **A. Class Claims**

5 The Court has counseled that the release of class claims should specify that it is limited to  
6 claims based on facts alleged in the operative First Amended Complaint only and that the  
7 references to the “Action” in the Released Claims language be modified accordingly. The Parties,  
8 in the Amended Settlement Agreement, have modified the language of Paragraph V(16) by  
9 replacing the word “Action” with “First Amended Complaint on file in this Action”, which  
10 effectuates a release of only claims based on facts alleged in the operative First Amended  
11 Complaint. To ensure there is no confusion, the Parties also included a sentence that reads:  
12 “Nothing in this Agreement is intended to release claims based on facts that were not alleged in  
13 the First Amended Complaint on file in this Action.” A redlined and fully executed version of the  
14 revised Settlement Agreement are attached to the Declaration of David D. Bibiyan as Exhibits “1”  
15 and “2” thereto, respectively.

16 **B. PAGA Cause of Action**

17 The Court has asked for briefing regarding the propriety of the PAGA release and why it  
18 should not be limited to claims for penalties that were brought or could have been brought based  
19 on the facts alleged in Plaintiffs’ LWDA letter. The Parties intended to do precisely this and have  
20 amended the language of Paragraph V(16) in the Amended Settlement Agreement to reflect that  
21 the only claims for penalties released are those that are in the PAGA Notice and again mentioned  
22 in the First Amended Complaint. To ensure there is no confusion, the Parties also included a  
23 sentence that reads: “Nothing in this Agreement is intended to release claims based on facts that  
24 were not alleged in the PAGA Notice filed by Plaintiffs, or either of them.” Plaintiffs attach the  
25 notice filed with the LWDA to the Declaration of David D. Bibiyan as Exhibit “5” thereto.

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1           **VII. SETTLEMENT DISTRIBUTION**

2           The Court has requested an explanation as to how Paragraph 19 of the Settlement  
3 Agreement would function in the event of a breach by one but not all defendants. Paragraph 19  
4 exists because Triple A claims to be distinct from the New-Indy, Montebello, and Proactive  
5 (collectively, “New Indy Entities”). Triple A contends that it was the employer for Class Members  
6 prior to January 1, 2017, with the New Indy Defendants being their employers thereafter, as it  
7 pertains to this Settlement. The reason Paragraph 19 is included is, in case one or the other  
8 defaults, the benefit of the remaining portion of the Settlement may be maintained by the other  
9 and by Class Members.

10          The Parties envision that in the unlikely event this should come to fruition, the payment  
11 made by the non-breaching Party shall be sent at the time of administration to Class Members,  
12 with an explanation that their claims were not released as to the other Party. For instance, should  
13 Triple A not fund its portion of the Settlement, but should the New-Indy Defendants fund their  
14 portion, Class Members should timely receive payments from the Settlement Administrator with  
15 a notice letter stating that the release from April 30, 2016 through December 31, 2016 is not  
16 effective and that payment is only being made for the period of January 1, 2017 through the close  
17 of the Class Period and the release does not extend to Triple A.

18           **VIII. DISMISSAL**

19          The reference to dismissal of the Action in Paragraph 27(b) of the original Settlement  
20 Agreement (now Paragraph 28 of the Amended Settlement Agreement) was there in error and has  
21 been deleted.

22           **IX. NOTICE AND NOTICE ADMINISTRATION**

23           **A. Confidentiality of Class List**

24          The confidentiality of the Class List is included because Class Members have a privacy  
25 right in their contact information and Social Security Numbers that the Parties seek to safeguard  
26 and have instructed that the Settlement Administrator safeguard. Because Class Counsel has  
27 already determined that the Settlement is fair, reasonable and adequate, Class Counsel does not  
28 foresee a need at this time to affirmatively contact Class Members. All communications to be

1 made to Class Members at this time regarding the Settlement may be and will be included on the  
2 Class Notice in English and Spanish. Any Settlement Class Members that have any questions  
3 about the Class Notice may contact Class Counsel (who has attorneys fluent in both English and  
4 Spanish). Class Counsel's contact information will be included on the Class Notice, including  
5 email addresses, a physical address, a telephone number, and a facsimile number. Thus, at this  
6 time, the Parties do not foresee any reason why the confidentiality of the Class Notice would not  
7 be in Class Member's best interest or otherwise impede Class Counsel's fiduciary interest.  
8 However, Class Counsel recognizes that circumstances may change and, if so, the Parties may  
9 agree at a later time to permit class contact information to be provided to Class Counsel by  
10 mutual agreement. The Amended Settlement Agreement now includes express language that  
11 states as much in Paragraph 26 (renumbered from Paragraph 25 in the Amended Settlement  
12 Agreement), set forth in Exhibits "1" and "2" to the Declaration of David D. Bibiyan.

13 **B. Mailing of Class Notice**

14 The Court noted that former Paragraph 20(b) and 25 had inconsistent provisions  
15 regarding how many days the Settlement Administrator had to mail the Class Notice. Paragraph  
16 21(b) of the Amended Settlement Agreement (coinciding with Paragraph 20(b) of the original  
17 Settlement Agreement) has been amended to reflect that the Settlement Administrator has  
18 fourteen (14) days, which comports with the Proposed Order Granting Preliminary Approval  
19 lodged with this Court, as can be seen in Exhibits "1" and "2" to the Declaration of David D.  
20 Bibiyan.

21 **C. Objections**

22 The Court has requested the removal from the Settlement Agreement and the Class  
23 Notice references to: (1) Class Members not being able to object unless they comply with  
24 written notice procedures; (2) requirements that specific language be used to request exclusion  
25 from the Settlement; and (3) anything but mailing of a written objection being required from a  
26 written objector (as opposed to "service").

27 To make clear that Class Members may make objections at the Final Approval Hearing:  
28 Paragraphs 9(e) and 9(f) in the Amended Settlement Agreement have been revised to include

1 discussion of both written objections made before and any objections made at the Final  
2 Approval Hearing; Paragraph 11 of the Amended Settlement Agreement has been revised from  
3 the Original Settlement Agreement to state that Class Members who provide written objections  
4 or object at the Final Approval Hearing may appeal; and Pages 1-2 and 4 of the Class Notice  
5 have been revised to clarify that one may not only object in writing, but also, whether or not he  
6 or she objected in writing, appear to object to, or comment on, the Settlement at the Final  
7 Approval Hearing.

8 Paragraph 20(e) of the original Settlement Agreement did not require specific language  
9 to be used to request exclusion as it included a qualifier that language to that effect could also be  
10 used, as did the Class Notice at Page 4. However, the language in Paragraph 21(e) of the  
11 Amended Settlement Agreement (its equivalent) now does not include any quotations, but  
12 simply states that a statement to the effect requesting exclusion of the Settlement of this Action  
13 must be included, as has the Class Notice at Page 4.

14 Finally, the reference to service of the written objection in Paragraph 11 of the Amended  
15 Settlement Agreement has been removed.

16 The changes appearing in the Amended Settlement Agreement can be seen at Exhibits  
17 “1” and “2” to the Declaration of David D. Bibiyan. A redlined version of the Class Notice  
18 reflecting these changes appear at Exhibit “3” with a final clean copy as Exhibit “4” to the  
19 Declaration of David D. Bibiyan accompanying this supplemental brief.

#### 20 **D. Response Deadline**

21 The Court has asked whether there will be an extension of time provided to Class  
22 Members who are remailed their Class Notices. Paragraph 1(L) in the Amended Settlement  
23 Agreement has been revised to reflect that Class Members will have the latter of forty-five (45)  
24 calendar days from the mailing, or fifteen (15) calendar days from the re-mailing, to postmark  
25 their Request for Exclusion, Objection, or Workweek Dispute, if any. Inconsistent portions of  
26 the Settlement Agreement have been omitted, leaving this as the only indicator of when these  
27 documents must be postmarked by Settlement Class Members.

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1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the County of Los Angeles, State of California. I am over the age of  
4 eighteen years and not a party to the within action; my business address is 8484 Wilshire Blvd.,  
Suite 500, Beverly Hills, California 91211.

5 On March 17, 2022, pursuant to Court Order, I caused a true and correct copy of the  
6 foregoing document(s) described as **PLAINTIFF'S NOTICE OF MOTION AND MOTION**  
7 **FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION**  
8 **SETTLEMENT AND PROVISIONAL CLASS CERTIFICATION FOR SETTLEMENT**  
9 **PURPOSES ONLY; DECLARATION OF DAVID D. BIBIYAN IN SUPPORT THEREOF;**  
[PROPOSED] **ORDER THEREON** to be served by electronic transmission via Case Anywhere  
to the following recipients:

9 Alexander M. Chemers  
10 Kristen N. Kovacich  
11 Ogletree, Deakins, Nash, Smoak, & Stewart, P.C.  
12 400 South Hope Street, Suite 1200  
13 Los Angeles, CA 90071  
14 [alexander.chemers@ogletree.com](mailto:alexander.chemers@ogletree.com)  
15 [krisitn.kovacich@ogletree.com](mailto:krisitn.kovacich@ogletree.com)

13 **Counsel for New-Indy Tripaq, LLC**

14 Edson K. McClellan  
15 Kimberly A. Nayagam  
16 Rutan & Tucker, LLP  
17 611 Anton Boulevard, Suite 1400  
18 Costa Mesa, CA 92626-1931  
19 [emcclellan@rutan.com](mailto:emcclellan@rutan.com)  
20 [knayagam@rutan.com](mailto:knayagam@rutan.com)

18 **Counsel for Triple A. Containers, Inc. and Brad McCroskey**

19 I declare under penalty of perjury under the laws of the State of California that the foregoing  
20 is true and correct.

21 Executed on November 17, 2022 at Beverly Hills, California.

22  
23 \_\_\_\_\_  
24 Emanuel Munguia  
25  
26  
27  
28

**BIBIYAN LAW GROUP, P.C.**  
David D. Bibiyan (Cal. Bar No. 287811)  
*david@tomorrowlaw.com*  
Diego Aviles (Cal. Bar No. 315533)  
*diego@tomorrowlaw.com*  
8484 Wilshire Blvd., Suite 500  
Beverly Hills, California 90211  
Telephone: (310) 438-5555  
Facsimile: (310) 300-1705

Attorneys for Plaintiffs, SALVADOR RINCON and  
SAUL ERNESTO CEDILLOS, on behalf of  
themselves and all others similarly situated and aggrieved

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

SALVADOR RINCON and SAUL  
ERNESTO CEDILLOS, on behalf of  
themselves and all others similarly situated  
and aggrieved

Plaintiffs,

v.

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

[Assigned to the Hon. Maren Nelson in Dept.  
17]

**RENEWED DECLARATION OF DAVID  
D. BIBIYAN IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
AND REPRESENTATIVE ACTION  
SETTLEMENT AND PROVISIONAL  
CLASS CERTIFICATION FOR  
SETTLEMENT PURPOSES ONLY**

HEARING INFORMATION:

DATE: April 11, 2022  
TIME: 9:00 a.m.  
DEPT: 17

**DECLARATION OF DAVID D. BIBIYAN**

I, David D. Bibiyan, state and declare, as follows:

1. I am an attorney at law, duly licensed to practice before all the Courts of the State of California and I am the principal of Bibiyan Law Group, P.C, counsel of record for plaintiffs Salvador Rincon (“Mr. Rincon” or “Plaintiff Rincon”) and Ernesto Cedillos (“Mr. Cedillos” or “Plaintiff Cedillos”, and collectively with Plaintiff Rincon, “Plaintiffs”) and all others similarly situated and aggrieved. As such, I am familiar with the file in this matter and if called as a witness I could and would competently testify to the following facts of my own personal knowledge.

2. On or around April 30, 2020, Plaintiff Rincon filed a wage-and-hour class action complaint against Defendants New-Indy Tripaq, LLC. (“New-Indy”), Triple A Containers, Inc. (“Triple A”), McDonald Packaging, Inc. (“McDonald Packaging”), and Brad McCroskey (“McCroskey”) alleging among other things: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal periods or compensation in lieu thereof (4) failure to provide rest periods or compensation in lieu thereof; (5) failure to pay wages due at termination; (6) failure to issue accurate itemized wage statements; and (7) violation of the Business and Professions Code section 17200 in the Superior Court of California, for the County of Los Angeles, Case Number 20STCV17118 (the “Class Action”)

3. On or around November 17, 2020, Plaintiff Cedillos filed with the Labor and Workforce Development Agency (“LWDA”) and served on New-Indy, Montebello Container Company, LLC (“Montebello”) and Proactive Packaging and Display, Inc. (“Proactive Packaging”), a notice under Labor Code section 2699.3 (the “PAGA Notice”), stating Mr. Cedillos intended to serve as a proxy of the LWDA to recover civil penalties on behalf of aggrieved employees of Defendants under the Labor Code Private Attorneys’ General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”) for various Labor Code violations. A true and correct copy of the PAGA Notice is attached as Exhibit “5” hereto.

4. On or around September 28, 2021, Plaintiff Cedillos filed with the LWDA and served on Defendants an amended PAGA notice adding defendants Triple A, McDonalds Packaging, and McCrosky (“Amended PAGA Notice”).

1           5.           Since then, the Plaintiff Rincon and Defendants, or some of them, entered into  
2 stipulation permitting Plaintiff Rincon to file a First Amended Complaint that, among other things,  
3 adds Plaintiff Cedillos as a named plaintiff and class representative, adds as defendants  
4 Montebello and Proactive Packaging, and includes the cause of action under PAGA for which Ms.  
5 Cedillos provided notice to the LWDA in his PAGA Notice and Amended PAGA Notice  
6 (hereinafter, the “Action”, the “Litigation” or the “Class Action”). The Court granted Plaintiff  
7 Rincon leave to file the First Amended Complaint on November 19, 2021 and the First Amended  
8 Complaint was subsequently filed on March 11, 2022 pursuant to the Court’s order.

9           6.           After the filing of the Action and after various discussions among counsel regarding  
10 parameters of a potential early mediation and the discovery to be exchanged beforehand, Plaintiffs  
11 and Defendants (collectively, the “Parties”) agreed to attend an early mediation with a mutually  
12 acceptable mediator after conducting informed discovery in connection therewith. The Parties  
13 resolved that the scope of the mediation would be to resolve all class and representative PAGA  
14 claims against Tripe A, McDonald Packaging, McCroskey, Proactive Packaging and Montebello  
15 (collectively, “Defendants”).

16           7.           Initially, Plaintiff’s counsel had informed the Court that in the leadup to mediation,  
17 Plaintiffs were provided with, among other things: (1) hire and termination dates for putative class  
18 members; (2) contact information for 66 separated putative class members so that Plaintiffs can  
19 investigate the certifiability of the claims; (3) Defendants’ policy documents; and (4) time and  
20 payroll records for putative class members.

21           8.           However, the Court has asked: for further detail as to the investigation and  
22 discovery conducted by Plaintiff’s counsel, including: (1) the specific documents and class data  
23 reviewed prior to agreeing to settle the case; (2) all formal discovery, if any, undertaken; (3) the  
24 number of Class Members identified through mediation; (4) whether the data reviewed was for  
25 the entire class, or a portion; and (5) if a portion was utilized, whether the sampling was  
26 statistically significant and whether expert analysis supported the conclusion that it was sufficient  
27 to provide useful data. Additional details regarding the investigation and discovery are located at  
28 the end of this Declaration beginning immediately after paragraph 91.

9. After reviewing the policies in detail, the time and payroll records with the aid of expert consultants, the Parties attended mediation before mediator Louis Marlin, Esq. on February 10, 2021. With the aid of the mediator's evaluation, the Parties reached the Settlement Agreement to resolve the Litigation.

10. The Parties at mediation had strong positions regarding the certifiability of Plaintiffs' claims, the merits thereof, the manageability of a trial, and the likelihood in recovering civil penalties for aggrieved employees. Nevertheless, the Parties concluded, after considering the sharply disputed factual and legal issues involved in this Litigation, the risks associated with further prosecution, and the substantial benefits to be received pursuant to the compromise and settlement of the Litigation as set forth in the Settlement Agreement, that Settlement on the terms set forth herein is in the best interest of Plaintiffs, putative class members, aggrieved employees and Defendants, and is fair, reasonable and adequate.

## The Proposed Settlement

11. Subject to Court approval pursuant to Code of Civil Procedure section 382 and California Rules of Court, rule 3.679, *et seq.*, the Parties have agreed to settle the Litigation by agreement upon the terms and conditions and for the consideration set forth in the Settlement Agreement. After taking into consideration the Court's counseling, the Parties executed a revised Settlement Agreement to address the Court's concerns. A redlined and fully executed version of the revised Settlement Agreement are attached hereto as Exhibits 1 and 2, respectively. A summary of the terms of the settlement are as follows:

Defendants will stipulate, for purpose of this settlement only, as follows:

- Certification of a class defined as: all current and former non-exempt, hourly-paid employees who worked at any time for Defendants from April 30, 2016, through April 26, 2021 (“Class Period”) in California (“Class Members”);
- Defendants will pay \$925,000.00 (*i.e.*, the “Gross Settlement Amount”) subject to escalation as detailed below and in the Settlement Agreement, with \$850,000 paid by New-Indy and \$75,000 paid by Triple A;

/ / /

- 1 • The Settlement is based on Triple A’s representation that there are no more than 5,621  
2 Workweeks through the date of the Parties’ mediation and the representation by the  
3 balance of Defendants that there are no more than 31,250 Workweeks worked by New-  
4 Indy, Montebello and Proactive Packaging through the date of the parties’ mediation.  
5 In the event the number of Workweeks worked increases by more than 5% through the  
6 date of the parties’ mediation, for either Triple A, on the one hand, or the New-Indy  
7 Defendants, on the other hand, then the Gross Settlement Amount shall be increased  
8 proportionally by the Workweek Value and be paid by the party or parties’ whose  
9 Workweeks were in excess. The Workweek Value shall be calculated by dividing the  
10 Gross Settlement Amount (\$925,000.00) by the number of Workweeks worked  
11 (36,871), which amounts to a Workweek Value of \$25.09. ( $\$925,000 / 36,871$   
12 workweeks.) Thus, for example, should there be 34,000 Workweeks worked for the  
13 New-Indy Defendants by Class Members through the date of the parties’ mediation,  
14 then the Gross Settlement Amount shall be increased by \$29,781.83 and paid by the  
15 New-Indy Defendants. ( $34,000 \text{ workweeks} - 31,250 \text{ workweeks} - 1,563 \text{ workweeks}$   
16  $\times \$25.09/\text{workweek}$ .).
- 17 • Defendants will pay the employer’s share of taxes separate and apart from the Gross  
18 Settlement Amount;
- 19 • This is a non-reversionary settlement;
- 20 • Class Members will be paid their *pro rata* share based on the total number of  
21 Workweeks worked during the Class Period;
- 22 • “Workweeks” means the number of number of workweeks that a Class Member was  
23 employed by Defendants in a non-exempt, hourly position during the Class Period  
24 using hire and termination dates, excluding any weeks in which a Class Member was  
25 unemployed or did not work during a workweek.
- 26 • The Settlement Administration cost, estimated not to exceed \$10,000, will be paid out  
27 of the Gross Settlement Amount;

28 ///

- Class Counsel -- comprised of David D. Bibiyan and Diego Aviles of Bibiyan Law Group, P.C. – will apply for, and Defendants will not oppose, attorneys’ fees of one-third of the Gross Settlement Amount, which, unless escalated pursuant to this Agreement, will amount to \$308,333.33, and costs not to exceed \$20,000.00, all of which will be paid out of the Gross Settlement Amount;
- Class Counsel will apply for, and Defendants will not oppose, an enhancement award of \$5,000.00 for each Plaintiff, which will be paid out of the Gross Settlement Amount;
- The “PAGA Period” means the period from November 17, 2019 April 26, 2021.
- “Aggrieved Employees” means Class Members working during the PAGA Period.
- Defendants have agreed to pay \$20,000.00 as PAGA penalties, seventy-five percent (75%) or \$15,000.00 of which will be paid to the LWDA out of the Gross Settlement Amount, and twenty-five percent (25%) or \$5,000.00 of which will be distributed to Aggrieved Employees in addition to their Individual Settlement Share should they elect not to opt out of the Settlement.
- Any checks from this distribution that are not cashed by Participating Class Members within one-hundred-eighty (180) calendar days from the date of their issuance shall be cancelled within seven (days) after the expiration of the 180-day period. All funds represented by uncashed settlement checks, plus any accrued interest, shall be tendered to Legal Aid at Work, located at, 180 Montgomery St., Suite 600, San Francisco, California 94104 as a *cy pres* recipient, for use in Los Angeles County.

#### **The Presumption of Fairness**

12. In this Litigation, the Settlement was reached after extensive factual and legal research, informal discovery, an exchange of time and payroll records, a review and analysis of time and payroll records with Plaintiffs and expert consultants, interviews with Class Members, preparation of damages analyses with the aid of expert consultants, and a full-day mediation with mediator, Louis Marlin, Esq.

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1        13.        I believe the Settlement that has been reached, subject to this Court’s approval, is  
2 the product of substantial effort and expense by Class Counsel. The settlement amount is, of  
3 course, a compromise figure. However, Class Counsel are satisfied that this figure is reasonable  
4 in light of the risks and expense of continued litigation.

5                    **Settlement Agreement and Accompanying Documents**

6        14.        Attached hereto as Exhibit “2” is a true and correct copy of the amended Settlement  
7 Agreement fully executed by the Parties.

8        15.        The Notice Class Action Settlement (“Class Notice”) has been revised to address  
9 the Court’s concerns. The Parties’ revisions to the Class Notice are discussed further below  
10 beginning at paragraph 114. The redlined version of the Class Notice and the proposed, revised  
11 Class Notice are attached to this Declaration as Exhibits 3 and 4, respectively, to be distributed to  
12 Class Members in English and Spanish.

13        16.        On or about November 19, 2021, Class Counsel submitted a copy of the original  
14 Settlement Agreement to the California Labor and Workforce Development Agency (“LWDA”) in  
15 compliance with Labor Code section 2699, subdivision (1)(2). A true and correct copy of the  
16 confirmation from the LWDA in connection with Plaintiffs is attached hereto as Exhibit “6”.

17        17.        On or about March 17, 2022, Class Counsel submitted a copy of the amended  
18 Settlement agreement, as well as all supplemental briefing documents filed concurrently with this  
19 Declaration to the LWDA in compliance with Labor Code section 2699, subdivision (1)(2). A  
20 true and correct of the confirmation from the LWDA of submission is attached hereto as Exhibit  
21 “7”.

22        18.        The Parties have agreed to use Phoenix Settlement Administrators (“Phoenix”), an  
23 experienced Settlement Administrator, to administer the settlement.

24        19.        The Parties have agreed that the administration costs will be paid out of the Gross  
25 Settlement Amount.

26                    **The Settlement Was Negotiated at Arms-Length and Not Collusive**

27        20.        The Settlement that has been reached, subject to this Court’s approval, is the  
28 product of substantial effort by the Parties and their counsel. The Settlement was reached after

1 extensive factual and legal investigation and research; substantial negotiation regarding the scope  
2 of informal discovery; an exchange of documents and information that included review of time  
3 and pay records and analysis thereof with the aid of Plaintiffs and expert consultants; an analysis  
4 of shifts and Workweeks worked by Class Members in the Class Period, how many pay periods  
5 and Aggrieved Employees there were in the PAGA Period, and how many Class Members may  
6 have been eligible for wage statement penalties and waiting time penalties; extensive  
7 correspondence and communication between counsel; interviews with Class Members; a review  
8 of pleadings, evidence and rulings in similar actions litigated elsewhere in the state; a review of  
9 similar cases in the same industry elsewhere in the country; preparation for and attendance at a  
10 full-day session of mediation, followed by weeks of negotiations after mediation finalizing the  
11 terms and conditions of the general settlement parameters agreed to by the Parties at mediation.

12 21. The settlement amount is, of course, a compromise figure. It considered the risks  
13 related to certifiability, liability, and manageability.

14 22. Class Counsel assert that the wage and hour claims and the claims for resulting  
15 penalties would be certified. On the other hand, Class Counsel understand from the mediator and  
16 the mediation process that Defendants argued the following. Defendants argued that Plaintiffs  
17 cannot meet the requirements of class certification because any wage discrepancies are not the  
18 product of an overarching policy that was uniformly applied; that Class Members were paid  
19 overtime for all the overtime hours worked at the proper rate of pay; that Class Members were  
20 paid for all hours under Defendants' control, or otherwise suffered or permitted to work by  
21 Defendants; that meal periods were provided and rest periods were permitted; that Defendants'  
22 meal and rest period policies were compliant; that Defendants did not deter Class Members from  
23 taking meal and rest periods and any untimely or missed meal periods were elections by Class  
24 Members and not caused by Defendants or Class Members were paid the required premiums; and  
25 that Defendants thus provided all pay owed to Class Members by separation of employment and  
26 issued accurate wage statements to Class Members. Class Counsel also understand from the  
27 mediator and the mediation process that Defendants further contend that class certification would  
28 not be warranted because individual liability issues predominate over any class-wide allegations.

1       23.       While Class Counsel believe in their chance of success of certifying the claims,  
2 Class Counsel also recognizes the potential risk, expense, and complexity posed by further  
3 litigation. Moreover, I believe that litigating Plaintiffs' claims in this Litigation—claims that  
4 involve hundreds of Class Members during the Class Period—would require substantial  
5 preparation and discovery and ultimately would involve the deposition and presentation of  
6 numerous more witnesses (including Class Members and expert witnesses), as well as the  
7 consideration, preparation, and analysis of expert reports. Therefore, should litigation have  
8 progressed any further, I believe there would have been significant expense incurred by each side  
9 (above and beyond the expense already incurred).

10       24.       Again, the Parties have very strong positions on liability in this case. I understand  
11 from the mediator and the mediation process that Defendants deny wrongdoing of any kind  
12 associated with the claims alleged in the Litigation, and further deny that, for any purpose other  
13 than that of settling this lawsuit, the allegations in the Litigation are appropriate for class  
14 treatment. In light of the sharply contested legal and factual issues, the risks of continued  
15 litigation, and substantial benefits to Class Members under the Settlement, I believe that the terms  
16 and conditions of this class settlement are fair and reasonable to all sides.

17                   **The Settlement Amount is Well Within Range of Reasonableness**

18       25.       I believe that the settlement amount reached in this case provides significant  
19 recovery to Class Members and easily falls within the range of reasonableness. However, the  
20 Court has requested further briefing as to why \$925,000 is a fair, reasonable and adequate  
21 settlement amount in light of the calculation that there may have been as much as \$16,381,513.81  
22 available to Class Members pursuant to Plaintiffs' calculations. Class Counsel's calculation of  
23 \$16,381,513.81 was a loose calculation of the *maximum* possible recovery based on Class  
24 Counsel's theories of recovery when going to mediation. Class Counsel did not brief the effect  
25 on the maximum available recovery after Plaintiffs learned further information at mediation, nor  
26 did Plaintiff brief in detail the effect Defendants' defenses had on Plaintiffs' initial valuation.  
27 Class Counsel will do so here at the Court's request. Thus, I have provided additional analysis,  
28

beyond the analysis in the following paragraphs, to address the Court's concern. The additional analysis is located at the end of this declaration beginning immediately after paragraph 91.

### **Unpaid Wages**

26. Class Counsel's most salient theory for failure to pay wages involves Defendants' failure to pay for all time permitted or suffered to work under Defendants' control. Specifically, Class Counsel theorized that Class Members were: (a) required to wait in line to clock in; (b) often required to start working up to an hour before their scheduled shift to prepared for large orders; (c) often called outside of work hours to answer work related questions.

27. Class Counsel theorized, based on Defendants' records, that over 90% of all shifts in the Class Period were over eight (8) hours in length. Thus, Class Counsel believe that it is reasonable to calculate all damages for time worked off-the-clock as overtime damages. Class Counsel understand from Defendants' records that the average rate of pay to be \$18.89 per hour and for there to be approximately 180,904 shifts in the Class Period. Even if Class Counsel attributes only ten underpaid minutes per shift, Class Counsel theorized that Defendants' exposure for this claim could thus be reasonably calculated to amount to \$871,406. (180,904 shifts x .17/shift x \$18.89/hr. x 1.5 overtime rate.)

28. Class Counsel understand from the mediator and the mediation process that Defendants argued the following. Defendants, for their part, contend they have policies in place prohibiting any off-the-clock work. Defendants contend that were sufficient time clocks to ensure that there was no time spent waiting in line to clock in and that all time clocks were in working order and even if there was ever any line, that time would not be compensable. Moreover, Defendants contend that no one ever arrived early and worked off the clock. Finally, Defendants defend that even if these events occurred uncommonly or rarely, it would require an individualized inquiry that is not susceptible to class treatment or a manageable trial. Thus, Defendants contend that no monies are owed on this account, but, even if they were owner, that ten (10) minutes per shift is a vast overstatement.

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1                                   **Recovery of Damages for Non-Compliant Meal Periods**

2           29.           Class Counsel theorized that Defendants' meal break policies throughout the Class  
3 Period did not comply with the Labor Code. Class Counsel theorized that, among other things,  
4 Defendants' General Supervisor prohibited Class Members from leaving the premises during their  
5 meal periods and Defendants employed a bell system to alert Class Members when it was time for  
6 their 30-minute meal periods which effectively shortened their meal periods to less than thirty  
7 (30) minutes per meal period. Thus, Class Counsel theorized that, one potential measure of  
8 damages against Defendants would be a 100% violation rate for meal periods. Class Counsel  
9 posits that a more conservative metric may be derived from their time and pay records that show  
10 58,209 unique meal period violations (*i.e.*, shifts without a timely, 30-minute meal period every  
11 five hours). Thus, Class Counsel theorized that it is reasonable to measure Defendants' exposure  
12 for non-complaint meal periods to be \$1,096,167.81. (58,209 shifts x \$18.89/hr.)

13          30.           Class Counsel understand from the mediator and the mediation process that  
14 Defendants argued the following. Defendants, for their part, argue that they had compliant meal  
15 period policies and practices. Defendants contend that all Class Members were permitted to leave  
16 the premises during their meal periods and that there was no requirement that anyone ask for  
17 permission to do so. Defendants further defend that any violations counted by Plaintiffs are for  
18 shifts between five and six hours or shifts between ten and twelve hours in which meal periods  
19 could be and, in fact, were voluntarily waived. Moreover, Defendants contend their bell system  
20 allowed extra time for Class Members to clock-in, thus, meal periods were often over 30-minutes.  
21 Finally, Defendants contend that any decision by any Class Member to take less than a thirty-  
22 minute period, meal period after the fifth hour, or no meal period at all would be their choice and  
23 thus necessitate an individualized inquiry that would neither be amenable to class certification or  
24 a manageable trial. Thus, Defendants contend that no monies are owed for failure to pay for meal  
25 period premiums.

26                                   **Recovery of Damages for Non-Compliant Rest Periods**

27          31.           Class Counsel theorized that Defendants' rest break practices were non-compliant.  
28 Class Counsel understands, based on Defendants' policy, that Class Members were not permitted

1 to leave the premises during their rest periods. Moreover, Class Counsel theorized that Class  
2 Members were never permitted to take a third rest break despite shifts often being over ten (10)  
3 hours in length.

4 32. Class Counsel understand from Defendants' records there to have been at least  
5 101,663 shifts over 10 hours in length. One calculation performed at mediation was that even if  
6 only half of them included at least one non-compliant rest period, Defendants' exposure for  
7 unprovided rest breaks could be measured to be \$960,207. (101,663 shifts x .5 x \$18.89/hr.)

8 33. Class Counsel understand from the mediator and the mediation process that  
9 Defendants argued the following. Defendants, for their part, argue that they maintained a  
10 compliant rest break policy and practice. Defendants contend that all Class Members were  
11 authorized and permitted to take rest periods and did. Defendants further contend that if Class  
12 Members did not do so, they did so voluntarily and thus the same would raise an individualized  
13 inquiry that would neither be suited for certification nor manageable at trial. Defendants argue  
14 that they did not deter Class Members from leaving the premises during their rest periods and that,  
15 anyhow, the same is permitted under the Labor Code. Lastly, that Class Counsels' estimation of  
16 the violation rate for non-compliant rest periods is excessive, unwarranted, and unsupported.  
17 Thus, Defendants insist that no monies are owed for unpaid rest periods.

#### 18 **Penalties for Wage Statement Violations**

19 34. Class Counsel theorized that Class Members are entitled to recover penalties for  
20 Defendants' alleged failure to issue compliant wage statements under Labor Code section 226,  
21 subdivision (e) for the derivative impact of the failure to pay all wages owed on providing accurate  
22 information on wage statements. Specifically, Class Counsel theorized that penalties are owed  
23 under Labor Code section 226 due to, at minimum, Defendants': (1) failure to pay wages for all  
24 hours worked; and (2) failure to pay premium wages.

25 35. Class Counsel understand from the information and documents provided by  
26 Defendants there were 7,242 pay periods in the wage statement rage. Thus, one calculation  
27 performed by Class Counsel of Defendants' maximum exposure for wage statement violations is  
28 \$742,200. (7,242 pay periods x \$100 penalty per pay period.)

36. Class Counsel understand from the mediator and the mediation process that Defendants make the following defenses in connection with this claim. Defendants contend that the wage statements issued to the employees fully complied with Labor Code section 226. They state that because they believe no wages are unpaid that, thus, there can be no derivative penalties. Defendants further defend that even if there were, *arguendo*, derivative penalties, that Plaintiff suffered no injury, citing *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308 [*Maldonado*]. Defendants further cite *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal.App.5th 444 [*Naranjo*] for the proposition that no derivative wage statement violation exists for failure to pay for meal and rest period premiums. Finally, Defendants point out that Plaintiffs' calculation neither takes into account that the first pay period merits only a \$50 instead of a \$100 violation rate or the \$4,000 maximum penalty per employee.

37. Class Counsel notes that the ruling in *Naranjo* is pending review by the California Supreme Court. Class Counsel further notes that the Court in *Maldonado* suggests that failure to account for all time worked may, in fact, constitute an injury, and thus does not find the defense meritorious as to Plaintiff's argument. (See *id.* at fn. 14.). However, Class Counsel acknowledge that the exposure estimate does not take into account that the first pay period merits only a \$50 instead of a \$100 violation rate or the \$4,000 maximum penalty per employee. Plaintiffs also understands the risks inherent in this claim should the underlying claims not be certified or not succeed on the merits, and the potential that a Court finds no injury occurred.

## Waiting Time Penalties

38. Class Counsel theorized that pursuant to Labor Code sections 201, 202, and 203, each employee in the relevant statutory period (*i.e.*, three years before the filing of the initial Complaint) is entitled to 30 days' worth of wages as a waiting time penalty for not being paid all wages upon the separation of employment.

39. Class Counsel theorized that Class Members still have not been paid for all wages earned as Defendants failed to include compensation for all time worked on their final paycheck including, but not limited to, minimum wages, overtime wages, and premium wages at the proper

1 rate of pay. Thus, at mediation, Class Counsel advanced a theory at mediation that the full 30-  
2 day penalty is owed under Labor Code section 203 due to the violations noted above.

3 40. Class Counsel understand from Defendant's records there were 248 separated  
4 employees in the applicable three-year statute of limitations period. Thus, one calculation Class  
5 Counsel performed at mediation of Defendants' exposure for waiting time penalties was  
6 \$1,124,333. (248 Class Members x \$18.89/hr. x 8 hours per day x 30 days.)

7 41. Class Counsel understand from the mediator and the mediation process that  
8 Defendant makes the following defenses in connection with this claim. Defendants contend that  
9 no unpaid wages are owed as Defendants did not fail to pay for all hours worked and that, thus,  
10 no derivative penalty is proper. Defendants further defend that no unpaid wages are owed for  
11 unpaid premium pay per *Naranjo*. Defendants also contend that their actions were not willful as  
12 required for penalties to issue. Thus, Defendants take the position that no waiting time penalties  
13 are owed or may be properly awarded in this matter.

#### 14 **PAGA Penalties**

15 42. Class Counsel had initially put forth a theory for PAGA penalties in Plaintiffs'  
16 Motion for Preliminary Approval, which upon retrospect and after consideration of the Court's  
17 concerns, has since been revised to offer the Court a clearer picture of Class Counsel's theory.  
18 Class Counsel's revised theory of Defendants' potential exposure for PAGA penalties begins at  
19 paragraph 99 of this Declaration.

#### 20 **Conclusion**

21 43. In all, Class Counsel obtained a Gross Settlement Amount of \$925,000.00, which  
22 I believe is fair, reasonable and adequate for Class Members considering the risks related to  
23 certifiability, liability, manageability, and considering the case law regarding fair, reasonable, and  
24 adequate settlements.

#### 25 **The Proposed Attorneys' Fees and Costs are Reasonable**

26 44. Class Counsel seeks an attorneys' fee award of one-third of the Gross Settlement  
27 Amount, which, unless escalated pursuant to this Agreement, amounts to \$308,333.33, and costs  
28

1 not to exceed \$20,000.00. I believe that the requested fee falls well within the historical range of  
2 attorney's fee awards under the common fund theory, which is generally from 25% to 50%.

3 45. I believe that the requested fee is fair compensation for undertaking complex, risky,  
4 expensive, and time-consuming litigation on a contingent fee basis.

5 46. Extensive investigation was done before and after litigation began with the help of  
6 Plaintiffs and consultants that included detailed review of time and payroll records; interviews  
7 with other Class Members; months of negotiations between opposing counsel discussion with  
8 other Class Members; months of negotiations between opposing counsel, as well as discussion of  
9 diametrically opposed viewpoints regarding the certifiability of Plaintiffs' claims, the merits of  
10 Plaintiffs' claims, the manageability of those claims at a class action or representative action trial,  
11 including what settlement terms would be just and proper. Moreover, significant expense was  
12 expended, including filing fees, the utilization of forensic consultants to help analyze time and  
13 payroll records, time spent with Plaintiffs by telephone, as well as attending a full-day mediation  
14 to try to resolve the Litigation, among other things.

15 47. Class Counsel have borne, and continue to bear, the entire risk and cost of litigation  
16 associated with this class action and representative action on a purely contingency basis.

17 48. I believe it is fair to characterize the factual and legal issues posed in this case were  
18 evolving and difficult. Class Counsel has easily already expended over four hundred hours on  
19 this matter, including:

- 20 • The investigation of the matter, including meeting with Plaintiffs, reviewing policies,  
21 Plaintiffs' time and pay records, Plaintiffs' personnel file, and exploring Defendants'  
22 corporate structure;
- 23 • Filing and serving pleadings in the Action;
- 24 • Compliance with prerequisites in connection with Plaintiffs' cause of action under  
25 PAGA;
- 26 • Amending noticed to the LWDA to include all theories explores and seek civil  
27 penalties in connection with all of those theories

- Amending the pleadings in this Action and entering into stipulations in connection therewith;
- Preparing notices, meeting and conferring with counsel for Defendants to prepare joint reports, and discussing the matter in big picture early on in the Litigation;
- Providing an informal wish list and draft opt-out notice to Defendants;
- Serving and being served with informal discover and reviewing the same;
- Discussing the potential merits of mediation, as well as negotiating the parameters thereof and the informal discovery to be exchanged beforehand, which involved various iterations of written correspondence back and forth and several telephone discussions between counsel regarding the potential scope of discovery;
- Obtaining and reviewing informal discovery;
- Selecting a mediator and mediation date;
- Entering into a protective order with Defendants for, among other things, provisions of class contact information;
- Working with opposing counsel and consultants for the receipt of a representative sampling and analyzing the same with the aid of expert consultants and Plaintiffs to perform analyses of liability and exposure prior to attendance of the mediations in this matter;
- Contacting and interviewing Class Members;
- Obtaining declarations from Class Members in connection with the questionnaire responses they provided;
- Preparing for and attending mediation;
- Negotiating and fully executing a Memorandum of Understanding;
- Negotiating, finalizing, and fully executing the Settlement Agreement;
- Communicating with Plaintiffs who request updates or other information regarding this matter;
- Preparing the motion for preliminary approval; and

- 1           • Preparing the supplemental brief in support of the motion for preliminary approval  
2           and the documents in connection therewith.

3       49.       Based on my past experience in wage and hour class action litigation, I believe that  
4 my office is very likely to be called upon, after the Class Notice has been sent, to expend  
5 substantial amounts of additional time to help Class Members understand the terms of the  
6 proposed settlement, and to assist Class Members in the preparation and documentation of their  
7 claims.

8       50.       I believe it is also likely that, even after final approval of the settlement has been  
9 granted, my office will be called upon to expend additional amounts of time in the presentation  
10 and resolution of contests and disputes relating to Class Members' claims under the terms of the  
11 proposed settlement, as to the amounts of individual claims and perhaps other individual issues.

12       51.       Finally, if the Settlement is approved, Class Counsel will have to work with the  
13 Settlement Administrator to submit a report to this Court regarding the distribution plan pursuant  
14 to Code of Civil Procedure section 384 along with a proposed judgment, which will require further  
15 time and cost to be expended.

16       52.       I believe the fees and costs requested are justified by the results achieved, the  
17 complexity of the issues, the difficulty of the case, and the great risk undertaken by Class Counsel.

18       53.       I am informed and believe the requested attorneys' fees and costs will not be  
19 opposed by Defendants.

20                   **The Proposed Enhancement Award to Plaintiffs as Class Representative is**  
21                                   **Reasonable**

22       54.       I believe Plaintiffs should be awarded enhancement awards for their service as class  
23 representatives, for answering extensive questions by Class Counsel, for being and answering  
24 questions during mediation, for the risk in being the named plaintiffs, and for providing  
25 Defendants with a more expansive release of claims, including a waiver based upon California  
26 Civil Code section 1542, in exchange for the enhancement award.

27       55.       Defendants have not opposed the requested enhancement to Plaintiffs.

28       ///

1       56.       Class Counsel can attest that Plaintiffs devoted time assisting Class Counsel in this  
2 case, communicated with counsel frequently, and were a valuable participant in the strategy for  
3 and success of the mediation. Plaintiffs risked intrusive discovery and the payment of employer  
4 costs.

5       57.       In the experience of Class Counsel, the typical enhancement award in wage and  
6 hour class actions ranges from approximately \$10,000.00 to \$25,000.00, although some awards  
7 are higher. In contrast, Class Counsel seeks an extremely limited enhancement of \$5,000.00 to  
8 each Plaintiff for their service (for a total of \$10,000 in enhancements), and which is  
9 commensurate to the time and effort they have put forth in the prosecution of this matter.

10                               **Conditional Certification for Settlement Purposes**

11                                       **Numerosity**

12       58.       Defendants identified 649 Class Members through mediation. I believe that is  
13 sufficiently numerous to establish the numerosity requirement.

14                                       **Commonality**

15       59.       Class Counsel theorized that common issues in this Litigation, without limitation,  
16 include, whether Defendants violated applicable wage and hour laws, *i.e.*, failed pay for all hours  
17 worked; failed to provide meal or rest breaks or compensation in lieu thereof; and whether the  
18 Class Members are entitled to derivative penalties, etc. I believe that because there are common  
19 issues, this requirement is satisfied for purposes of settlement.

20                                       **Typicality**

21       60.       I believe that Plaintiffs' claims are precisely the same as those of the Class  
22 Members they seek to represent, as, like other members of the Settlement Class, they were  
23 employed by Defendants during the relevant time period as non-exempt employees, and they  
24 contend that Defendants' wage policies were uniformly applied to its non-exempt employees.

25       61.       I believe that Plaintiffs' claims are thus typical of those of other Class Members.

26                                       **Adequacy of Plaintiffs**

27       62.       I am not aware of any conflicts, disabling or otherwise, existing between Plaintiffs  
28 and Class Members because Plaintiffs have allegedly been damaged by the same alleged conduct

(i.e., they were classified as non-exempt employees, not paid premium pay, etc.) and thus has the incentive to fairly represent all Class Members' claims to achieve the maximum possible recovery.

### **Adequacy of Class Counsel**

63. Class Counsel are experienced class action attorneys, have been appointed as class counsel in other class actions, and have a successful track record in litigating class actions.

64. I graduated with a Bachelor of Arts degree from the University of California, Los Angeles in 2009.

65. I received my Juris Doctorate from The University of Chicago Law School in 2012.

66. After practicing for several years as a member of Cohen & Lord, P.C. practicing in an amorphous range of civil litigation on behalf of both plaintiffs and defendants, I opened up a law firm in 2014 with a concentration in representation of employees against employers to recover unpaid wages and vindicate harassment, discrimination and retaliation in various contexts.

67. I am an active member of the California Employment Lawyers' Association ("CELA"), one of only a few members of its Reverse Auctions Subcommittee, and have attended various Continuing Legal Education courses pertaining to advocacy on behalf of employees.

68. My firm has the experience, resources, and means necessary to allow us to provide adequate representation as Class Counsel to all class members in this litigation.

69. I have been appointed Class Counsel by the Superior Court of California in the past for purposes of certifying a class.

- *Santoyo v. Consolidated Foundries, Inc.*, Case No. BC612298, California Superior Court, County of Los Angeles, Honorable Judge Ann I. Jones, presiding;

- *Arendorff v. Stanley Steamer International, Inc.*, Case No. BC681368, California Superior Court, County of Los Angeles, Honorable Yvette M. Palazuelos, presiding;

- *Barreto v. Don Roberto Jewelers, Inc.*, Case No. BC495451, California Superior Court, County of Los Angeles, Honorable Ann I. Jones, presiding;

- *Junior Amilcar Laguna Gonzalez v. Takaaki Koyama*, Case No. BC641998, Los Angeles Superior Court, Honorable Elihu M. Berle, presiding;

1           • *Rios v. Nongshim America, Inc.*, Case No. CIVDS1807390, California Superior Court,  
2 County of San Bernardino, Honorable David S. Cohn, presiding;  
3           • *Stoddard v. Molded Fiber Glass – West*, Case No. 1517758, California Superior Court,  
4 County of San Bernardino, Honorable David S. Cohn, presiding;  
5           • *Mata v. Sahara Scaffold, Inc.*, Case No. CIVDS1810785, California Superior Court,  
6 County of San Bernardino, Honorable David S. Cohn, presiding;  
7           • *Carrasco v. Pure Dental Solutions*, Case No. BC645995, Los Angeles Superior Court,  
8 Honorable Kenneth R. Freeman, presiding;  
9           • *Gonzalez v. Gochez, et al.*, Case No. BC648729, Los Angeles Superior Court, Honorable  
10 Maren Nelson, presiding;  
11           • *Montoya v. Superior Paving Co.*, Case No. CIVDS1833422, County of San Bernardino,  
12 Honorable David S. Cohn, presiding;  
13           • *Lopez v. Norred & Associates, Inc.*, Case No. CIVDS1824109, California Superior  
14 Court, County of San Bernardino, David S. Cohn, presiding;  
15           • *Noyola v. Lacren, LLC*, Case No. BC717024, California Superior Court, County of Los  
16 Angeles, Hon. Anthony Mohr, presiding;  
17           • *Luciano, et al. v. O’Tasty Foods, Inc., et al.*, Case No. BC711988, California Superior  
18 Court, County of Los Angeles, Honorable Maren Nelson, presiding;  
19           • *Gordon v. Hospice Source, LLC*, Case No. 34-2018-00250022-CU-OE-GDS, California  
20 Superior Court, County of Sacramento, Honorable Christopher E. Krueger, presiding;  
21           • *Barragan v. Refrigeration Supplies Distributor*, Case No. 19STCV09312, California  
22 Superior Court, County of Los Angeles, Honorable Carolyn B. Kuhl, presiding;  
23           • *Ramirez v. Acre Gourmet, Inc.*, Case No. CGC-19-575117, California Superior Court,  
24 County of San Francisco, Honorable Andrew Y.S. Cheng, presiding;  
25           • *Villafuerte v. Bay Alarm Company*, Case No. BC689110, California Superior Court,  
26 County of Los Angeles, Honorable Amy D. Hogue, presiding;  
27           • *Cazares v. Areas USA LAX, LLC*, Case No. 19STCV08209, California Superior Court,  
28 County of Los Angeles, Honorable Carolyn B. Kuhl, presiding;

1 • *Magana v. Castlerock Environmental, Inc., et al.*, Case No. 19STCV38353, California  
2 Superior Court, County of Los Angeles, Honorable Ann I. Jones, presiding;  
3 • *Chilel v. Sushi California, Inc.*, Case No. 19STCV08209, California Superior Court,  
4 County of Los Angeles, Honorable Ann I. Jones, presiding;  
5 • *Malone v. Orange Courier, Inc., et al.*, Case No. 30-2016-00763474, California Superior  
6 Court, County of Orange, Honorable Glenda Sanders, presiding;  
7 • *Rivera v. Talamo Food Services, Inc.*, Case No. 19CV355856, California Superior Court,  
8 County of Santa Clara, Honorable Patricia M. Lucas, presiding;  
9 • *Olquin v. Cal Central Harvesting, Inc.*, Case No. 18CV03860, California Superior Court,  
10 County of Santa Barbara, Honorable James F. Rigali, presiding;  
11 • *Pence v. Sober Living by the Sea, Inc.*, Case No. 2018-00988742, California Superior  
12 Court, County of Orange, Honorable Randall J. Sherman, presiding;  
13 • *Franco v. Vincent Rags, Inc.*, Case No. 20STCV07768, California Superior Court,  
14 County of Los Angeles, Honorable Ann I. Jones, presiding;  
15 • *Cabral v. Miller Castings, Inc.*, Case No. 19STCV39556, California Superior Court,  
16 County of Los Angeles, Honorable Carolyn B. Kuhl, presiding.  
17 • *Bolanos v. Texas Roadhouse, Inc.*, Case No. 19STCV39556, California Superior Court,  
18 County of Los Angeles, Honorable Sunshine Sykes, presiding;  
19 • *Rodriguez v. Scott A. Humphreys, Inc.*, Case No. 30-2021-01184556-CU-OE-CXC,  
20 California Superior Court, County of Ventura, Honorable Matthew P. Guasco, presiding; and  
21 • *Torres v. Primal Pet Foods, Inc.* Case No. FCS054783, California Superior Court,  
22 County of Solano, Honorable Wendy G. Getty, presiding.  
23 • *Hanson v. Zapata Nuccio, Inc.*, Case No. 20STCV28951, California Superior Court,  
24 County of Los Angeles, Honorable Elihu M. Berle, presiding;  
25 • *Molina v. Avibank Mfg, Inc.*, Case No. 20STCV03910, California Superior Court,  
26 County of Los Angeles, Honorable John P. Doyle, presiding;  
27 • *Cetina v. Lawry's Restaurants, Inc.*, Case No. 19STCV05201, California Superior  
28 Court, County of Los Angeles, Honorable Amy D. Hogue, presiding; and

1 • *Luna v. Pronto California General Agency, LLC*, Case No. 19STCV39951, California  
2 Superior Court, County of Los Angeles, Honorable Elihu M. Berle, presiding.

3 70. I have also settled matters on a “PAGA Only” basis for aggrieved employees in the  
4 past, including in:

5 • *Flores v. Delta Apparel, Inc.*, Case No. BC641499, California Superior Court, County  
6 of Los Angeles, Honorable Daniel J. Buckley, presiding;

7 • *Segura v. CJ Foods Service Holdings USA, LLC*, Case No. 19STCV24918, California  
8 Superior Court, County of Los Angeles, Honorable Maureen Duffy-Lewis, presiding;

9 • *Sierra v. Nexem-Allied, LLC*, Case No. 20STCV11281, California Superior Court,  
10 County of Los Angeles, Honorable Randolph M. Hammock, presiding; and

11 • *Nodal v. Sodexo, Inc.*, Case No. 20STCV40601, California Superior Court, County of  
12 Los Angeles, Honorable Lawrence Riff, presiding.

13 71. Currently, my firm is acting as counsel in tens of wage and hour class actions and  
14 representative PAGA actions.

15 72. Diego Aviles has been a member of my law firm for over four (4) years and served  
16 as Class Counsel on the majority of the Actions on which I was named Class Counsel.

17 73. After a thorough investigation and settlement discussions, the Parties arrived at  
18 terms that they viewed was in the best interest of both the Class Members and the Parties.

19 74. I believe that Plaintiff’s goals have been realized via redress for the employees  
20 whose wage and hour rights were violated.

21 75. While Defendants deny liability, they have nonetheless agreed to settle the matter  
22 to avoid any potential expense.

23 76. Should the Court refuse to grant preliminary approval of this Settlement, Class  
24 Members may be denied any recourse for Defendants’ alleged violations.

25 **Superiority of Class Action**

26 77. I believe that this this wage and hour class action meets all the criteria to deem it a  
27 superior vehicle for resolution of the issues it seeks to resolve. First, it allegedly pertains to  
28 Plaintiffs’ contention that Defendants have a uniform practice of: failing to pay wages for all time

1 worked; and adopting non-compliant meal and rest period policies and practices resulting in the  
2 failure to provide compliant meal and rest breaks to Class Members. This allows claims of many  
3 individuals to be resolved at the same time, eliminates the possibility of repetitious litigation and  
4 affords small claimants with a method of obtaining redress for claims which otherwise would be  
5 too insufficient to warrant individual litigation. It is also brought by former employees who are  
6 not at the greater risk of retaliation than current employees who are less likely to seek such redress  
7 for themselves.

8 78. In addition, Class Counsel is not aware of any other action against Defendants  
9 brought on an individual basis, which I believe signals that Class Members have little interest in  
10 personally controlling their claims.

11 79. I believe that a class action would eradicate the concern of inconsistent rulings  
12 regarding the wage and hour issues brought as part of this class action.

13 80. I believe that because the class action meets all criteria for certification and a lesser  
14 standard of scrutiny applies when evaluating these criteria for settlement purposes.

15 **Plaintiffs' Supplemental Brief**

16 **First Amended Complaint**

17 81. The First Amended Complaint was filed with the Court on March 11, 2022 pursuant  
18 to the Court's order.

19 **Records Reviewed**

20 82. The Court has asked: for further detail as to the investigation and discovery  
21 conducted by Class Counsel, including: (1) the specific documents and class data reviewed prior  
22 to agreeing to settle the case; (2) all formal discovery, if any, undertaken; (3) the number of Class  
23 Members identified through mediation; (4) whether the data reviewed was for the entire class, or  
24 a portion; and (5) if a portion was utilized, whether the sampling was statistically significant and  
25 whether expert analysis supported the conclusion that it was sufficient to provide useful data

26 83. Based on the Defendants' records, Class Counsel estimated at mediation there were  
27 approximately 649 non-exempt, hourly-paid employees identified by plaintiffs Salvador Rincon  
28 and Saul Ernesto Cedillos (collectively, "Plaintiffs") working for defendants New-Indy TriPAQ

1 LLC (“New Indy”), Triple A Containers, Inc. (“Triple A”), Montebello Container Company LLC  
2 (“Montebello”), Proactive Packaging and Display, LLC (“Proactive”) and Brad McCroskey  
3 (collectively, “Defendants”) from April 30, 2016 through mediation in California. Class Counsel  
4 theorized that Defendants are joint employers. While Class Counsel served twelve sets of  
5 discovery on New Indy, Triple A, and Brad McCroskey, and while three sets of formal discovery  
6 were propounded upon Plaintiffs, no formal responses were ever provided by any Party as the  
7 Parties agreed to attend mediation.

8 84. Rather, Defendants provided documents informally reflecting the following  
9 information. Hire dates, termination dates and rates of pay were provided by for all employees of  
10 New-Indy and Triple A. Class data points were provided for Montebello and Proactive. With  
11 that information, Class Counsel was able to determine the average rate of pay for putative class  
12 members, as well as the number of workweeks worked from April 30, 2016 through mediation,  
13 the number of putative class members, the number of putative class members who worked during  
14 the relevant statutory period for waiting time penalties, wage statement violations, and the  
15 statutory period for recovery of civil penalties under the Labor Code Private Attorneys General  
16 Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”), as well as the number of pay  
17 periods in the relevant statutory period for wage statement violations and PAGA.

18 85. Time and payroll records were provided for 293 of the approximately 649 putative  
19 Class Members through mediation, which were provided for analysis to expert consultants that  
20 determined the sampling was significant enough to be sufficient to provide useful data to gauge  
21 the reasonableness of the settlement terms. Moreover, policy documents and contact information  
22 for 66 former employees were provided to gauge the certifiability, manageability, and merits of  
23 the class and PAGA actions.

24 86. Class Counsel reviewed the time and payroll records, data points, hire and  
25 termination dates, policy records, and spoke with putative class members prior to attending  
26 mediation to gauge the reasonableness of the settlement terms and determined the settlement terms  
27 reached to be fair, reasonable and adequate.

28 ///

**Settlement Amount is a Significant Recovery**

87. The Court has requested further briefing as to why \$925,000 is a fair, reasonable and adequate settlement amount in light of the calculation that there may have been as much as \$16,381,513.81 available to Class Members pursuant to Class Counsel's calculations. Class Counsel's calculation of \$16,381,513.81 was a loose calculation of the maximum possible recovery based on Plaintiff's theories of recovery when going to mediation. Class Counsel did not brief the effect on the maximum available recovery after Class Counsel learned further information at mediation, nor did Class Counsel brief in detail the effect Defendants' defenses had on Class Counsel's initial valuation.

Unpaid Wages

88. Class Counsel's most salient theory for failure to pay wages was an off-the-clock theory for failure to pay wages. Class Counsel theorized that Class Members were not paid for all time: (a) required to wait in line to clock in; (b) often required to start working up to an hour before their schedule shift to prepare for large orders; (c) often called outside of work hours to answer work related questions. Class Counsel's initial calculation at mediation was that Class Members were underpaid ten minutes every shift with 180,904 shifts in the Class Period, amounting to unpaid wages of \$871,406 in light of an approximate average rate of pay of \$18.89 for Class Members. (180,904 shifts x .17/shift x \$18.89/hr. x 1.5 overtime rate.)

89. However, information regarding the staggering of shifts and the number of time clocks at Defendants' facilities learned at mediation caused Class Counsel to go back to Plaintiffs and Class Members who provided Class Counsel with questionnaire responses during mediation to gather further information regarding how often time was spent waiting in line, for what portions of the Class Period time spent waiting in line was more prevalent, what shifts had to wait in line more than others, and how long waiting time was depending on these variables. Also, based on information learned at mediation, Class Counsel revisited with Plaintiffs and Class Members details about which job positions may be required to come in early to perform work on large projects and/or called outside of work hours to answer work related questions, and during which portions of the Class Period this practice was maintained. Based on information learned from

1 Defendants and further investigation done by Class Counsel with Plaintiffs and Class Members,  
2 Class Counsel, in conjunction with expert consultants to account for various permutations,  
3 performed various more calculations of time spent off-the-clock, all of which were significantly  
4 lower than ten minutes every single shift.

5 90. Moreover, in light of learning that the variance between the timing of one's shift,  
6 the job position, and other factors, Class Counsel had to value more than prior to mediation  
7 Defendant's defenses regarding certifiability as it pertains to commonality, predominance, and  
8 manageability. Class Counsel had to consider these risks when valuing this claim for the purpose  
9 of settlement, as well.

#### 10 Failure to Provide Meal Periods

11 91. Class Counsel included in Plaintiffs' Motion for Preliminary Approval as a metric  
12 Defendants' exposure the number of unique meal period violations detected (i.e., shifts without a  
13 timely, 30-minute meal period every five hours), which came to 58,029 unique violations and an  
14 exposure of \$1,096,167.81. (58,029 shifts x \$18.89.) This number, however, did not include a  
15 calculation of the meal premium payments made (at least \$23,650) by Defendants during the Class  
16 Period.

17 92. But, more saliently, it did not take into account that the meal period violations rest  
18 on two key disputes of fact which, if resolved against Plaintiffs, would almost eviscerate the value  
19 of this claim. The first is that approximately 42,798 meal periods were recorded after the fifth  
20 hour. Class Counsel understand from the mediator and the mediation process that Defendants  
21 point to written policies requiring Class Members to take their meal period before the fifth hour  
22 and refer to their failure to do so as voluntary, an individualized inquiry, and one not manageable  
23 for trial.

24 93. The second is that approximately 92,931 shifts between ten and twelve hours did  
25 not include a second meal period, which Class Counsel calculated as a violation and Defendants  
26 insist reflect waived meal periods. However, Class Counsel understand from the mediator and the  
27 mediation process that Defendants vehemently state that Class Members voluntarily waived their  
28 entitlement to meal periods between ten and twelve hours in length, as they may by law and that,

1 thus, these are not meal period violations. Further, Defendants point to written policies permitting  
2 for their waiver and insist that any question regarding whether a waiver occurred is an  
3 individualized inquiry and therefore not manageable at trial.

#### 4 Failure to Provide Rest Periods

5 94. Class Counsel's theory for failure to provide rest period violations is based on Class  
6 Counsel's theory that: (1) Class Members often were not permitted to take a third rest period; and  
7 (2) Defendants' policies requiring that they remain on premises makes each shift a violation. Class  
8 Counsel measured Defendants' exposure for this claim by taking the number of shifts over ten  
9 (10) hours (approximately 101,663) and stating that even if only half included non-compliant rest  
10 periods, it would amount to an exposure of \$960,207. (101,663 shifts x .5 x \$18.89.) Based on  
11 the responses by Class Members to questionnaires regarding whether they had to stay on premises,  
12 which seemed to vary during the Class Period, Class Counsel theorized that it was more prudent  
13 to calculate damages in connection with third rest periods. And based on responses by Class  
14 Members to questionnaires regarding how often third rest periods were taken, Class Counsel  
15 theorized that a 50% violation rate was fitting.

16 95. Class Counsel understand from the mediator and the mediation process that  
17 Defendants contend that their rest period policy is compliant; that rest periods do not have to be  
18 off premises; that Class Members actually were able to leave the premises during rest periods; and  
19 that Class Members received all of their rest periods. To the extent Class Members elected not to  
20 take third rest periods, Defendants contend that they did so to leave work earlier, which is their  
21 election and creates no liability for Defendants, destroys commonality and predominance, and  
22 makes any trial unmanageable. While Class Counsel maintains the position that the rest break  
23 claim is certifiable and meritorious, they had to consider the risks inherent in this claim when  
24 considering the settlement amount.

#### 25 Wage Statement Violations

26 96. Class Counsel, in Plaintiffs' Motion for Preliminary Approval, conducted a very  
27 rudimentary calculation of the maximum exposure for wage statements violations. With  
28 approximately 7,242 pay periods in the relevant time period, and with a \$100 subsequent violation

1 rate for wage statement violations, Class Counsel calculated the maximum exposure to be  
2 \$724,200. But there is no question that the true maximum exposure would necessarily have been  
3 less because this calculation, made for ease of discussion, does not take into account: (1) the initial  
4 violation rate is only \$50; (2) there is a maximum penalty of \$4,000 per Class Member. More  
5 saliently, because this is a *derivative* claim, it relies on Plaintiff's success on its failure to pay  
6 wage theories. And, if the case of *Naranjo v. Spectrum Security Services, Inc.* (2019) 40  
7 Cal.App.5th 444 is upheld on appeal, it will rely solely on Plaintiff's off-the-clock claim's success,  
8 the risks of which are detailed above. And, even then, the maximum exposure here assumes a  
9 violation *every* pay period. Thus, even if Plaintiff is only partially successful, the damages may  
10 be much lower than the maximum damage amount shown here. As such, Class Counsel had to  
11 discount this claim in accordance with the real risk that nothing, or something much lower than  
12 the maximum amount reflected here, may be recovered on this claim

#### 13 Waiting Time Penalties

14 97. With, 248 Class Members in the relevant time period, Class Counsel calculated a  
15 maximum exposure of \$1,124,333 for waiting time penalties by theorizing that every one of those  
16 employees were not unpaid all of their wages prior to termination. However, as is the case with  
17 wage statements, because this is a derivative claim, it relies on Plaintiff's success on its failure to  
18 pay wage theories. And, if the case of *Naranjo v. Spectrum Security Services, Inc.* (2019) 40  
19 Cal.App.5th 444 is upheld on appeal, it will rely solely on Plaintiff's off-the-clock claim's success,  
20 the risks of which are detailed above. And, even then, the maximum exposure here assumes a  
21 violation for every Class Member for the full statutory period of 30 days. Thus, even if Plaintiff  
22 is only partially successful, the damages may be much lower than the maximum damage amount  
23 shown here. As such, Class Counsel had to discount this claim in accordance with the real risk  
24 that nothing, or something much lower than the maximum amount reflected here, may be  
25 recovered on this claim.

#### 26 PAGA Penalties

27 98. Class Counsel performed an overly rudimentary calculation of PAGA penalties, in  
28 retrospect, when calculating PAGA penalties. Specifically, Class Counsel merely multiplied the

1 subsequent violation rate for the default PAGA penalty (i.e., Labor Code section 2699) by the  
2 number of theories pursued (eight) as well as the pay period count in the PAGA Period (7,242)  
3 and came to an exposure amount of \$11,587,200. (7,242 pay periods x \$200/pay period x 8  
4 violations.).

5 99. While reasonable minds differ with regard to calculation of PAGA penalties, Class  
6 Counsel believe a further examination will show that the likely recoverable penalties are almost  
7 certainly lower. The first step in the analysis is the violation rates used. PAGA penalties include  
8 penalties for initial violations and subsequent violations. Class Counsel understand from the  
9 mediator and the mediation process that Defendants contend that only initial violation rates may  
10 be used instead of the subsequent violation rates initially used by Class Counsel. Specifically,  
11 Defendants contend that until “notified that it is violating a Labor Code provision ... the employer  
12 cannot be presumed to be aware that its continuing underpayment of employees is a “violation”  
13 subject to penalties.” (*Amaral v. Cintas Corp. No. 2 [Amaral]* (2008) 163 Cal. App. 4th 1157,  
14 1209.) Thus, Defendants contend that subsequent violations in the PAGA context means not just  
15 later in time but following notice to the employer that it is in violation of the Labor Code. With  
16 this in mind, and because Class Counsel, despite initially calculating penalties with the subsequent  
17 violation rate, through investigation and discovery did not conclude that Defendants at any time  
18 were notified by any governmental entity that they violated any Labor Code sections presented in  
19 the PAGA Notice and PAGA claims, and therefore Class Counsel adjusts the exposure model for  
20 Defendants to include only initial violation rates.

21 100. The second step is the penalty amount used. Labor Code section 2699 sets forth  
22 the amount of penalties owed when there is not a more specific provision already provided, such  
23 as Labor Code sections 210, 226.3, 558, 1174.5, and 1197.1, which provide for PAGA penalties  
24 for specific violations.

25 101. The third step is that Class Counsel originally calculated a violation for every pay  
26 period when some of the allegations (i.e., waiting time penalties, failure to provide notice under  
27 Labor Code section 2810.5) do not arise every pay period and, perhaps, for only one pay period.

1     102.         When considering these details in connection with PAGA penalties, Class Counsel  
2 recalculates the maximum exposure for PAGA penalties, as follows:

3         a.         Overtime Violations: Labor Code section 558 prescribes penalties of \$50 for an  
4 initial violation and \$100 for each subsequent violation. Using the initial pay period rate for all  
5 violations, and a violation every single pay period for every single non-exempt employee in the  
6 Settlement Period, this amounts to a maximum exposure of \$362,100. (7,242 pay periods x \$50.)

7         b.         Minimum Wage Violations: Labor Code section 1197.1 prescribes penalties of  
8 \$100 for an initial violation and \$250 for each subsequent violation. Using the initial pay period  
9 rate for all violations, and a violation every single pay period for every single Aggrieved Employee  
10 in the PAGA Period, this amounts to a maximum exposure of \$724,200. (7,242 pay periods x  
11 \$100.)

12         c.         Meal Period Violations: Labor Code section 558 prescribes penalties of \$50 for an  
13 initial violation and \$100 for each subsequent violation. Using the initial pay period rate for all  
14 violations, and a violation every single pay period for every single non-exempt employee in the  
15 Settlement Period, this amounts to a maximum exposure of \$362,100. (7,242 pay periods x \$50.)

16         d.         Rest Period Violations: Labor Code section 558 prescribes penalties of \$50 for an  
17 initial violation and \$100 for each subsequent violation. Using the initial pay period rate for all  
18 violations, and a violation every single pay period for every single non-exempt employee in the  
19 Settlement Period, this amounts to a maximum exposure of \$362,100. (7,242 pay periods x \$50.)

20         e,         Waiting Time Penalties: Labor Code section 2699 prescribes penalties of \$100 for  
21 an initial violation and \$200 for each subsequent violation. Because this violation is merited only  
22 at separation of employment, a 100% violation rate would likely include just one violation per  
23 employee. The data produced by Defendants indicates that there are 248 Aggrieved Employees  
24 whose employment was separated during the PAGA Period. This amounts to a maximum  
25 exposure of \$24,800. (248 Aggrieved Employees x \$100.)

26         f.         Wage Statement Violations: According to *Gunther v. Alaska Airlines, Inc.* (2021)  
27 287 Cal.Rptr.3d 229, in this instance, Labor Code section 2699 would be the appropriate penalty  
28 for wage statement violations that are inaccurate, which prescribes penalties of \$100 for an initial

1 violation and \$200 for each subsequent violation. (*Id.* at 247-248.) Using the initial pay period  
2 rate for all violations, and a violation every single pay period for every single Aggrieved Employee  
3 in the PAGA Period, this amounts to a maximum exposure of \$724,200. (7,242 pay periods x  
4 \$100.)

5 h. Violation of Labor Code § 2810.5: Upon hire, Defendants must provide each  
6 Aggrieved Employee a notice under Labor Code section 2810.5 with the information set out under  
7 that Labor Code section. Labor Code section 2699 prescribes penalties of \$100 for an initial  
8 violation and \$200 for each subsequent violation. Class Counsel understands Defendants to  
9 concede that no such notices were provided. There were, according to the data provided by  
10 Defendants, approximately 428 Aggrieved Employees hired during the PAGA Period. This  
11 amounts to a maximum exposure, using the initial violation rate, of \$42,800. (428 Aggrieved  
12 Employees x \$100.).

13 g. Violation of Labor Code § 246: Labor Code section 246 states that Defendants  
14 must provide paid sick leave for employees who have worked more than 30 days within one year  
15 of employment. Labor Code section 2699 prescribes penalties of \$100 for an initial violation and  
16 \$200 for each subsequent violation. This amounts to a maximum exposure, using the initial  
17 violation rate, of \$724,200. (7,242 pay periods x \$100.)

18 g. Conclusion: In sum, when details regarding PAGA in this matter and generally are  
19 applied, the maximum exposure for PAGA penalties is, in fact, more likely \$3,326,500.

20 However, this does not take into account Defendants' available defenses, either. Class  
21 Counsel understand from the mediator and the mediation process that Defendants argued the  
22 following defenses in connection with this claim. Defendants contend that no PAGA penalties  
23 are likely to be awarded and, even if they were, the maximum exposure calculated by Class  
24 Counsel is vastly overstated. First, Defendants defend that PAGA penalties cannot and should  
25 not be stacked and that, even if they could, very few Courts have ever exercised discretion to stack  
26 them. Second, Defendants will likely assert that individualized issues predominate the PAGA  
27 claims, making the claims unmanageable for trial pursuant to *Wesson v. Staples the Office*  
28 *Superstore, LLC* (2021) 68 Cal.App.5th 746. Third, Defendants deny that a violation for each pay

1 period can be established. Defendants state that because the PAGA penalties rely upon  
2 substantially similar allegations made in the Action, they are subject to the same defenses, and,  
3 thus, for the same reason Defendants believe there will be no damages collectible in the class  
4 action and no PAGA penalties would be awarded. Fourth, Defendants contend that a Court is  
5 unlikely to exercise its discretion to award civil penalties under PAGA where, as here, there is no  
6 conduct shown by Plaintiff that would show any Labor Code violation by Defendants is knowing  
7 and intentional that would justify PAGA penalties. Defendants insist that this is especially true  
8 in this Action where class action damages are available to Class Members, rendering an award of  
9 PAGA penalties in addition to class action damages an unjust, arbitrary, oppressive, or  
10 confiscatory double recovery. Thus, Defendants contend that the Court cannot, should not, and  
11 will not exercise its discretion to award any penalties under PAGA.

12 Class Counsel had to account for the risk that the Court does not exercise its discretion to  
13 grant any PAGA penalties, in addition to potential issues on the merits, trial manageability, and  
14 issues the possibility that the Court does not use permit stacking of penalties or permit the use of the  
15 subsequent violation rate when providing penalties when considering a settlement.

16 Conclusion

17 103. Thus, in retrospect, when including derivative penalties, such as waiting time  
18 penalties, wage statement violations, and discretionary PAGA penalties, Class Counsel theorizes  
19 that Defendants' maximum exposure is, in fact, approximately \$8,102,613.81, with over 40% of  
20 that exposure coming from the exposure of discretionary PAGA penalties. Plaintiffs achieved a  
21 settlement of \$925,000, amounting to a recovery of 11.4% of the maximum possible recovery.  
22 Particularly in light of the risks involving obstacles to class certification, all risks related to  
23 liability, the risks with manageability at trial, the manner in which the discretionary nature of  
24 PAGA penalties, and considering the case law regarding fair, reasonable, and adequate  
25 settlements, Class Counsel strongly believe that the settlement reached is fair, reasonable, and  
26 adequate and in the best interest of Class Members

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**Allocation to PAGA**

104. The Court has inquired why the \$20,000 allocated to PAGA civil penalties is fair to the LWDA and to aggrieved employees. While the maximum exposure appears high, this allocation was decided mutually by the Parties and the mutual decision was based largely on: (1) the fact that damages are available for the failure to pay wage claims while only penalties are available for the PAGA claims; (2) the risk that the Court may exercise its discretion to decline to stack PAGA penalties; (3) the risk that the Court may exercise its discretion to not award the full amount of PAGA penalties available; and (4) the risk that the Court may decline to award any PAGA penalties at all, particularly in light of the fact that damages are available for Class Members and it may find any further liability against Defendants may be unnecessarily punitive. Because the class claims, that are not discretionary in any manner, are what drove the value of settlement in this Action, and the class action achieves the goals of the LWDA (*i.e.*, incentivize employers to pay all wages owed to employee, correct policies and practices that prevent full payment of wages, punishing the employer for any Labor Code violations, and providing relief to employees whose wages were taken), I believe the amount allocated to PAGA in this Action in which class claims were available is fair, reasonable and adequate.

**Declaration of David D. Bibiyan**

105. The Court has inquired as to the propriety of the testimony in the initial Declaration of David D. Bibiyan filed with the Court that is stated under information and belief. The Declaration at issue included five categories of information under information and belief: (1) information provided by expert consultants; (2) information provided by counsel for Defendants; (3) attorneys and staff from my office who helped litigate the action to fruition; (4) information provided by co-counsel; and (5) information provided by the mediator. I have revised the Declaration and have submitted this Declaration that supports the evidence set forth in the brief and that in the original Motion in a manner that I am hopeful will resolve the Court's concerns.

**Community of Interest**

106. Filed concurrently herewith are declarations of all four Plaintiffs setting forth that each: (1) understands the obligations of being an adequate class representative; (2) the details of

1 what he has done or will do to demonstrate the adequacy of his or her representation; and (3) the  
2 substantial burden he will undertake or has undertaken in order to represent the putative class in  
3 this Action.

#### 4 **Class Size**

5 107. Based on documents and information provided by Defendants, there were  
6 approximately 649 Class Members in the Settlement Class as of mediation and 428 Aggrieved  
7 Employees in the PAGA Period as of mediation.

#### 8 **Class Period**

9 108. The reference to the Class Period ending at the time of preliminary approval instead  
10 of April 26, 2021 is a vestige from a previous version of the Settlement Agreement. Paragraph  
11 10 has been revised to reflect that the Class Period ends on April 26, 2021 in an Amended  
12 Settlement Agreement, a redlined version which is attached as Exhibit “1” hereto. The fully  
13 executed version of the Amended Settlement Agreement is also attached as Exhibit “2” to this  
14 Declaration.

#### 15 **Scope of Release**

##### 16 Class Claims

17 109. The Court has counseled that the release of class claims should specify that it is  
18 limited to claims based on facts alleged in the operative First Amended Complaint only and that  
19 the references to the “Action” in the Released Claims language be modified accordingly. The  
20 Parties, in the Amended Settlement Agreement, have modified the language of Paragraph V(16)  
21 by replacing the word “Action” with “First Amended Complaint on file in this Action”, which  
22 effectuates a release of only claims based on facts alleged in the operative First Amended  
23 Complaint. To ensure there is no confusion, the Parties also included a sentence that clarifies  
24 there is no release of claims unless they are based on facts that were alleged in the First Amended  
25 Complaint on file in this Action.” A redlined and fully executed version of the revised Settlement  
26 Agreement are attached to the Declaration of David D. Bibiyan as Exhibits “1” and “2” thereto,  
27 respectively.

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PAGA Cause of Action

110. The Court has asked for briefing regarding the propriety of the PAGA release and why it should not be limited to claims for penalties that were brought or could have been brought based on the facts alleged in Plaintiffs’ LWDA letter. The Parties intended to do precisely this and have amended the language of Paragraph V(16) in the Amended Settlement Agreement to reflect that the only claims for penalties released are those that are in the PAGA Notice and again mentioned in the First Amended Complaint. To ensure there is no confusion, the Parties also included a sentence that reads that only the claims based on facts that were alleged in the PAGA Notice filed by Plaintiffs are being released. Class Counsel attach the notice filed with the LWDA to the Declaration of David D. Bibiyan as Exhibit “5” hereto.

**Settlement Distribution**

111. The Court has requested an explanation as to how Paragraph 19 of the Settlement Agreement would function in the event of a breach by one but not all defendants. Paragraph 19 exists because Triple A claims to be distinct from the New-Indy, Montebello, and Proactive (collectively, “New Indy Entities”). Triple A contends that it was the employer for Class Members prior to January 1, 2017, with the New Indy Defendants being their employers thereafter, as it pertains to this Settlement. The reason Paragraph 19 is included is in case one or the other defaults, the benefit of the remaining portion of the Settlement may be maintained by the other and by Class Members.

112. Class Counsel envision that in the unlikely event this should come to fruition, the payment made by the non-breaching Party shall be sent at the time of administration to Class Members, with an explanation that their claims were not released as to the other Party. For instance, should Triple A not fund its potion of the Settlement, but should the New-Indy Defendants fund their portion, Class Members should timely receive payments from the Settlement Administrator with a notice letter stating that the release from April 30, 2016 through December 31, 2016 is not effective and that payment is only being made for the period of January 1, 2017 through the close of the Class Period and the release does not extend to Triple A.

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**Dismissal**

113. The reference to dismissal of the Action in Paragraph 27(b) of the original Settlement Agreement (now Paragraph 28 of the Amended Settlement Agreement) was there in error and has been deleted.

**Notice and Notice Administration**

Confidentiality of Class List

114. The confidentiality of the Class List is included because Class Members have a privacy right in their contact information and Social Security Numbers that Class Counsel seek to safeguard and have instructed that the Settlement Administrator safeguard. Because Class Counsel has already determined that the Settlement is fair, reasonable and adequate, Class Counsel does not foresee a need at this time to affirmatively contact Class Members. All communications to be made to Class Members at this time regarding the Settlement may be and will be included on the Class Notice in English and Spanish. Any Settlement Class Members that have any questions about the Class Notice may contact Class Counsel (who has attorneys fluent in both English and Spanish). Class Counsel's contact information will be included on the Class Notice, including email addresses, a physical address, a telephone number, and a facsimile number. Thus, at this time, Class Counsel do not foresee any reason why the confidentiality of the Class Notice would not be in Class Member's best interest or otherwise impede Class Counsel's fiduciary interest. However, Class Counsel recognizes that circumstances may change and, if so, the Parties may agree at a later time to permit class contact information to be provided to Class Counsel by mutual agreement. The Amended Settlement Agreement now includes express language that states as much in Paragraph 26 (renumbered from Paragraph 25 in the Amended Settlement Agreement), set forth in Exhibits "1" and "2" to the Declaration of David D. Bibiyan.

Mailing of Class Notice

115. The Court noted that former Paragraph 20(b) and 25 had inconsistent provisions regarding how many days the Settlement Administrator had to mail the Class Notice. Paragraph 21(b) of the Amended Settlement Agreement (coinciding with Paragraph 20(b) of the original Settlement Agreement) has been amended to reflect that the Settlement Administrator has fourteen

(14) days, which comports with the Proposed Order Granting Preliminary Approval lodged with this Court, as can be seen in Exhibits “1” and “2” attached hereto.

### Objections

116. The Court has requested the removal from the Settlement Agreement and the Class Notice references to: (1) Class Members not being able to object unless they comply with written notice procedures; (2) requirements that specific language be used to request exclusion from the Settlement; and (3) anything but mailing of a written objection being required from a written objector (as opposed to “service”).

117. To make clear that Class Members may make objections at the Final Approval Hearing: Paragraphs 9(e) and 9(f) in the Amended Settlement Agreement have been revised to include discussion of both written objections made before and any objections made at the Final Approval Hearing; Paragraph 11 of the Amended Settlement Agreement has been revised from the Original Settlement Agreement to state that Class Members who provide written objections *or* object at the Final Approval Hearing may appeal; and Pages 1-2 and 4 of the Class Notice have been revised to clarify that one may not only object in writing, but also, whether or not he or she objected in writing, appear to object to, or comment on, the Settlement at the Final Approval Hearing.

118. Paragraph 20(e) of the original Settlement Agreement did not require specific language to be used to request exclusion as it included a qualifier that language to that effect could also be used, as did the Class Notice at Page 4. However, the language in Paragraph 21(e) of the Amended Settlement Agreement (its equivalent) now does not include any quotations, but simply states that a statement to the effect requesting exclusion of the Settlement of this Action must be included, as has the Class Notice at Page 4.

119. Finally, the reference to service of the written objection in Paragraph 11 of the Amended Settlement Agreement has been removed.

120. The changes appearing in the Amended Settlement Agreement can be seen at Exhibits “1” and “2” attached hereto. A redlined version of the Class Notice reflecting these changes appear at Exhibit “3” with a final clean copy as Exhibit “4” hereto.

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**Settlement Administrator**

125. Filed concurrently with this Declaration is a declaration from Jodey Lawrence of the settlement administrator – Phoenix Settlement Administrators – that provides the qualifications and experience of the administrator, affirms that the administrator has sufficient safeguards in place to protect the data and funds entrusted to it, and has no relationship to any counsel.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct this 17th day of March 2022, at Beverly Hills, California.

\_\_\_\_\_

David D. Bibiyan

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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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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,

2016 through April 26, 2021.

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

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

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

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

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

l) Document Receipt Deadline. The term "Document Receipt Deadline" shall mean the deadline for Class Members to mail any Requests for Exclusion, Objections, or Workweek Disputes to the Settlement Administrator, which is forty-five (45) calendar days from the date that the Class Notice is first mailed in English and Spanish by the Settlement Administrator, unless the Class Member's notice is re-mailed. In such an instance, the Document Response Deadline shall be fifteen (15) calendar days from the re-mailing, or forty-five (45) calendar days from the date of the initial mailing, whichever is later, in which to postmark a Request for Exclusion, Workweek Dispute or Objection. The date of the postmark shall be the exclusive means for determining whether a Request for Exclusion, Objection, or Workweek Dispute was submitted by the Response Deadline.

1 m) Effective Date. The term “Effective Date” shall mean the date on which the Court’s  
2 Judgment becomes final, as further detailed in Paragraph 9, herein.

3 n) Final Settlement Approval Hearing. The term “Final Settlement Approval Hearing”  
4 shall mean and refer to a hearing before the Court to finally approve the Settlement as fair,  
5 reasonable, and adequate, as further detailed in Paragraph 28, herein.

6 o) Final Settlement Papers. The term “Final Settlement Papers” shall refer to and  
7 include, without limitation, a Motion for Final Approval of Settlement, Motion for Attorneys’ Fees  
8 and Costs, and [Proposed] Final Settlement Order.

9 p) Individual Settlement Amount. The term “Individual Settlement Amount” shall  
10 mean a Class Member’s share of the Net Settlement Amount, as further detailed in Paragraph 18,  
11 subparagraph (f), herein.

12 q) Net Settlement Amount. The term “Net Settlement Amount” shall mean and refer  
13 to the balance of the Total Class Action Settlement Amount, after all Court-approved deductions  
14 for attorneys’ fees and actual costs to Class Counsel, the Settlement Administrator’s cost and fees,  
15 the Class Representatives’ enhancement awards, and the PAGA Allocation. The Net Settlement  
16 Amount is the maximum amount that will be available for distribution to Class Members.

17 r) Notice. The term “Notice” shall mean the Notice of Class Action Settlement,  
18 attached hereto as **Exhibit 1**.

19 s) PAGA Period. The term “PAGA Period” shall mean from November 17, 2019  
20 through April 26, 2021.

21 t) Parties. The term “Parties” shall mean and refer collectively to plaintiffs Salvador  
22 Rincon and Saul Cedillos, on the one hand, and Defendants on the other.

23 u) Plaintiffs. The term “Plaintiffs” shall mean and refer to to plaintiffs Salvador  
24 Rincon and Saul Cedillos. The term “Plaintiffs” shall be synonymous with the term “Class  
25 Representatives”.

26 v) Preliminary Approval Date. The term “Preliminary Approval Date” shall mean the  
27 date that the Court enters the Preliminary Approval Order.

28 w) Released Parties. The term “Released Parties” shall mean and refer to Defendants

1 and all of Defendants' current or former parent companies, subsidiary companies, and/or related  
2 companies, partnerships, joint ventures, affiliates, divisions, and, with respect to each of them, all  
3 of their and/or such related entities' predecessors and successors, and, with respect to each such  
4 entity, all of its past, present, and/or future, direct and/or indirect, employees, officers, partners,  
5 principals, directors, stockholders, managers, owners, representatives, assigns, attorneys, agents,  
6 insurers, employee benefit programs (and the trustees, administrators, fiduciaries, and insurers of  
7 such programs), and investors.

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

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

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

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

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

## II. BACKGROUND OF THE LEGAL ACTION

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

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

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

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

5. Investigation. The Parties have conducted a detailed and comprehensive investigation of the claims asserted against Defendants and of the applicable law. The Parties each exchanged and responded to formal and informal discovery, which included: (a) analysis by the Parties of certain records, data, and policies pertaining to Plaintiffs, Class Members, and the claims

1 asserted in the Action; (b) research of the law applicable to Plaintiffs' claims and Defendants'  
2 affirmative defenses, as well as the damages alleged by Plaintiffs; (c) examination and analysis of  
3 information and documents; and (d) consideration of information disclosed at and in connection  
4 with mediation.

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

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

1        8. Amendment of Complaint. As part of this Stipulation, Plaintiff has agreed to file an  
2 amended complaint in *Salvador Rincon v. New-Indy TriPAQ LLC, et al.*, Case No. 20STCV17118  
3 in the Superior Court for the County of Los Angeles. The amended complaint shall add  
4 Montebello Container Company LLC and Proactive Packaging and Display, LLC as defendants  
5 and Saul Cedillos as an additional representative. The amended complaint shall allege the  
6 following causes of actions against Defendants: (1) failure to pay overtime wages; (2) failure to  
7 pay minimum wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest  
8 breaks; (5) failure to pay wages due at termination; (6) failure to issue accurate itemized wage  
9 statements; (7) failure to reimburse business expenses; (8) violations of Business and Professions  
10 Code § 17200; (9) failure to pay wages during employment; (10) failure to provide written notice  
11 of paid sick leave; and (11) civil penalties under PAGA, all of which were investigated prior to  
12 mediation as to Defendants, and each of them.

13        **III. DATE OF SETTLEMENT**

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

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

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

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

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

23            e) In the event that objections are presented prior to or at the Final Settlement  
24 Approval Hearing which are not later withdrawn, or upon Class Representatives and/or Class  
25 Counsel reserving the right to appeal any portion of the Final Order and Judgment, upon the later  
26 of:

- 27                    i. The date of final affirmance on an appeal of the Judgment; the  
28                    expiration of the time for a petition to review the Judgment; and, if

review is granted, the date of final affirmance of the Judgment following review; or

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

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

f) In the event that no objections are presented prior to or at the Final Settlement Approval Hearing, or to the extent any objections are withdrawn prior to or at the Final Settlement Approval Hearing, the Court's Judgment shall become final when the conditions set forth in subparagraphs (a) through (d) of this Paragraph 9, hereinabove, have been fulfilled.

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

10. Scope Of The Class. The Class is defined as follows: "All current and former non-exempt, hourly employees of Defendants who worked in the State of California from April 30, 2016, through April 26, 2021."

11. Class Members' Objection To This Settlement. Any Class Member may object to the Settlement by serving a written objection on the Settlement Administrator, which shall include the case name and case number, the Class Member's name, the last four digits of the Class Member's Social Security Number and/or employee ID, the Class Member's address, the specific reasons for the objection, and the Class Member's signature, along with whether the Class Member wishes to speak at the Final Settlement Approval Hearing. Any such objection shall be mailed and post-marked on or before the Document Receipt Deadline. Within forty-eight (48) hours of receipt of any objection, the Settlement Administrator shall forward that objection by email to Class Counsel and Defendants' Counsel. Defendants' Counsel shall lodge the objection with the Court within five (5) days after receipt from the Settlement Administrator. Class Counsel and Defendants' Counsel shall respond to any written objection by the deadline to file the Final Approval Papers. Any Class Member who does not object to the Settlement in the manner provided for in this Stipulation or at the Final Approval Hearing may not appeal the Final Judgment. In the event that the Court approves this Settlement notwithstanding the objections of

1 any Class Members, Class Members who object to the Settlement will nonetheless be bound by the  
2 Settlement. Class Members who have validly opted out of the Settlement as set forth herein do not  
3 have standing to object to the Settlement or to file an appeal for purposes of Paragraph 9

4 12. Class Members' Exclusion ("Opt-Out") From This Settlement. Any Class Member  
5 may request to be excluded ("opt-out") from this Settlement by mailing a written Request for  
6 Exclusion to the Settlement Administrator as prescribed herein. Each Class Member who submits  
7 a valid Request for Exclusion shall not be bound by the Settlement. Each Class Member who has  
8 not validly and timely opted-out as prescribed herein will be subject to the full Release.

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

22 14. Pro Rata Increase. Triple A represents that there are no more than 5,621  
23 Workweeks through the date of the parties' mediation. The New-Indy Defendants represent that  
24 there are no more than 31,250 Workweeks through the date of the parties' mediation. In the event  
25 the number of workweeks worked increases by more than 5% through the date of the parties'  
26 mediation, for either Triple A, on the one hand, or the New-Indy Defendants, on the other hand,  
27 then the Gross Settlement Amount shall be increased proportionally by the Workweek Value and  
28 be paid by the party or parties' whose Workweeks were in excess. The Workweek Value shall be

1 calculated by dividing the Gross Settlement Amount (\$925,000.00) by the number of Workweeks  
2 worked (36,871), which amounts to a Workweek Value of \$25.09. (\$925,000 / 36,871 workweeks.)  
3 Thus, for example, should there be 34,000 Workweeks worked for the New-Indy Defendants by  
4 Class Members through the date of the parties' mediation, then the Gross Settlement Amount shall  
5 be increased by \$29,781.83 and paid by the New-Indy Defendants. (34,000 workweeks – 31,250  
6 workweeks – 1,563 workweeks x \$25.09/workweek.)

7 15. Finality Of Settlement. As of the Effective Date, the Settlement contained herein,  
8 including the Release outlined below, shall be final and binding upon all Class Members who do  
9 not exclude themselves from the Settlement.

10 **V. RELEASES**

11 16. Release By Plaintiffs And Class Members. Upon final approval of this Settlement,  
12 as well as the receipt by the Settlement Administrator of the full Gross Settlement Amount and the  
13 employer's share of payroll taxes, Plaintiffs and Class Members release the Released Parties from  
14 the following, collectively referred to as the "Released Class Claims," during the period from April  
15 30, 2016 through April 26, 2021: any and all claims, actions, demands, causes of action, suits,  
16 debts, obligations, damages, rights or liabilities that have been asserted by Plaintiffs in the First  
17 Amended Complaint on file in the Action, and any claims that could have been asserted based on  
18 the facts and/or theories alleged in the First Amended Complaint on file in the Action, including,  
19 but not limited to: claims for unpaid wages (including claims for minimum wage and overtime  
20 compensation), for failure to provide meal and rest periods and for any and all unpaid meal and  
21 unpaid rest period premiums (including premiums pursuant to Labor Code section 226.7), for  
22 unreimbursed business expenses, for interest, for penalties (including waiting time penalties  
23 pursuant to Labor Code sections 201, 202, and 203, pay stub penalties pursuant to Labor Code  
24 section 226, for claims pursuant to Labor Code sections 200, 201, 202, 203, 226, , 226.7, 510, 512,  
25 1174, 1194, 1194.2, 1197, and 2802, for claims under Business and Professions Code section  
26 17200 *et seq.* arising from the facts and/or theories asserted in the First Amended Complaint on file  
27 in the Action, as well as for claims for attorneys' fees, costs, interest, restitution, injunctive or  
28 equitable relief, and any other remedies available at law or equity arising from the facts and/or

1 theories asserted in the First Amended Complaint on file in the Action ("Class Released Claims").  
2 This release is limited to claims based on facts alleged in the First Amended Complaint on file in  
3 this Action. In addition, for Aggrieved Employees, during the period from November 17, 2019  
4 through April 26, 2021, the release includes all claims for civil penalties under PAGA arising out  
5 of Labor Code sections 210, 226.3, 558, 1197.1, and 2699 based on the facts and/or theories  
6 alleged to have been violated in the PAGA Notice filed with the LWDA and included in the First  
7 Amended Complaint, which includes, without limitation, Labor Code sections 200, 201, 202, 203,  
8 204, 226, 227.3, 404, 432, 510, 1174, 1194, 1197, 1198, 1198.5, 2802, and 2810.5 ("PAGA  
9 Released Claims"). This release is limited to claims based on facts that were alleged in the PAGA  
10 Notice filed with the LWDA by Plaintiffs, or either of them.

11 17. General Release By The Class Representatives. In addition to the release set forth  
12 in the above Paragraph 16, upon final approval of this Settlement, as well as the receipt by the  
13 Settlement Administrator of the full Gross Settlement Amount and the employer's share of payroll  
14 taxes, the Class Representatives make the additional general release of their individual claims  
15 arising during the Class Period as follows: The Class Representatives release the Released Parties  
16 from any and all claims, actions, demands, causes of action, suits, debts, obligations, damages,  
17 rights, or liabilities of any nature and description whatsoever, known or unknown, that the Class  
18 Representatives individually may possess against the Released Parties arising from the Class  
19 Representatives' employment with Defendants. The Class Representatives hereby acknowledge  
20 that, upon receiving the sums provided pursuant to this Stipulation, they will have received all  
21 potential wages, damages, and penalties owing to them by the Released Parties, and, further, that  
22 they are not owed any additional wages, penalties, or damages from the Released Parties.

23 Upon final approval of this Settlement, as well as the receipt by the Settlement  
24 Administrator of the full Gross Settlement Amount and the employer's share of payroll taxes, the  
25 Class Representatives also agree to expressly waive the provisions of California Civil Code section  
26 1542, which provides as follows:

27 **A general release does not extend to claims that the creditor or releasing party does not**  
28 **know or suspect to exist in his or her favor at the time of executing the release and that, if**

1 known by him or her, would have materially affected his or her settlement with the  
2 debtor or released party.

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

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

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

13 b) The payments in this paragraph recognize that Triple A and McCroskey are  
14 potentially liable for the period from April 30, 2016 through December 31, 2016, and that New-  
15 Indy is potentially liable for the period from January 1, 2017 through the present.

16 c) In the event that either Triple A or New-Indy do not fund their portion of the Total  
17 Class Action Settlement Amount as described in this paragraph or otherwise fail to comply with  
18 their respective obligations in this Stipulation, the Stipulation shall be void as to the breaching  
19 defendant only. The Stipulation shall remain in effect as to the non-breaching defendant, provided  
20 that it pays its portion of the Total Class Action Settlement Amount, and with the Stipulation only  
21 applying to that defendant's liability period, i.e., payment by New-Indy would serve to settle  
22 claims during the period since January 1, 2017.

23 19. Deduction From Settlement Amount. Deductions from the Total Class Action  
24 Settlement Amount, all subject to Court approval, shall be made for:

25 a) Attorneys' Fees. Class Counsel may apply for an award of attorneys' fees, not to  
26 exceed 33% of the Gross Settlement Amount which, unless escalated by Paragraph 14 of this  
27 Agreement, shall be Three Hundred and Eight Thousand and Three Hundred and Thirty Three  
28 Dollars and Thirty Three Cents Cents (\$308,333.33.) The attorneys' fees award shall be paid from

1 the Gross Settlement Amount. Defendants agree not to oppose any such applications which are  
2 consistent with this paragraph. The amount of attorneys' fees shall include all past and future  
3 attorneys' fees incurred in the Action – including, without limitation, all time expended by Class  
4 Counsel in the Action or in defending the Settlement and securing final approval of the Settlement.

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

12 c) Class Representatives' Enhancement Award. Class Counsel may apply for an  
13 enhancement award to the Class Representatives in an amount not to exceed Five Thousand  
14 Dollars and no cents (\$5,000.00) to each of the Class Representatives. The enhancement award  
15 shall be paid from the Gross Settlement Amount. Defendants agree not to oppose any such  
16 application which is consistent with this paragraph.

17 d) Settlement Administration Costs and Fees. All actual costs for settlement  
18 administration, including related accounting costs, in an amount not to exceed \$10,000.00, shall be  
19 paid from the Gross Settlement Amount. The Parties contemplate that the Settlement  
20 Administrator shall be Phoenix Settlement Administrators, or any other third-party class action  
21 settlement administrator agreed to by the Parties and approved by the Court for the purposes of  
22 administering this Settlement. If a Settlement Administrator is not agreed upon by the Parties,  
23 Class Counsel shall select a Settlement Administrator on the bases of cost and competence, with  
24 the best interest of the Class in mind, subject to approval by the Court for purposes of  
25 administering this Settlement. Defendants agree not to oppose any such applications which are  
26 consistent with this paragraph.

27 e) PAGA Allocation. The Parties agree to allocate Twenty Thousand Dollars and Zero Cents  
28 (\$20,000.00) of the Gross Settlement Amount to resolve Aggrieved Employees' claims under

1 PAGA (the "PAGA Allocation"). Pursuant to PAGA, seventy-five percent (75%) of the PAGA  
2 Allocation, or Fifteen Thousand Dollars and Zero Cents (\$15,000.00), shall be paid to the State of  
3 California Labor and Workforce Development Agency (the "LWDA"), with the remaining twenty-  
4 five percent (25%), or Five Thousand Dollars and Zero Cents (\$5,000.00), allocated to the Net  
5 Settlement Amount.

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

- 11 a. Individual Settlement Payments (*i.e.*, a payment to a Participating Class Member  
12 of his or her net share of the Net Settlement Amount, excluding any PAGA  
13 Payment to which he or she may be entitled if he or she is also an Aggrieved  
14 Employee), will be calculated and distributed to Participating Class Members  
15 from the Net Settlement Amount on a *pro rata* basis, based on the Participating  
16 Class Members' respective number of Workweeks during the Class Period.  
17 PAGA Payments to Aggrieved Employees will be calculated and distributed to  
18 Aggrieved Employees from the PAGA Payment on a *pro rata* basis based on  
19 Aggrieved Employees' respective number of Workweeks during the PAGA  
20 Period. Workweek means the number of workweeks that a Class Member was  
21 employed by Defendant in a non-exempt, hourly position during the Class  
22 Period. If a Class Member disputes his/her Individual Settlement Share (*i.e.*, the  
23 gross amount of the Net Settlement Amount that a Class Member is eligible to  
24 receive based on the number of Workweeks that he or she worked as a Class  
25 Member during the Class Period if he or she does not submit a timely and valid  
26 Request for Exclusion, excluding any PAGA Payment to which he or she may  
27 be entitled if he or she is also an Aggrieved Employee), it shall be termed a  
28 "Workweek Dispute." Specific calculations of the Individual Settlement Shares

1 and PAGA Payments to PAGA Aggrieved Employees will be made as follows:

- 2 i. The Settlement Administrator will determine the total number of  
3 Workweeks worked by each Class Member during the Class Period  
4 ("Class Member's Workweeks"), as well as the aggregate number of  
5 Workweeks worked by all Class Members during the Class Period  
6 ("Class Workweeks"). Additionally, the Settlement Administrator will  
7 determine the total number of Workweeks worked by each Aggrieved  
8 Employee during the PAGA Period ("Aggrieved Employee's  
9 Workweeks"), as well as the aggregate number of Workweeks worked  
10 by all Aggrieved Employees during the PAGA Period ("PAGA  
11 Workweeks").
- 12 ii. To determine each Class Member's Individual Settlement Share, the  
13 Settlement Administrator will use the following formula: Individual  
14 Settlement Share = (Class Member's Workweeks ÷ Class Workweeks) ×  
15 Net Settlement Amount.
- 16 iii. To determine each Participating Class Member's Individual Settlement  
17 Share, the Settlement Administrator will determine the aggregate number  
18 of Workweeks worked by all Participating Class Members during the  
19 Class Period ("Participating Class Workweeks") and use the following  
20 formula: Individual Settlement Share = (Participating Class Member's  
21 Workweeks ÷ Participating Class Workweeks) × Net Settlement  
22 Amount.
- 23 iv. The net amount of the Individual Settlement Share is to be paid out to  
24 Participating Class Members by way of check and is referred to as  
25 "Individual Settlement Payment(s).
- 26 v. To determine each Aggrieved Employee's PAGA Payment, the  
27 Settlement Administrator will use the following formula: Aggrieved  
28 Employee's PAGA Payment = (Aggrieved Employee's Workweeks ÷

PAGA Workweeks) x \$2,500.00 (the portion of the PAGA Payment paid to PAGA Aggrieved Employees). This amount is to be paid out to Aggrieved Employees by way of check.

g. Non-Reversionary Settlement. There will be no reversion to Defendants of any amounts contributed toward the settlement after distribution. Class Members who do not submit a timely and valid Request for Exclusion (*i.e.*, Participating Class Members) will receive an Individual Settlement Payment. All PAGA Aggrieved Employees, regardless of whether they submit a valid Request for Exclusion or not, will receive their portion of the PAGA Payment. Individual Settlement Payment checks and checks to Aggrieved Employees for their portion of the PAGA Payment shall remain valid and negotiable for one hundred and eighty (180) calendar days after the date of their issuance. Within seven (7) calendar days after expiration of the 180-day period, checks for such payments shall be canceled and funds associated with such checks shall be considered unpaid, unclaimed or abandoned cash residue pursuant to Code of Civil Procedure 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)

1 filing any required reports with the Court; and (g) any and all such other tasks as to which the  
2 Parties mutually agree, or which the Court orders the Settlement Administrator to perform.

3 Specifically, the Settlement Administrator shall perform the following duties:

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

10 b) Mailing Of Documents. Within fourteen (14) calendar days of receipt of the  
11 database containing the information to be provided by Defendants, the Settlement Administrator  
12 shall mail a copy of the Notice to all Class Members by first class regular U.S. Mail, using the most  
13 current mailing address information provided by Defendants and/or obtained by the Settlement  
14 Administrator. The Settlement Administrator will engage in address searches consistent with its  
15 normal practices in administering settlements of wage claims, including skip tracing. Such search  
16 efforts shall include, where necessary, using social security numbers to obtain better address  
17 information and attempting to call such Class Members. Any returned envelopes from this mailing  
18 with forwarding addresses will be utilized by the Settlement Administrator to forward the Notices  
19 to the Class Members.

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

27 d) Challenges To Estimated Qualified Weeks And/Or Weekly Settlement Value. On  
28 or before the Document Receipt Deadline, any Class Member can dispute the number of

1 Workweeks attributed to them in the Class Period and/or PAGA Period, as well as the Individual  
2 Settlement Share and/or PAGA Payment attributed to them (*i.e.*, Workweek Dispute). Any such  
3 Workweek Dispute shall be mailed or faxed to the Settlement Administrator, along with any  
4 evidence that the Class Member has to support the Workweek Dispute. The Settlement  
5 Administrator shall notify Class Counsel and Defendants' Counsel of its receipt of a valid  
6 Workweek Dispute within five (5) business days after having received each such Workweek  
7 Dispute, and shall inform the Class Member how it will resolve any such Workweek Dispute  
8 within ten (10) business days after having received the Workweek Dispute. The Settlement  
9 Administrator's decision will be communicated to the Class Member by mail (along with any  
10 alternate form of communication provided by the Class Member in connection with the Dispute)  
11 and shall be binding and final.

12 e) Processing Requests For Exclusion ("Opt-Outs") From Settlement. In the event that  
13 a Class Member requests to be excluded (*i.e.*, opts out) of the Settlement provided herein, he or she  
14 must mail a written Request for Exclusion to the Settlement Administrator by first class U.S. Mail,  
15 or equivalent, postage paid and postmarked, by no later than the Document Receipt Deadline. To  
16 be valid, the written Request for Exclusion must include (i) the Class Member's name, (ii) the  
17 Class Member's address, (iii) the last four digits of his or her social security number, (iv) a  
18 statement to the effect that the Class Member wishes to be excluded from the Settlement in the  
19 *Salvador Rincon v. New-Indy Tripaq* matter, and (iv) the Class Member's signature. The  
20 Settlement Administrator shall notify Class Counsel and Defendants' Counsel of its receipt of all  
21 valid Requests for Exclusion within five (5) business days after having received each such Request  
22 for Exclusion. A Class Member can only request to be excluded from the class portion of the  
23 settlement, which will result in he or she not receiving his or her Individual Settlement Share. A  
24 Class Member cannot opt out of the settlement of the PAGA claim and, should settlement of the  
25 PAGA claim be approved, he or she will receive a PAGA Payment whether or not he or she opts  
26 out if he or she is an Aggrieved Employee.

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

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

4           h)     Allocating Portions Of the Individual Settlement As Wages. The Settlement  
5 Administrator shall be responsible for calculating the portion of each Individual Settlement  
6 Payment to be allocated as wages. 33.334% of each Individual Settlement Award shall be  
7 allocated as wages, and 66.666% of each Individual Settlement Award shall be allocated as interest  
8 and penalties.

9           i)     Taxation Of Individual Settlement Awards. The portion of each Individual  
10 Settlement Award allocated as wages shall be subject to payroll withholding. The Settlement  
11 Administrator shall be responsible for paying the employees' share of federal, state, and local  
12 payroll and income taxes. Appropriate withholding of the employee's share of income taxes shall  
13 be deducted from each Individual Settlement Awards. The employer's share of payroll taxes shall  
14 be paid outside of the Gross Settlement Amount by Defendants, and each of them.

15                 i. Federal Tax Reporting. The Settlement Administrator shall issue an IRS Form  
16 W-2 to each Class Member for the portion of the Individual Settlement Payment  
17 that is designated as wages. The Settlement Administrator shall issue an IRS  
18 Form 1099 to each Class Member for the portion of the Individual Settlement  
19 Payments that is not designated as wages, as well as the PAGA Payments. The  
20 Settlement Administrator shall issue an IRS Form 1099 to the Class  
21 Representatives for any enhancement award paid in connection with his role as  
22 the Class Representative.

23                 ii. State Tax Reporting. The Settlement Administrator shall file, with the  
24 California Employment Development Department ("EDD"), the required reports  
25 of Personal Income Tax ("PIT") wages withheld from the Individual Settlement  
26 Payments, as well as the amounts to be paid as Unemployment Insurance ("UI"),  
27 Employment Training Tax ("ETT"), and State Disability Insurance ("SDI"). For  
28 purposes of this reporting, prior to disbursement of the Individual Settlement

1 Payments, the Settlement Administrator shall provide Defendants with a list of  
2 all Class Members, and Defendants shall provide to the Settlement  
3 Administrator the following information: (1) their Form DE 2088, Notice of  
4 Contribution Rates and Statement of UI Account, for the current calendar year  
5 (if unavailable, Defendants may provide instead their California State  
6 Employer's Identification Number and applicable UI and ETT Rates); and (2)  
7 the year-to-date earnings of each Class Member who received any wages from  
8 Defendants during the current calendar year.

9 iii. Responsibility For Tax Obligations. All Class Members and the Class  
10 Representatives will be responsible for correctly characterizing the  
11 compensation they receive for tax purposes and for paying any taxes on the  
12 amounts received, except for the employer contributions which will be  
13 handled as provided by this Stipulation.

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

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

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

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

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

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

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

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

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

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

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

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

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

25       25.       Defendants' Provision Of Class Member Data To Settlement Administrator. No  
26 later than fourteen (14) calendar days following preliminary approval of this Settlement by the  
27 Court, Defendants shall provide the Settlement Administrator with data that is within each  
28 Defendants' possession containing, for each Class Member: (a) the Class Member's name; (b) the

1 Class Member's last known address; (c) the Class Member's social security number; (d) the Class  
2 Member's first date of employment in California in a non-exempt job position; and (e) the Class  
3 Members' last date of employment (if any) in California in a non-exempt job position. This Class  
4 information is confidential and not to be disclosed to anyone other than the Settlement  
5 Administrator, although the Parties may, at a later time, agree to permit the class list to be disclosed  
6 to Class Counsel (or certain information therein) if it is determined to be in the best interest of  
7 Class Members. Defendants may also provide more detailed information identifying weeks in  
8 which Class Members did not record any hours, including due to leaves of absence, vacation, and  
9 other weeks not actually worked. This information shall be based on Defendants' payroll and other  
10 business records, and shall be in a format readily accessible to Defendants. Within fourteen (14)  
11 calendar days of receipt of the information from Defendants, the Settlement Administrator will  
12 mail the Notice to the Class Members, provided that counsel for the Parties have approved the  
13 documents. In the event that approval of the documents takes more than ten (10) calendar days, the  
14 Settlement Administrator shall mail the Notice to the Class Members within three (3) business days  
15 of receiving approval of the documents.

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

20 27. Motions By Class Counsel.

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

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

- i. Approval of the Settlement, adjudging the terms thereof to be fair, reasonable, adequate, and directing consummation of its terms and provisions;
- ii. Approval of Class Counsel's application for an award of attorneys' fees and costs (Class Counsel will separately submit a motion for award of attorneys' fees and costs);
- iii. Approval of the enhancement award to the Class Representatives; and
- iv. Reserving jurisdiction over the construction, interpretation, implementation, and enforcement of the Parties' Settlement, and over the administration and distribution of the Settlement amounts.

28. Fairness Hearing. Upon expiration of the Document Receipt Deadline, the Parties shall attend a Final Settlement Approval Hearing with the Court to finally approve the Settlement as fair, reasonable, and adequate as to (a) Class Members; (b) attorneys' fees and costs to Class Counsel; (c) the enhancement awards to the Class Representatives; (d) the costs and fees for settlement administration; (e) the PAGA Allocation, and (f) the Individual Settlement Payments to be paid to the Class Members, including the methodology used to calculate such awards.

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

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

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

1 Settlement Amount (as the same may be escalated pursuant to this Agreement), as well as the  
2 employer's share of taxes provided by Defendants.

3 31. Provision Of Final Settlement Approval Order And Judgment To Settlement

4 Administrator. Within two (2) business days of final approval by the Court of the Settlement  
5 provided for in this Stipulation, Class Counsel shall provide the Settlement Administrator with a  
6 copy of the Final Settlement Approval Order and Judgment.

7 **XI. ADDITIONAL TERMS**

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

11 a) The Court does not enter the Final Settlement Approval Order and Judgment as provided  
12 for herein or contemplated by this Stipulation;

13 b) The Court does not finally approve the Settlement as provided for herein;

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

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

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

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

28 35. Entire Agreement. This Stipulation and the accompanying exhibits constitute and

1 comprise the entire agreement between the Parties. No oral or written representations, warranties,  
2 or inducements have been made to any of the Parties concerning this Stipulation other than the  
3 representations, warranties, and covenants contained and memorialized herein.

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

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

11 38. Successors And Assigns. This Stipulation is binding upon, and inures to the benefit  
12 of, the Parties' successors and assigns. The Parties represent and warrant that they have not,  
13 directly or indirectly, assigned, transferred, or encumbered to any person or entity any portion of  
14 any claim, demand, action, cause of action, or rights herein released and discharged except as set  
15 forth herein.

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

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

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

28 42. Counterparts. This Stipulation may be executed in one or more counterparts. All

1 executed counterparts, and each of them, shall be deemed to be one and the same instrument.

2 Signatures may be affixed either by original signatures, PDF, or facsimile.

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

6 To The Class:

7 BIBIYAN LAW GROUP, P.C.

8 David D. Bibiyan

9 Diego Aviles

10 Sara Ehsani-Nia

11 8484 Wilshire Blvd, Suite 500

12 Beverly Hills, California 90211

13 Facsimile: (310) 300-1705

14 To Defendant New-Indy TriPAQ LLC:

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

16 Alexander M. Chemers

17 Kristin N. Kovacich

18 400 South Hope Street, Suite 1200

19 Los Angeles, CA 90071

20 Fax: (213) 239-9045

21 To Defendants Triple A Containers, Inc. and Brad McCroskey:

22 RUTAN & TUCKER, LLP

23 Edson K. McClellan

24 Kimberly A. Nayagam

25 611 Anton Boulevard, Suite 1400

26 Costa Mesa, California 92626-1931

27 Facsimile: 714-546-9035

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

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

46. Confidentiality.

a) Media Comment. The Parties and their respective counsel agree that the terms of

1 this Settlement (including, but not limited to, any settlement amounts), the negotiations leading to  
2 this Settlement, and all documents related to the Settlement, shall not be discussed with, publicized,  
3 or promoted to the media in any manner that identifies Defendants, except as necessary in order to  
4 enforce its terms. Class Counsel and/or Plaintiffs will not list or refer to the Action in any website,  
5 mailing, publicity or similar materials – including, but not limited to, any radio or television  
6 stations, newspapers, or magazines in any manner that identifies Defendants. In response to any  
7 inquiries, including those from media outlets, concerning the settlement, the Parties and their  
8 respective counsel agree that they shall simply respond by stating, “the matter has resolved.”

9       b) Class Counsel Marketing And Adequacy Declarations. Class Counsel agrees not to  
10 use Defendants’ names in marketing materials. Class Counsel and the Class Representatives will  
11 not make any posting on any website, instant message site, blog, or social networking site that uses  
12 Defendants’ name. However, for the limited purpose of allowing Class Counsel to prove adequacy  
13 as class counsel in other actions, Class Counsel may disclose the name of the Parties, the  
14 venue/case number of the Action, a brief description of the case and the fact of the settlement.

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

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

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

28       50. Class Certification For Settlement Purposes Only. The Parties agree to stipulate to

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

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

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

11 53. Binding Agreement. The Parties intend that this Settlement shall be fully  
12 enforceable and binding on all Parties, and that it shall be admissible and subject to disclosure in  
13 any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that  
14 otherwise might apply under federal or state law.

15  
16 Mar 16, 2022

17 Dated: April \_\_, 2021

By:   
Salvador Rincon (Mar 16, 2022 14:35 PDT)

Salvador Rincon  
Plaintiff

18  
19  
20  
21 Dated: April \_\_, 2021

By: \_\_\_\_\_  
Saul Ernesto Cedillos  
Plaintiff

22  
23  
24  
25 Dated: April \_\_, 2021

By: \_\_\_\_\_  
  
For New-Indy TriPAQ LLC

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3 for purposes of the Settlement is not an admission that class certification is proper under the  
4 standard applied to contested certification motions and that this Settlement will not be admissible  
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14 otherwise might apply under federal or state law.

15  
16  
17 Dated: April \_\_, 2021

By: \_\_\_\_\_  
Salvador Rincon  
Plaintiff

18  
19  
20 Mar 16, 2022

21 Dated: April \_\_, 2021

By: \_\_\_\_\_  
Saul Ernesto Cedillos  
Plaintiff

22  
23  
24  
25 Dated: April \_\_, 2021

By: \_\_\_\_\_  
For New-Indy TriPAQ LLC

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4 standard applied to contested certification motions and that this Settlement will not be admissible  
5 in this or any other proceeding as evidence that (i) a class should or should not be certified or (ii)  
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14 otherwise might apply under federal or state law.

15  
16  
17 Dated: April , 2021

By: \_\_\_\_\_  
Salvador Rincón  
Plaintiff

18  
19  
20  
21 Dated: April , 2021

By: \_\_\_\_\_  
Saul Ernesto Cedillos  
Plaintiff

22  
23  
24  
25 Dated: March 16, 2022

By:  \_\_\_\_\_  
Scott Conant  
For New-Indy TriPAQ LLC

1 3/15/2022  
2 Dated: April \_\_, 2021

DocuSigned by:  
By: Brad McCroskey  
74E613E86E974BA...

3 *For Triple A Containers, Inc.*

4  
5 3/15/2022  
6 Dated: April \_\_, 2021

DocuSigned by:  
By: Brad McCroskey  
74E613E86E974BA...  
Brad McCroskey

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9 BIBYAN LAW GROUP P.C. ,

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11  
12 Dated: April \_\_, 2021

By: \_\_\_\_\_  
David D. Bibyan  
*Attorney for Plaintiffs*

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14  
15 OGLETREE, DEAKINS, NASH,  
16 SMOAK & STEWART, P.C.

17  
18 Dated: April \_\_, 2021

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

19  
20  
21 RUTAN AND TUCKER, LLP

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23  
24 Dated: April \_\_, 2021

By: \_\_\_\_\_  
Edson McClellan, Esq.  
*Attorney for Triple A Containers, Inc. and Brad McCroskey*

1  
2 Dated: April \_\_, 2021

By: \_\_\_\_\_

3 *For Triple A Containers, Inc.*

4  
5  
6 Dated: April \_\_, 2021

By: \_\_\_\_\_

Brad McCroskey

8  
9 BIBYAN LAW GROUP P.C.,

10  
11 *March 17, 2022*  
12 Dated: April \_\_, 2021

By: *Vedang S. Patel*

13 David D. Bibyan ; *Vedang S. Patel*  
14 *Attorney for Plaintiffs*

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

17  
18 Dated: March 16, 2022

By: *Alexander M. Chemers*

19 Alexander M. Chemers  
20 *Attorney for New-Indy TriPAQ LLC*

21  
22 RUTAN AND TUCKER, LLP

23  
24 Dated: March 15, 2022

By: *Edson McClellan*

25 Edson McClellan, Esq.  
26 *Attorney for Triple A Containers, Inc. and Brad*  
27 *McCroskey*

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Attorneys for Defendant  
NEW-INDY TRIPAQ LLC

*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

1 Edson K. McClellan, CA Bar No. 199541  
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Telephone: 714-641-5100  
5 Facsimile: 714-546-9035  
  
6 Attorneys for Defendants  
TRIPLE A CONTAINERS, INC. and  
7 BRAD MCCROSKEY

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 the deadline for Settlement-Class Members to mail any Requests for Exclusion, Objections, or  
21 Workweek Disputes to the Settlement Administrator, which is forty-five (45) calendar days from  
22 the date that the Class Notice is first mailed in English and Spanish by the Settlement  
23 Administrator, unless the Settlement-Class Member’s notice is re-mailed. In such an instance, the  
24 Document Response Deadline shall be fifteen (15) calendar days from the re-mailing, or forty-five  
25 (45) calendar days from the date of the initial mailing, whichever is later, in which to postmark a  
26 Request for Exclusion, Workweek Dispute or Objection. The date of the postmark shall be the  
27 exclusive means for determining whether a Request for Exclusion, Objection, or Workweek  
28 Dispute was submitted by the Response Deadline.mean forty five (45) days after the Notices are

1 ~~originally mailed to Class Members by the Settlement Administrator.~~

2 m) Effective Date. The term “Effective Date” shall mean the date on which the Court’s  
3 Judgment becomes final, as further detailed in Paragraph 9, herein.

4 n) Final Settlement Approval Hearing. The term “Final Settlement Approval Hearing”  
5 shall mean and refer to a hearing before the Court to finally approve the Settlement as fair,  
6 reasonable, and adequate, as further detailed in Paragraph 28, herein.

7 o) Final Settlement Papers. The term “Final Settlement Papers” shall refer to and  
8 include, without limitation, a Motion for Final Approval of Settlement, Motion for Attorneys’ Fees  
9 and Costs, and [Proposed] Final Settlement Order.

10 p) Individual Settlement Amount. The term “Individual Settlement Amount” shall  
11 mean a Class Member’s share of the Net Settlement Amount, as further detailed in Paragraph 18,  
12 subparagraph (f), herein.

13 q) Net Settlement Amount. The term “Net Settlement Amount” shall mean and refer  
14 to the balance of the Total Class Action Settlement Amount, after all Court-approved deductions  
15 for attorneys’ fees and actual costs to Class Counsel, the Settlement Administrator’s cost and fees,  
16 the Class Representatives’ enhancement awards, and the PAGA Allocation. The Net Settlement  
17 Amount is the maximum amount that will be available for distribution to Class Members.

18 r) Notice. The term “Notice” shall mean the Notice of Class Action Settlement,  
19 attached hereto as Exhibit 1.

20 s) PAGA Period. The term “PAGA Period” shall mean from November 17, 2019  
21 through April 26, 2021.

22 t) Parties. The term “Parties” shall mean and refer collectively to plaintiffs Salvador  
23 Rincon and Saul Cedillos, on the one hand, and Defendants on the other.

24 u) Plaintiffs. The term “Plaintiffs” shall mean and refer to plaintiffs Salvador  
25 Rincon and Saul Cedillos. The term “Plaintiffs” shall be synonymous with the term “Class  
26 Representatives”.

27 v) Preliminary Approval Date. The term “Preliminary Approval Date” shall mean the  
28 date that the Court enters the Preliminary Approval Order.

1 w) Released Parties. The term “Released Parties” shall mean and refer to Defendants  
2 and all of Defendants’ current or former parent companies, subsidiary companies, and/or related  
3 companies, partnerships, joint ventures, affiliates, divisions, and, with respect to each of them, all  
4 of their and/or such related entities’ predecessors and successors, and, with respect to each such  
5 entity, all of its past, present, and/or future, direct and/or indirect, employees, officers, partners,  
6 principals, directors, stockholders, managers, owners, representatives, assigns, attorneys, agents,  
7 insurers, employee benefit programs (and the trustees, administrators, fiduciaries, and insurers of  
8 such programs), and investors.

9 x) Settlement Administrator. The term “Settlement Administrator” shall refer to  
10 Phoenix Settlement Administrators, or any other third-party class action settlement administrator  
11 agreed to by the Parties and approved by the Court for the purposes of administering this  
12 Settlement. If a Settlement Administrator is not agreed upon by the Parties, Class Counsel shall  
13 select a Settlement Administrator on the bases of cost and competence, with the best interest of the  
14 Class in mind, subject to approval by the Court for purposes of administering this Settlement.

15 y) Stipulation. The term “Stipulation” shall refer to this document, entitled “Joint  
16 Stipulation Re: Class Action and Representative Action Settlement”, including all exhibits attached  
17 hereto.

18 z) Total Class Action Settlement Amount. The term “Total Class Action Settlement  
19 Amount” shall mean Nine Hundred Twenty-Five Thousand Dollars and no cents (\$925,000.00)  
20 (“Gross Settlement Amount”). This is the maximum possible amount that may be paid by  
21 Defendants to resolve the Action. The Total Class Action Settlement Amount is a common fund,  
22 non-reversionary amount.

23 aa) Workweek. The term “Workweek” shall mean the number of weeks of employment  
24 for each Class Member as an hourly-paid, non-exempt employee during the Class Period. The  
25 Settlement Administrator will calculate the number of Workweeks by calculating the number of  
26 days each Class Member was employed using their original hire date and final termination date,  
27 excluding any time they were unemployed in between during that time period. However, should  
28 Defendants identify weeks in which Class Members did not perform any work, those weeks may be

1 excluded from the definition of Workweek.

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

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

6 3. Brief Procedural History. The Parties briefly summarize the procedural history in  
7 the Action.

8 a) Plaintiff Salvador Rincon filed the lawsuit entitled *Salvador Rincon v. New-Indy*  
9 *TriPAQ LLC, et al.*, Case No. 20STCV17118, on April 30, 2020 in the Superior Court for the  
10 County of Los Angeles. Therein, the Class Action Complaint for Damages (the “Class Action  
11 Complaint”) alleged the following causes of action against defendants New Indy, Triple A, and  
12 McCroskey: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to  
13 provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to pay wages due  
14 at termination; (6) failure to issue accurate itemized wage statements; and (7) violations of  
15 Business and Professions Code § 17200.

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

21 4. Mediation And Settlement Agreement Reached By The Parties. On February 10,  
22 2020, the Parties, by and through their counsel, participated in a private mediation before Louis  
23 Marlin, Esq. Those mediation efforts were ultimately successful with the Parties agreeing to  
24 resolve the Action in principle and on a class-wide and representative basis against Defendants.  
25 This Stipulation formalizes the settlement agreement reached by the parties.

26 5. Investigation. The Parties have conducted a detailed and comprehensive  
27 investigation of the claims asserted against Defendants and of the applicable law. The Parties each  
28 exchanged and responded to formal and informal discovery, which included: (a) analysis by the

1 Parties of certain records, data, and policies pertaining to Plaintiffs, Class Members, and the claims  
2 asserted in the Action; (b) research of the law applicable to Plaintiffs' claims and Defendants'  
3 affirmative defenses, as well as the damages alleged by Plaintiffs; (c) examination and analysis of  
4 information and documents; and (d) consideration of information disclosed at and in connection  
5 with mediation.

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

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

an admission by Defendants of any fault, wrongdoing, or liability whatsoever.

8. Amendment of Complaint. As part of this Stipulation, Plaintiff has agreed to file an amended complaint in *Salvador Rincon v. New-Indy TriPAQ LLC, et al.*, Case No. 20STCV17118 in the Superior Court for the County of Los Angeles. The amended complaint shall add Montebello Container Company LLC and Proactive Packaging and Display, LLC as defendants and Saul Cedillos as an additional representative. The amended complaint shall allege the following causes of actions against Defendants: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest breaks; (5) failure to pay wages due at termination; (6) failure to issue accurate itemized wage statements; (7) failure to reimburse business expenses; (8) violations of Business and Professions Code § 17200; (9) failure to pay wages during employment; (10) failure to provide written notice of paid sick leave; and (11) civil penalties under PAGA, all of which were investigated prior to mediation as to Defendants, and each of them.

### III. DATE OF SETTLEMENT

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

- a) The Stipulation has been executed by all Parties, Class Counsel, and Defendants' Counsel;
- b) The Court has given preliminary approval to the Settlement;
- c) The Court has held a Final Settlement Approval Hearing and has entered a Final Order and Judgment;
- d) Class Representatives and Class Counsel have confirmed in writing that they do not plan at this time to appeal any portion of the Final Order and Judgment; and
- e) In the event that ~~written~~ objections are presented prior to or at the Final Settlement Approval Hearing which are not later withdrawn, or upon Class Representatives and/or Class Counsel reserving the right to appeal any portion of the Final Order and Judgment, upon the later of:
  - i. The date of final affirmance on an appeal of the Judgment; the

1 expiration of the time for a petition to review the Judgment; and, if  
2 review is granted, the date of final affirmance of the Judgment  
3 following review; or  
4 ii. The date of final dismissal of any appeal from the Judgment or the  
5 final dismissal of any proceeding to review the Judgment; or  
6 iii. If no appeal is filed, the expiration date for filing any appeal from the  
7 Judgment.

8 f) In the event that no ~~written~~ objections are presented prior to or at the Final  
9 Settlement Approval Hearing, or ~~that any filed to the extent written any~~ objections are withdrawn  
10 prior to or at the Final Settlement Approval Hearing, the Court's Judgment shall become final  
11 when the conditions set forth in subparagraphs (a) through (d) of this Paragraph 9, hereinabove,  
12 have been fulfilled.

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

14 10. Scope Of The Class. The Class is defined as follows: "All current and former non-  
15 exempt, hourly employees of Defendants who worked in the State of California from April 30,  
16 2016, through ~~the Preliminary Approval Date.~~" April 26, 2021."

17 11. Class Members' Objection To This Settlement. Any Class Member may object to  
18 the Settlement by serving a written objection on the Settlement Administrator, which shall include  
19 the case name and case number, the Class Member's name, the last four digits of the Class  
20 Member's Social Security Number and/or employee ID, the Class Member's address, the specific  
21 reasons for the objection, and the Class Member's signature, along with whether the Class Member  
22 wishes to speak at the Final Settlement Approval Hearing. Any such objection shall be ~~served by~~  
23 mailed and post-marked on or before the Document Receipt Deadline. Within forty-eight (48)  
24 hours of receipt of any objection, the Settlement Administrator shall forward that objection by  
25 email to Class Counsel and Defendants' Counsel. Defendants' Counsel shall lodge the objection  
26 with the Court within five (5) days after receipt from the Settlement Administrator. Class Counsel  
27 and Defendants' Counsel shall respond to any written objection by the deadline to file the Final  
28 Approval Papers. Any Class Member who does not object to the Settlement in the manner

provided for in this Stipulation or at the Final Approval Hearing may not appeal the Final Judgment. In the event that the Court approves this Settlement notwithstanding the objections of any Class Members, Class Members who object to the Settlement will nonetheless be bound by the Settlement. Class Members who have validly opted out of the Settlement as set forth herein do not have standing to object to the Settlement or to file an appeal for purposes of Paragraph 9

12. Class Members' Exclusion ("Opt-Out") From This Settlement. Any Class Member may request to be excluded ("opt-out") from this Settlement by mailing a written Request for Exclusion to the Settlement Administrator as prescribed herein. Each Class Member who submits a valid Request for Exclusion shall not be bound by the Settlement. Each Class Member who has not validly and timely opted-out as prescribed herein will be subject to the full Release.

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

14. Pro Rata Increase. Triple A represents that there are no more than 5,621 Workweeks through the date of the parties' mediation. The New-Indy Defendants represent that there are no more than 31,250 Workweeks through the date of the parties' mediation. In the event the number of workweeks worked increases by more than 5% through the date of the parties' mediation, for either Triple A, on the one hand, or the New-Indy Defendants, on the other hand,

1 then the Gross Settlement Amount shall be increased proportionally by the Workweek Value and  
2 be paid by the party or parties' whose Workweeks were in excess. The Workweek Value shall be  
3 calculated by dividing the Gross Settlement Amount (\$925,000.00) by the number of Workweeks  
4 worked (36,871), which amounts to a Workweek Value of \$25.09. (\$925,000 / 36,871 workweeks.)  
5 Thus, for example, should there be 34,000 Workweeks worked for the New-Indy Defendants by  
6 Class Members through the date of the parties' mediation, then the Gross Settlement Amount shall  
7 be increased by \$29,781.83 and paid by the New-Indy Defendants. (34,000 workweeks – 31,250  
8 workweeks – 1,563 workweeks x \$25.09/workweek.)

9 15. Finality Of Settlement. As of the Effective Date, the Settlement contained herein,  
10 including the Release outlined below, shall be final and binding upon all Class Members who do  
11 not exclude themselves from the Settlement.

## 12 **V. RELEASES**

13 16. Release By Plaintiffs And Class Members. Upon final approval of this Settlement,  
14 as well as the receipt by the Settlement Administrator of the full Gross Settlement Amount and the  
15 employer's share of payroll taxes, Plaintiffs and Class Members release the Released Parties from  
16 the following, collectively referred to as the "Released Class Claims," during the period from April  
17 30, 2016 through April 26, 2021: any and all claims, actions, demands, causes of action, suits,  
18 debts, obligations, damages, rights or liabilities that have been asserted by Plaintiffs in the First  
19 Amended Complaint on file in the Action, and any claims that could have been asserted based on  
20 the facts and/or theories alleged in the First Amended Complaint on file in the Action, including,  
21 but not limited to: claims for unpaid wages (including claims for minimum wage and overtime  
22 compensation), for failure to provide meal and rest periods and for any and all unpaid meal and  
23 unpaid rest period premiums (including premiums pursuant to Labor Code section 226.7), for  
24 unreimbursed business expenses, for interest, for penalties (including waiting time penalties  
25 pursuant to Labor Code sections 201, 202, and 203, pay stub penalties pursuant to Labor Code  
26 section 226, for claims pursuant to Labor Code sections 200, 201, 202, 203, 226, , 226.7, 510, 512,  
27 1174, 1194, 1194.2, 1197, and 2802, for claims under Business and Professions Code section  
28 17200 *et seq.* arising from the facts and/or theories asserted in the First Amended Complaint on file

1 in the Action, as well as for claims for attorneys' fees, costs, interest, restitution, injunctive or  
2 equitable relief, and any other remedies available at law or equity arising from the facts and/or  
3 theories asserted in the First Amended Complaint on file in the Action ("Class Released Claims").  
4 ~~Nothing in this Agreement is intended to~~ This release is limited to claims ~~based on facts that were~~  
5 ~~not alleged in the First Amended Complaint on file in this Action.~~ In addition, for Aggrieved  
6 Employees, during the period from November 17, 2019 through April 26, 2021, the release  
7 includes all claims for civil penalties under PAGA arising out of Labor Code sections 210, 226.3,  
8 558, 1197.1, and 2699 based on the facts and/or theories alleged to have been violated in the ~~First~~  
9 ~~Amended Complaint~~ PAGA Notice filed with the LWDA and included in the First Amended  
10 Complaint, which includes, without limitation, Labor Code sections 200, 201, 202, 203, 204, 226,  
11 227.3, 404, 432, 510, 1174, 1194, 1197, 1198, 1198.5, 2802, and 2810.5 ("PAGA Released  
12 Claims"). ~~Nothing in this Agreement is intended to~~ This release is limited to claims based on facts  
13 ~~that were not alleged in the PAGA Notice filed with the LWDA by Plaintiffs, or either of them.~~

14 17. General Release By The Class Representatives. In addition to the release set forth  
15 in the above Paragraph 16, upon final approval of this Settlement, as well as the receipt by the  
16 Settlement Administrator of the full Gross Settlement Amount and the employer's share of payroll  
17 taxes, the Class Representatives make the additional general release of their individual claims  
18 arising during the Class Period as follows: The Class Representatives release the Released Parties  
19 from any and all claims, actions, demands, causes of action, suits, debts, obligations, damages,  
20 rights, or liabilities of any nature and description whatsoever, known or unknown, that the Class  
21 Representatives individually may possess against the Released Parties arising from the Class  
22 Representatives' employment with Defendants. The Class Representatives hereby acknowledge  
23 that, upon receiving the sums provided pursuant to this Stipulation, they will have received all  
24 potential wages, damages, and penalties owing to them by the Released Parties, and, further, that  
25 they are not owed any additional wages, penalties, or damages from the Released Parties.

26 Upon final approval of this Settlement, as well as the receipt by the Settlement  
27 Administrator of the full Gross Settlement Amount and the employer's share of payroll taxes, the  
28 Class Representatives also agree to expressly waive the provisions of California Civil Code section

1542, which provides as follows:

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

**VI. AMOUNT AND DISTRIBUTION OF SETTLEMENT**

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

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

~~19.~~ The payments in this paragraph recognize that Triple A and McCroskey are potentially liable for the period from April 30, 2016 through December 31, 2016, and that New-Indy is potentially liable for the period from January 1, 2017 through the present.

~~b)~~

~~c)~~ In the event that either Triple A or New-Indy do not fund their portion of the Total Class Action Settlement Amount as described in this paragraph or otherwise fail to comply with their respective obligations in this Stipulations, the Stipulation shall be void as to the breaching defendant only. The Stipulation shall remain in effect as to the non-breaching defendant, provided that it pays its portion of the Total Class Action Settlement Amount, and with the Stipulation only applying to that defendant's liability period, i.e., payment by New-Indy would serve to settle claims during the period since January 1, 2017.

~~20, 19.~~ Deduction From Settlement Amount. Deductions from the Total Class Action Settlement Amount, all subject to Court approval, shall be made for:

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

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

16 c) Class Representatives' Enhancement Award. Class Counsel may apply for an  
17 enhancement award to the Class Representatives in an amount not to exceed Five Thousand  
18 Dollars and no cents (\$5,000.00) to each of the Class Representatives. The enhancement award  
19 shall be paid from the Gross Settlement Amount. Defendants agree not to oppose any such  
20 application which is consistent with this paragraph.

21 d) Settlement Administration Costs and Fees. All actual costs for settlement  
22 administration, including related accounting costs, in an amount not to exceed \$10,000,00, shall be  
23 paid from the Gross Settlement Amount. The Parties contemplate that the Settlement  
24 Administrator shall be Phoenix Settlement Administrators, or any other third-party class action  
25 settlement administrator agreed to by the Parties and approved by the Court for the purposes of  
26 administering this Settlement. If a Settlement Administrator is not agreed upon by the Parties,  
27 Class Counsel shall select a Settlement Administrator on the bases of cost and competence, with  
28 the best interest of the Class in mind, subject to approval by the Court for purposes of

administering this Settlement. Defendants agree not to oppose any such applications which are consistent with this paragraph.

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

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

- a. Individual Settlement Payments (*i.e.*, a payment to a Participating Class Member of his or her net share of the Net Settlement Amount, excluding any PAGA Payment to which he or she may be entitled if he or she is also an Aggrieved Employee), will be calculated and distributed to Participating Class Members from the Net Settlement Amount on a *pro rata* basis, based on the Participating Class Members' respective number of Workweeks during the Class Period. PAGA Payments to Aggrieved Employees will be calculated and distributed to Aggrieved Employees from the PAGA Payment on a *pro rata* basis based on Aggrieved Employees' respective number of Workweeks during the PAGA Period. Workweek means the number of workweeks that a Class Member was employed by Defendant in a non-exempt, hourly position during the Class Period. If a Class Member disputes his/her Individual Settlement Share (*i.e.*, the gross amount of the Net Settlement Amount that a Class Member is eligible to receive based on the number of Workweeks that he or she worked as a Class

Member during the Class Period if he or she does not submit a timely and valid Request for Exclusion, excluding any PAGA Payment to which he or she may be entitled if he or she is also an Aggrieved Employee), it shall be termed a “Workweek Dispute.” Specific calculations of the Individual Settlement Shares and PAGA Payments to PAGA Aggrieved Employees will be made as follows:

- i. The Settlement Administrator will determine the total number of Workweeks worked by each Class Member during the Class Period (“Class Member’s Workweeks”), as well as the aggregate number of Workweeks worked by all Class Members during the Class Period (“Class Workweeks”). Additionally, the Settlement Administrator will determine the total number of Workweeks worked by each Aggrieved Employee during the PAGA Period (“Aggrieved Employee’s Workweeks”), as well as the aggregate number of Workweeks worked by all Aggrieved Employees during the PAGA Period (“PAGA Workweeks”).
- ii. To determine each Class Member’s Individual Settlement Share, the Settlement Administrator will use the following formula: Individual Settlement Share = (Class Member’s Workweeks ÷ Class Workweeks) × Net Settlement Amount.
- iii. To determine each Participating Class Member’s Individual Settlement Share, the Settlement Administrator will determine the aggregate number of Workweeks worked by all Participating Class Members during the Class Period (“Participating Class Workweeks”) and use the following formula: Individual Settlement Share = (Participating Class Member’s Workweeks ÷ Participating Class Workweeks) × Net Settlement Amount.
- iv. The net amount of the Individual Settlement Share is to be paid out to Participating Class Members by way of check and is referred to as

“Individual Settlement Payment(s).

- v. To determine each Aggrieved Employee’s PAGA Payment, the Settlement Administrator will use the following formula: Aggrieved Employee’s PAGA Payment = (Aggrieved Employee’s Workweeks ÷ PAGA Workweeks) x \$2,500.00 (the portion of the PAGA Payment paid to PAGA Aggrieved Employees). This amount is to be paid out to Aggrieved Employees by way of check.

g. Non-Reversionary Settlement. There will be no reversion to Defendants of any amounts contributed toward the settlement after distribution. Class Members who do not submit a timely and valid Request for Exclusion (*i.e.*, Participating Class Members) will receive an Individual Settlement Payment. All PAGA Aggrieved Employees, regardless of whether they submit a valid Request for Exclusion or not, will receive their portion of the PAGA Payment. Individual Settlement Payment checks and checks to Aggrieved Employees for their portion of the PAGA Payment shall remain valid and negotiable for one hundred and eighty (180) calendar days after the date of their issuance. Within seven (7) calendar days after expiration of the 180-day period, checks for such payments shall be canceled and funds associated with such checks shall be considered unpaid, unclaimed or abandoned cash residue pursuant to Code of Civil Procedure 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**

24-20. 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

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1 hereto as **Exhibit 1**) as well as following up with reasonable skip tracing; (c) notifying the Parties  
2 of the identity of Class Members who submit timely Requests for Exclusion; (d) calculating and  
3 mailing Individual Settlement Payments to Class Members and PAGA Payments to Aggrieved  
4 Employees; (e) filing any required federal and state tax forms and related agency reporting; (f)  
5 filing any required reports with the Court; and (g) any and all such other tasks as to which the  
6 Parties mutually agree, or which the Court orders the Settlement Administrator to perform.

7 Specifically, the Settlement Administrator shall perform the following duties:

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

14 b) Mailing Of Documents. Within ~~ten (10)~~fourteen (14) calendar days of receipt of the  
15 database containing the information to be provided by Defendants, the Settlement Administrator  
16 shall mail a copy of the Notice to all Class Members by first class regular U.S. Mail, using the most  
17 current mailing address information provided by Defendants and/or obtained by the Settlement  
18 Administrator. The Settlement Administrator will engage in address searches consistent with its  
19 normal practices in administering settlements of wage claims, including skip tracing. Such search  
20 efforts shall include, where necessary, using social security numbers to obtain better address  
21 information and attempting to call such Class Members. Any returned envelopes from this mailing  
22 with forwarding addresses will be utilized by the Settlement Administrator to forward the Notices  
23 to the Class Members.

24 c) Re-Mailing Of Returned Notices. Notices returned to the Settlement Administrator  
25 as non-delivered shall be re-sent to the forwarding address, if any, on the returned envelope. A  
26 returned Notice will be forwarded only once per Class Member by the Settlement Administrator.  
27 Upon completion of these steps by the Settlement Administrator, the Parties shall be deemed to  
28 have satisfied their obligation to provide the Notice to the affected Class Member. The affected

1 Class Member shall remain a Class Member and shall be bound by all the terms of this Stipulation  
2 and the Court's Final Order and Judgment.

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

17 e) Processing Requests For Exclusion ("Opt-Outs") From Settlement. In the event that  
18 a Class Member requests to be excluded (*i.e.*, opts out) of the Settlement provided herein, he or she  
19 must mail a written Request for Exclusion to the Settlement Administrator by first class U.S. Mail,  
20 or equivalent, postage paid and postmarked, by no later than the Document Receipt Deadline;  
21 ~~which is forty five (45) calendar days after the date that the Settlement Administrator originally~~  
22 ~~mails Notices to Class Members.~~ To be valid, the written Request for Exclusion must include (i)  
23 the Class Member's name, (ii) the Class Member's address, (iii) the last four digits of his or her  
24 social security number, (iv) a statement to the effect that the statement: "Please exclude me from  
25 the Settlement-Class Member wishes to be excluded from in the Settlement in the Salvador  
26 Rincon v. New-Indy Tripaq matter"~~or something to that effect~~, and (iv) the Class Member's  
27 signature. The Settlement Administrator shall notify Class Counsel and Defendants' Counsel of its  
28 receipt of all valid Requests for Exclusion within five (5) business days after having received each

1 such Request for Exclusion. A Class Member can only request to be excluded from the class  
2 portion of the settlement, which will result in he or she not receiving his or her Individual  
3 Settlement Share. A Class Member cannot opt out of the settlement of the PAGA claim and,  
4 should settlement of the PAGA claim be approved, he or she will receive a PAGA Payment  
5 whether or not he or she opts out if he or she is an Aggrieved Employee.

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

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

11 h) Allocating Portions Of the Individual Settlement As Wages. The Settlement  
12 Administrator shall be responsible for calculating the portion of each Individual Settlement  
13 Payment to be allocated as wages. 33.334% of each Individual Settlement Award shall be  
14 allocated as wages, and 66.666% of each Individual Settlement Award shall be allocated as interest  
15 and penalties.

16 i) Taxation Of Individual Settlement Awards. The portion of each Individual  
17 Settlement Award allocated as wages shall be subject to payroll withholding. The Settlement  
18 Administrator shall be responsible for paying the employees' share of federal, state, and local  
19 payroll and income taxes. Appropriate withholding of the employee's share of income taxes shall  
20 be deducted from each Individual Settlement Awards. The employer's share of payroll taxes shall  
21 be paid outside of the Gross Settlement Amount by Defendants, and each of them.

22 i. Federal Tax Reporting. The Settlement Administrator shall issue an IRS Form  
23 W-2 to each Class Member for the portion of the Individual Settlement Payment  
24 that is designated as wages. The Settlement Administrator shall issue an IRS  
25 Form 1099 to each Class Member for the portion of the Individual Settlement  
26 Payments that is not designated as wages, as well as the PAGA Payments. The  
27 Settlement Administrator shall issue an IRS Form 1099 to the Class  
28 Representatives for any enhancement award paid in connection with his role as

the Class Representative.

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

iii. Responsibility For Tax Obligations. All Class Members and the Class Representatives will be responsible for correctly characterizing the compensation they receive for tax purposes and for paying any taxes on the amounts received, except for the employer contributions which will be handled as provided by this Stipulation.

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

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

l) Payment Of PAGA Allocation. Within ten (10) calendar days after Defendants’ transfer of funds to the Settlement Administrator, the Settlement Administrator shall pay the

1 portion of the PAGA Allocation owed to the LWDA.

2 22-21. Disputes Regarding The Settlement Administrator's Performance of Duties. All  
3 disputes relating to the Settlement Administrator's performance of its duties shall be referred to the  
4 Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this  
5 Stipulation until all payments and obligations contemplated by this Stipulation have been fully  
6 carried out.

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

8 23-22. Submission Of Stipulation To Court. The Parties shall promptly submit this  
9 Stipulation to the Court in support of Plaintiffs' motion for preliminary approval and determination  
10 by the Court as to the fairness, adequacy, and reasonableness of this Stipulation, and shall apply to  
11 the Court for the entry of an order substantially in the following form:

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

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

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

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

22 24-23. Amendment Of This Stipulation To Conform To The Court's Order. To the extent  
23 the Court does not approve this Stipulation, or any term contained herein, and instead allows the  
24 Parties to amend this Stipulation, the Parties agree to cooperate in good faith to amend the  
25 Stipulation in accordance with the Court's direction, and to retain all other terms of the Stipulation  
26 that the Court approves.

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

28 25-24. Timely Approval Of Documents To Be Mailed By The Settlement Administrator.

1 Counsel for the Parties shall respond to requests by the Settlement Administrator to approve all  
2 settlement administration documents, including the Notice to be mailed to the Class, within four (4)  
3 business days of the Settlement Administrator's request for approval.

4 ~~26-25.~~ Defendants' Provision Of Class Member Data To Settlement Administrator. No  
5 later than fourteen (14) calendar days following preliminary approval of this Settlement by the  
6 Court, Defendants shall provide the Settlement Administrator with data that is within each  
7 Defendants' possession containing, for each Class Member: (a) the Class Member's name; (b) the  
8 Class Member's last known address; (c) the Class Member's social security number; (d) the Class  
9 Member's first date of employment in California in a non-exempt job position; and (e) the Class  
10 Members' last date of employment (if any) in California in a non-exempt job position. This Class  
11 information is confidential and not to be disclosed to anyone other than the Settlement  
12 Administrator, although the Parties may, at a later time, agree to permit the Class List to be  
13 disclosed to Class Counsel (or certain information therein) if it is determined to be in the best  
14 interest of Class Members. Defendants may also provide more detailed information identifying  
15 weeks in which Class Members did not record any hours, including due to leaves of absence,  
16 vacation, and other weeks not actually worked. This information shall be based on Defendants'  
17 payroll and other business records, and shall be in a format readily accessible to Defendants.  
18 Within fourteen (14) calendar days of receipt of the information from Defendants, the Settlement  
19 Administrator will mail the Notice to the Class Members, provided that counsel for the Parties have  
20 approved the documents. In the event that approval of the documents takes more than ~~fourteen~~  
21 ~~(14)~~ten (10) calendar days, the Settlement Administrator shall mail the Notice to the Class  
22 Members within three (3) business days of receiving approval of the documents.

23 ~~27-26.~~ Disputes Arising From Settlement Administration. Any disputes arising during the  
24 settlement administration process must be resolved informally by counsel for the Parties and, if the  
25 Parties cannot agree, by the Settlement Administrator, within ten (10) calendar days of the  
26 Document Receipt Deadline.

27 ~~28-27.~~ Motions By Class Counsel.

28 a) Motions Required For Final Approval Of The Settlement. Class Counsel shall timely

1 prepare Final Settlement Papers in conformance with the terms of this Settlement, including (1) a  
2 motion for final approval of the Settlement; (2) a motion for award of attorneys' fees and costs; (3)  
3 a motion for the Class Representatives' enhancement award; (4) the [Proposed] Final Settlement  
4 Order; and (5) any other documents, petitions, or motions required to effectuate this Settlement –  
5 including, but not limited to, any additional proposed orders requested by the Court.

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

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

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

13 iii. Approval of the enhancement award to the Class Representatives; and

14 ~~iv. Dismissal of the Action; and~~

15 ~~v. iv.~~ Reserving jurisdiction over the construction, interpretation, implementation, and  
16 enforcement of the Parties' Settlement, and over the administration and  
17 distribution of the Settlement amounts.

18 29-28. Fairness Hearing. Upon expiration of the Document Receipt Deadline, the Parties  
19 shall attend a Final Settlement Approval Hearing with the Court to finally approve the Settlement  
20 as fair, reasonable, and adequate as to (a) Class Members; (b) attorneys' fees and costs to Class  
21 Counsel; (c) the enhancement awards to the Class Representatives; (d) the costs and fees for  
22 settlement administration; (e) the PAGA Allocation, and (f) the Individual Settlement Payments to  
23 be paid to the Class Members, including the methodology used to calculate such awards.

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

25 30-29. Final Settlement Approval, And Entry Of Judgment. At or before the Final  
26 Settlement Approval Hearing, Class Counsel shall submit the [Proposed] Final Settlement  
27 Approval Order and Judgment to the Court for the Court's approval and entry. After entry of the  
28 Final Settlement Approval Order and Judgment, the Court shall have continuing jurisdiction over

the administration of the Settlement.

~~31-30.~~ Payment Of Settlement Amount. Not later than twenty-one (21) calendar days following the Effective Date, Defendants shall deposit the Gross Settlement Amount, as the same may be escalated pursuant to this Agreement, in addition to the employer's share of payroll taxes necessary to effectuate the Settlement, into an account established by the Settlement Administrator. The Settlement Administrator will retain authority over the deposited funds, which are to be used in accordance with this Stipulation and any orders of the Court. The Settlement Administrator shall make all payments and other disbursements required by this Stipulation from the Gross Settlement Amount (as the same may be escalated pursuant to this Agreement), as well as the employer's share of taxes provided by Defendants.

~~32-31.~~ Provision Of Final Settlement Approval Order And Judgment To Settlement Administrator. Within two (2) business days of final approval by the Court of the Settlement provided for in this Stipulation, Class Counsel shall provide the Settlement Administrator with a copy of the Final Settlement Approval Order and Judgment.

#### **XI. ADDITIONAL TERMS**

~~33-32.~~ Nullification Of Settlement. This Stipulation shall be null and void, and any order of judgment entered by the Court in furtherance of the Settlement shall be vitiated *nunc pro tunc*, if any of the following occurs:

- a) The Court does not enter the Final Settlement Approval Order and Judgment as provided for herein or contemplated by this Stipulation;
- b) The Court does not finally approve the Settlement as provided for herein;
- c) The Court does not enter a Final Settlement Approval Order and Judgment as provided for herein that becomes final as a result of the occurrence of the Effective Date; or
- d) The Settlement does not become final for any other reason. In such a case, the Parties shall be returned to their respective statuses prior to the settlement, and the Parties shall proceed in all respects as if this Stipulation had not been executed. If an appeal is filed from the Court's Final Settlement Approval Order and Judgment prior to the Effective Date, administration of the Settlement shall be immediately stayed pending final resolution of the appeal process.

1 ~~34~~33. No Admissions. Nothing contained herein is to be construed or deemed to be an  
2 admission of liability or wrongdoing by Defendants. This Stipulation and the attached exhibits are  
3 settlement documents, and, pursuant to California Evidence Code section 1152, these documents  
4 shall be inadmissible in any proceeding except in an action or proceeding to approve, interpret, or  
5 enforce this Stipulation.

6 ~~35~~34. Amendment Or Modification. This Stipulation may be amended or modified only  
7 by a written instrument signed by counsel for all Parties.

8 ~~36~~35. Entire Agreement. This Stipulation and the accompanying exhibits  
9 constitute and comprise the entire agreement between the Parties. No oral or written  
10 representations, warranties, or inducements have been made to any of the Parties concerning this  
11 Stipulation other than the representations, warranties, and covenants contained and memorialized  
12 herein.

13 ~~37~~36. Construction. The Parties agree that the terms of this Stipulation and the  
14 accompanying exhibits are the result of lengthy, arms-length negotiations, and that this Stipulation  
15 shall not be construed in favor of or against any of the Parties by reason of the extent to which any  
16 of the Parties or their respective counsel participated in the drafting of this Stipulation.

17 ~~38~~37. Parties' Authority. The signatories to this Stipulation represent that they are fully  
18 authorized to enter into this Stipulation and to bind the Parties hereto to the terms and conditions  
19 hereof.

20 ~~39~~38. Successors And Assigns. This Stipulation is binding upon, and inures to the benefit  
21 of, the Parties' successors and assigns. The Parties represent and warrant that they have not,  
22 directly or indirectly, assigned, transferred, or encumbered to any person or entity any portion of  
23 any claim, demand, action, cause of action, or rights herein released and discharged except as set  
24 forth herein.

25 ~~40~~39. Enforcement Of Actions. In the event that any of the Parties to this Stipulation  
26 institutes any legal action, arbitration, or other proceeding against any of the other Parties to  
27 enforce the provisions of this Stipulation or to declare rights or obligations under this Stipulation,  
28 the successful Party shall be entitled to recover from the unsuccessful Party or Parties, reasonable

attorneys' fees and costs, including expert witness fees, incurred in connection with any such enforcement proceedings.

~~41-40.~~ Governing Law. All terms of this Stipulation shall be governed by and interpreted according to the laws of the State of California.

~~42-41.~~ Jurisdiction Of The Court. The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Stipulation and all orders and judgments entered in connection with it pursuant to Section 664.6 of the California Code of Civil Procedure.

~~43-42.~~ Counterparts. This Stipulation may be executed in one or more counterparts. All executed counterparts, and each of them, shall be deemed to be one and the same instrument. Signatures may be affixed either by original signatures, PDF, or facsimile.

~~44-43.~~ Notices. Unless otherwise specifically provided in this Stipulation, all notices, demands, and/or other communications will be in writing and will be deemed to have been duly given as of the third (3rd) business day after mailing by U.S. Mail, addressed as follows:

To The Class:

BIBIYAN LAW GROUP, P.C.  
David D. Bibiyan  
Diego Aviles  
Sara Ehsani-Nia  
8484 Wilshire Blvd, Suite 500  
Beverly Hills, California 90211  
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

To Defendants Triple A Containers, Inc. and Brad McCroskey:

RUTAN & TUCKER, LLP  
Edson K. McClellan  
Kimberly A. Nayagam  
611 Anton Boulevard, Suite 1400  
Costa Mesa, California 92626-1931  
Facsimile: 714-546-9035

~~45-44.~~ Enforceability. The Parties intend for this Agreement to be enforceable in the

1 Superior Court of California for the County of Los Angeles, by and subject to the Court's pending  
2 jurisdiction.

3 ~~46-45.~~ Interpretation. This Stipulation shall be construed as a whole according to its fair  
4 meaning. It shall not be construed strictly for or against any Party. Unless the context indicates  
5 otherwise, the term "or" shall be deemed to include the term "and," and the singular or plural  
6 number shall be deemed to include the other. Captions and headings are intended solely for  
7 convenience of reference and shall not be used in the interpretation of this Stipulation.

8 ~~47-46.~~ Confidentiality.

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

18 b) Class Counsel Marketing And Adequacy Declarations. Class Counsel agrees not to  
19 use Defendants' names in marketing materials. Class Counsel and the Class Representatives will  
20 not make any posting on any website, instant message site, blog, or social networking site that uses  
21 Defendants' name. However, for the limited purpose of allowing Class Counsel to prove adequacy  
22 as class counsel in other actions, Class Counsel may disclose the name of the Parties, the  
23 venue/case number of the Action, a brief description of the case and the fact of the settlement.

24 ~~48-47.~~ Exhibits Incorporated By Reference. The terms of this Stipulation include the terms  
25 set forth in any attached Exhibit, which are incorporated by this reference as though fully set forth  
26 herein. Any Exhibit to this Stipulation is an integral part of the Settlement.

27 ~~49-48.~~ Interim Stay Of Proceedings. The Parties agree to refrain from further litigation in  
28 the Action, except such proceedings necessary to implement and obtain an Order granting final

1 approval of the terms of the Settlement. The Parties further agree that the mutual, voluntary  
2 cessation of litigation shall terminate either as of the Effective Date or the date upon which this  
3 Settlement has been denied by the Court and all subsequent attempts to cure deficiencies have  
4 ended.

5 50-49. Invalidity Of Any Provision. Before declaring any provision of this Stipulation  
6 invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible  
7 consistent with applicable precedents so as to define all provisions of this Settlement valid and  
8 enforceable.

9 51-50. Class Certification For Settlement Purposes Only. The Parties agree to stipulate to  
10 class certification only for purposes of the Settlement. If, for any reason, the Settlement is not  
11 approved, the stipulation to certification will be void. The Parties further agree that certification  
12 for purposes of the Settlement is not an admission that class certification is proper under the  
13 standard applied to contested certification motions and that this Settlement will not be admissible  
14 in this or any other proceeding as evidence that (i) a class should or should not be certified or (ii)  
15 Defendants are or are not liable to the Class Representatives or the putative Class Members.

16 52-51. All Terms Subject To Final Court Approval. All amounts and procedures described  
17 in this Stipulation shall be subject to final Court approval.

18 53-52. Execution Of Necessary Documents. All Parties shall execute all documents  
19 reasonably necessary to effectuate the terms of this Settlement.

20 54-53. Binding Agreement. The Parties intend that this Settlement shall be fully  
21 enforceable and binding on all Parties, and that it shall be admissible and subject to disclosure in  
22 any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that  
23 otherwise might apply under federal or state law.

24  
25  
26 Dated: April \_\_, 2021

By: \_\_\_\_\_  
Salvador Rincon  
Plaintiff

1  
2 Dated: April\_\_\_\_, 2021

By:\_\_\_\_\_  
Saul Ernesto Cedillos  
*Plaintiff*

3  
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5  
6 Dated: April\_\_\_\_, 2021

By:\_\_\_\_\_  
  
*For New-Indy TriPAQ LLC*

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11 Dated: April\_\_\_\_, 2021

By:\_\_\_\_\_  
  
*For Triple A Containers, Inc.*

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13  
14 Dated: April\_\_\_\_, 2021

By:\_\_\_\_\_  
Brad McCroskey

15  
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17  
18 BIBYAN LAW GROUP P.C. ,

19  
20  
21 Dated: April\_\_\_\_, 2021

By:\_\_\_\_\_  
David D. Bibyan  
*Attorney for Plaintiffs*

22  
23  
24 OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.

25  
26  
27 Dated: April\_\_\_\_, 2021

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

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RUTAN AND TUCKER, LLP

Dated: April \_\_, 2021

By: \_\_\_\_\_  
Edson McClellan, Esq.  
*Attorney for Triple A Containers, Inc. and Brad  
McCroskey*

# NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL APPROVAL

*Salvador Rincon v. New-Indy Tripaq, LLC, et al.*

Superior Court of California for the County of Los Angeles, Case No. 20STCV17118

**As a non-exempt, hourly-paid employee currently or formerly employed by Triple A Containers, Inc., New-Indy TriPAQ, LLC, Montebello Container Company LLC, and/or Proactive Packaging and Display, LLC in California during the period of April 30, 2016 through April 26, 2021, you are entitled to receive money from a class action settlement.**

**Please read this Notice carefully. This Notice relates to a proposed settlement of class action litigation. If you are a Class Member, it contains important information about your right to receive a payment from the Settlement Fund.**

You have received this Notice of Class Action Settlement because the records of Triple A Containers, Inc., New-Indy Tripaq, LLC, Montebello Container Company LLC, and Proactive Packaging and Display, LLC (together, with Brad McCroskey, “Defendants”) collectively show you are a “Class Member,” and therefore entitled to a payment from this class action Settlement. Class Members are all current and former non-exempt, hourly employees of Defendants who worked in the State of California from April 30, 2016 through April 26, 2021.

- The settlement resolves a class-action lawsuit, *Salvador Rincon v. New-Indy Tripaq, LLC, et al.* (the “Complaint”), which alleges that Defendants: (1) failed to pay Class Members overtime wages, (2) failed to pay Class Members minimum wages, (3) failed to provide Class Members legally-compliant meal breaks under California law, (4) failed to provide Class Members legally-compliant rest breaks under California law, (5) failed to provide Class Members with legally complaint wage statements, (6) failed to timely pay wages upon separation of employment, (7) failed to reimburse business expenses; (8) failed to pay wages during employment, and (9) engaged in unfair business practices. Based on these and other alleged Labor Code violations, including alleged failure to provide written notice of paid sick leave, Plaintiffs also seek penalties under the California Labor Code Private Attorneys General Act (“PAGA”) pursuant to Labor Code sections 226.3, 558, 1197.1, and 2699.
- On [REDACTED], the Los Angeles County Superior Court granted preliminary approval of this class action Settlement and ordered that all Class Members be notified of the Settlement. The Court has not made any determination of the validity of the claims in the Lawsuit. Defendants vigorously deny the claims in the Lawsuit and contend that they fully complied with all applicable laws.

| YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT |                                                                                                                                                                                                                                                                                       |
|--------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| DO NOTHING AND RECEIVE PAYMENT                   | Get a payment, and give up your legal rights to pursue claims released by the settlement of the Lawsuit.                                                                                                                                                                              |
| OPT OUT OF THE SETTLEMENT                        | Exclude yourself from the Settlement, get no payment, and retain your legal rights to pursue claims that would otherwise be released by the settlement of the Lawsuit.                                                                                                                |
| OBJECT TO THE SETTLEMENT                         | If you do not opt out, you may write to the Settlement Administrator, Phoenix Settlement Administrators, about why you object to the settlement and they will forward your concerns to counsel which will then be provided to the Court. If the Court approves the Settlement despite |

**Questions? Contact the Settlement Claims Administrator toll free at [PHONE NUMBER]**

|  |                                                                                                                                                                                                                                                                                                                                                                              |
|--|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | <p>your objection, you will still be bound by the Settlement. Whether or not you object in writing, you or your attorney may also address the Court during the Final Approval hearing scheduled for [DATE AND TIME] in Department 17 of the Spring Street Courthouse of the Los Angeles Superior Court, located at 312 N. Spring Street, Los Angeles, California, 90012.</p> |
|--|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

The Final Fairness and Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at \_\_\_\_\_.m. on \_\_\_\_\_, in Department 17 of Los Angeles Superior Court, located at 312 N. Spring Street, Los Angeles, California, 90012. You are not required to attend the Hearing, but you are welcome to do so.

### **Why Am I Receiving This Notice?**

Defendants' records show that you currently work, or previously worked, for Defendants as a non-exempt hourly, hourly paid employee in the State of California from April 30, 2016 at some point through April 30, 2021. You were sent this Class Notice because you have a right to know about a proposed settlement of a class action lawsuit, and about all of your options before the Court decides whether to finally approve the settlement. If the Court approves the settlement and then any objections and appeals are resolved, a "Settlement Administrator" appointed by the Court will make the payments described in this Notice. This Notice explains the Lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

### **What Is This Case About?**

Salvador Rincon and Saul Cedillos were hourly paid, non-exempt employees of Defendants in California. They are the "Plaintiffs" in this case and are suing on behalf of themselves and Class Members for Defendants' alleged failure to pay overtime wages, failure to pay minimum wages, failure to provide legally-compliant meal and rest breaks under California law, failure to provide compliant wage statements, failure to timely pay wages upon separation, failure to timely pay wages during employment, failure to reimburse business expenses, and engagement in unfair business practices. Based on these and other alleged Labor Code violations, and others, including alleged failure to provide written notice of paid sick leave under Labor Code section 246, *et seq.*, Plaintiffs also seek to recover penalties under PAGA pursuant to Labor Code sections 226.3, 558, 1197.1, and 2699.

Defendants deny all of the allegations made by Plaintiffs and deny that they violated any law. The Court has made no ruling on the merits of Plaintiffs' claims. The Court has only preliminarily approved this Class Action Settlement. The Court will decide whether to give final approval to the Settlement at the Final Fairness and Approval Hearing.

### **Summary of the Settlement Terms**

Plaintiffs and Defendants have agreed to settle this case on behalf of themselves and the Class Members for the Gross Settlement Amount of \$925,000.00. The Gross Settlement includes: (1) Administration Costs up to \$10,000; (2) a service payment of up to \$5,000.00 each to Plaintiffs Salvador Rincon and Saul Cedillos for their time and effort in pursuing this case and in exchange for a broader release of claims against Defendants; (3) one-third in attorney's fees which, unless escalated, amount to 308,333.33; and up to \$20,000 in litigation cost to Class Counsel; and (4) payment allocated to PAGA penalties in the amount of \$20,000.00, of which 75% (or

**Questions? Contact the Settlement Claims Administrator toll free at [PHONE NUMBER]**

15,000) will be paid to the California Labor and Workforce Development Agency. After deducting these sums, a total of approximately \$561,666.67 will be available for distribution to Class Members (i.e., Class Members who do not opt out of the class portion of this agreement) (“Net Settlement Amount”). An additional \$5,000 will remain for distribution to Aggrieved Employees, who are all Class Members who worked for Defendants as non-exempt, hourly paid employees in California from November 17, 2019, through April 26, 2021. (“PAGA Period”)

### **Distribution to Class Members**

Class Members who do not opt out will receive a pro-rata payment based on the number of weeks worked by Class Members for Defendants during the Class Period as non-exempt employees (“Eligible Workweeks”). Specifically, Class Members’ payments will be calculated by dividing the number of Eligible Workweeks attributed to the Class Member by all Eligible Workweeks attributed to members of the Settlement Class, multiplied by the Net Settlement Amount. Otherwise stated, the formula for a Class Member is: (individual Class Member’s Eligible Workweeks ÷ total Settlement Class Eligible Workweeks) x Net Settlement Amount. In addition, Class Members who worked during the PAGA Period will receive a pro-rata share of the \$5,000 allocated as PAGA penalties, whether or not they opt out, based on the number of Workweeks worked by the Class Member during the PAGA Period.

Defendants’ records indicate that you worked [Eligible Workweeks] as a non-exempt employee in California between April 30, 2016 and April 30, 2021. Based on these records, your estimated payment as a Class Member would be [\$Estimated Award]. If you believe this information is incorrect and wish to dispute it, you must mail a dispute to the Settlement Administrator no later than [RESPONSE DEADLINE]. Please include any documentation you have that you contend supports your dispute.

### **Tax Reporting**

33.334% of each Settlement Payment will be allocated as wages and reported on an IRS Form W-2; and 66.666% will be allocated as penalties and interest reported on an IRS Form 1099. This notice is not intended to provide legal or tax advice on your Settlement Share.

### **Your Options Under the Settlement**

#### ***Option 1 – Do Nothing and Receive Your Payment***

If you do not opt out, you are automatically entitled to your Settlement Check because you are a Class Member. If you do not dispute your settlement share calculation and do not opt out of the settlement, you will be bound by the settlement and receive a settlement payment. **In other words, if you are a Class Member, you do not need to take any action to receive the settlement payment set forth above.**

Class Members who do not submit a valid and timely opt out (pursuant to Option 2 below) will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released Claims he or she may have or had upon final approval of this Settlement, entry of judgment, and payment by Defendants to the Settlement Administrator.

“Released Claims” refers to, during the period from April 30, 2016 through April 26, 2021: any and all claims, actions, demands, causes of action, suits, debts, obligations, damages, rights or liabilities that have been asserted by Plaintiffs in the First Amended Complaint on file in the Action, and any claims that could have been asserted based on the facts and/or theories alleged in the First Amended Complaint on file in the Action, including, but

**Questions? Contact the Settlement Claims Administrator toll free at [PHONE NUMBER]**

not limited to: claims for unpaid wages (including claims for minimum wage and overtime compensation), for failure to provide meal and rest periods and for any and all unpaid meal and unpaid rest period premiums (including premiums pursuant to Labor Code section 226.7), for unreimbursed business expenses, for interest, for penalties (including waiting time penalties pursuant to Labor Code sections 201, 202, and 203, pay stub penalties pursuant to Labor Code section 226, for claims pursuant to Labor Code sections 200, 201, 202, 203, 226, , 226.7, 510, 512, 1174, 1194, 1194.2, 1197, and 2802, for claims under Business and Professions Code section 17200 *et seq.* arising from the facts and/or theories asserted in the First Amended Complaint on file in the Action, as well as for claims for attorneys’ fees, costs, interest, restitution, injunctive or equitable relief, and any other remedies available at law or equity arising from the facts and/or theories asserted in the First Amended Complaint on file in the Action (“Class Released Claims”). This release is limited to claims based on facts alleged in the First Amended Complaint on file in the Action. In addition, for Aggrieved Employees, during the period from November 17, 2019 through April 26, 2021, the release includes all claims for civil penalties under PAGA arising out of Labor Code sections 210, 226.3, 558, 1197.1, and 2699 based on the facts and/or theories alleged to have been violated in the PAGA Notice filed with the LWDA and included in the First Amended Complaint, which includes, without limitation, Labor Code sections 200, 201, 202, 203, 204, 226, 227.3, 404, 432, 510, 1174, 1194, 1197, 1198, 1198.5, 2802, and 2810.5 (“PAGA Released Claims”). This release is limited to claims based on facts that were alleged in the PAGA Notice filed with the LWDA by Plaintiffs, or either of them.

“Released Parties” means Defendants current or former parent companies, subsidiary companies, and/or related companies, partnerships, joint ventures, affiliates, divisions, and, with respect to each of them, all of their and/or such related entities’ predecessors and successors, and, with respect to each such entity, all of its past, present, and/or future, direct and/or indirect, employees, officers, partners, principals, directors, stockholders, managers, owners, representatives, assigns, attorneys, agents, insurers, employee benefit programs (and the trustees, administrators, fiduciaries, and insurers of such programs), and investors.

### **Option 2 – Opt Out of the Settlement**

If you do not wish to participate in the Settlement, you may exclude yourself by submitting a written request to be excluded from the Class. Your written request must expressly and clearly indicate that you do not want to participate in the Settlement, and you desire to be excluded from the Settlement Class in the *Salvador Rincon v. New-Indy Tripaq* matter. The written request for exclusion must include your name, address, the last four digits of your Social Security Number, and signature. Sign, date, and mail your written request for exclusion by U.S. First-Class Mail or facsimile to the address below.

#### **[Settlement Administrator]**

The written request to be excluded from the Settlement must be postmarked or received by the Administrator not later than **[RESPONSE DEADLINE]**. If you exclude yourself from the Settlement then you will get no payment, and retain your legal rights to pursue claims that would otherwise be released by the settlement of the Lawsuit. A Class Member however cannot opt out of the settlement of the PAGA claim and, should settlement of the PAGA claim be approved, a qualifying employee will receive a PAGA Payment whether or not they opt out of from the Settlement.

### **Option 3 – File an Objection to the Settlement**

If you wish to object to the Settlement, you may file a written objection stating why you object to the Settlement. Your written objection must provide the case name and number, your full name, address, the last four digits of your Social Security Number and/or employee ID, your reasons why you think the Court should not approve the

**Questions? Contact the Settlement Claims Administrator toll free at [PHONE NUMBER]**

Settlement, along with any legal authority, if any, you assert supports your objection, and your signature. Your written objection must be mailed to the Administrator no later than [RESPONSE DEADLINE]. However, even if you do not object in writing, you or your attorney may appear, at your own expense, at the Final Fairness and Approval Hearing to object to, or comment on, the Settlement. Please note that you cannot both object to the Settlement and exclude yourself. If the Court overrules your objection, you will be bound by the Settlement and will receive your Settlement Share.

### **Final Fairness Hearing**

You may, if you wish, also appear at the Final Fairness and Approval Hearing set for [REDACTED] at [REDACTED].m. in Department 17 of the Spring Street Courthouse of the Los Angeles Superior Court, located at 312 N. Spring Street, Los Angeles, California, 90012, and raise or discuss your objections with the Court and the Parties at your own expense. You may also retain an attorney to represent you at the Hearing at your own expense.

Due to the COVID-19 pandemic, hearings may be conducted remotely through LACourtConnect. Class Members who wish to appear at the Final Fairness and Approval Hearing may contact Class Counsel to arrange a telephonic appearance through LACourtConnect, at least three days before the hearing if possible. Any CourtCall fees for an appearance by an objecting Class Member will not be paid by Class Counsel.

### **Additional Information**

This Notice of Class Action Settlement is only a summary of this case and the Settlement. For a more detailed statement of the matters involved in this case and the Settlement, you may visit [www.\[REDACTED\].com](http://www.[REDACTED].com), call the Settlement Administrator at [PHONE NUMBER] or Class Counsel:

BIBIYAN LAW GROUP, P.C.  
David D. Bibiyan  
*david@tomorrowlaw.com*  
Diego Aviles (Spanish speaker)  
*diego@tomorrowlaw.com*  
8484 Wilshire Boulevard, Suite 500  
Beverly Hills, California 90211  
Telephone: (310) 438-5555  
Facsimile: (310) 270-9601

You may also refer to the pleadings, the Settlement Agreement, and other papers filed in this case, which may be inspected at the Office of the Clerk of the Los Angeles Superior Court, located at [ADDRESS], during regular business hours of each court day.

All inquiries by Class Members regarding this Notice of Class Action Settlement and/or the Settlement should be directed to the Settlement Administrator.

**PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE,  
DEFENDANTS, OR DEFENDANTS' ATTORNEYS WITH INQUIRIES.**

**Questions? Contact the Settlement Claims Administrator toll free at [PHONE NUMBER]**

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND HEARING DATE  
FOR FINAL APPROVAL**

*Salvador Rincon v. New-Indy Tripaq, LLC, et al.*

Superior Court of California for the County of Los Angeles, Case No. 20STCV17118

**As a non-exempt, hourly-paid employee currently or formerly employed by Triple A Containers, Inc., New-Indy TriPAQ, LLC, Montebello Container Company LLC, and/or Proactive Packaging and Display, LLC in California during the period of April 30, 2016 through April 26, 2021, you are entitled to receive money from a class action settlement.**

**Please read this Notice carefully. This Notice relates to a proposed settlement of class action litigation. If you are a Class Member, it contains important information about your right to receive a payment from the Settlement Fund.**

You have received this Notice of Class Action Settlement because the records of Triple A Containers, Inc., New-Indy Tripaq, LLC, Montebello Container Company LLC, and Proactive Packaging and Display, LLC (together, with Brad McCroskey, “Defendants”) collectively show you are a “Class Member,” and therefore entitled to a payment from this class action Settlement. Class Members are all current and former non-exempt, hourly employees of Defendants who worked in the State of California from April 30, 2016 through April 26, 2021.

- The settlement resolves a class-action lawsuit, *Salvador Rincon v. New-Indy Tripaq, LLC, et al.* (the “Complaint”), which alleges that Defendants: (1) failed to pay Class Members overtime wages, (2) failed to pay Class Members minimum wages, (3) failed to provide Class Members legally-compliant meal breaks under California law, (4) failed to provide Class Members legally-compliant rest breaks under California law, (5) failed to provide Class Members with legally complaint wage statements, (6) failed to timely pay wages upon separation of employment, (7) failed to reimburse business expenses; (8) failed to pay wages during employment, and (9) engaged in unfair business practices. Based on these and other alleged Labor Code violations, including alleged failure to provide written notice of paid sick leave, Plaintiffs also seek penalties under the California Labor Code Private Attorneys General Act (“PAGA”) pursuant to Labor Code sections 226.3, 558, 1197.1, and 2699.
- On [REDACTED], the Los Angeles County Superior Court granted preliminary approval of this class action Settlement and ordered that all Class Members be notified of the Settlement. The Court has not made any determination of the validity of the claims in the Lawsuit. Defendants vigorously deny the claims in the Lawsuit and contend that they fully complied with all applicable laws.

| YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT |                                                                                                                                                                                                                                                                                       |
|--------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| DO NOTHING AND RECEIVE PAYMENT                   | Get a payment, and give up your legal rights to pursue claims released by the settlement of the Lawsuit.                                                                                                                                                                              |
| OPT OUT OF THE SETTLEMENT                        | Exclude yourself from the Settlement, get no payment, and retain your legal rights to pursue claims that would otherwise be released by the settlement of the Lawsuit.                                                                                                                |
| OBJECT TO THE SETTLEMENT                         | If you do not opt out, you may write to the Settlement Administrator, Phoenix Settlement Administrators, about why you object to the settlement and they will forward your concerns to counsel which will then be provided to the Court. If the Court approves the Settlement despite |

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**Questions? Contact the Settlement Claims Administrator toll free at [PHONE NUMBER]**

|  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
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|  | <p>your objection, you will still be bound by the Settlement. <del>If you timely object,</del> <b>Whether or not you object in writing object,</b> you or your attorney may also address the Court during the Final Approval hearing scheduled for <b>[DATE AND TIME]</b> in <b>Department 17 of the Spring Street Courthouse e [COURTHOUSE NAME]</b> of the Los Angeles Superior Court, located at <b>312 N. Spring Street, Los Angeles, California, 90012 [COURTHOUSE ADDRESS].</b></p> |
|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

The Final Fairness and Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at **[REDACTED]**.m. on **[REDACTED]**, in ~~the [COURTHOUSE NAME]~~**Department 17** of Los Angeles Superior Court, located at ~~[COURTHOUSE ADDRESS]~~**312 N. Spring Street, Los Angeles, California, 90012.** You are not required to attend the Hearing, but you are welcome to do so.

#### **Why Am I Receiving This Notice?**

Defendants' records show that you currently work, or previously worked, for Defendants as a non-exempt hourly, hourly paid employee in the State of California from April 30, 2016 at some point through April 30, 2021. You were sent this Class Notice because you have a right to know about a proposed settlement of a class action lawsuit, and about all of your options before the Court decides whether to finally approve the settlement. If the Court approves the settlement and then any objections and appeals are resolved, a "Settlement Administrator" appointed by the Court will make the payments described in this Notice. This Notice explains the Lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

#### **What Is This Case About?**

Salvador Rincon and Saul Cedillos were hourly paid, non-exempt employees of Defendants in California. They are the "Plaintiffs" in this case and are suing on behalf of themselves and Class Members for Defendants' alleged failure to pay overtime wages, failure to pay minimum wages, failure to provide legally-compliant meal and rest breaks under California law, failure to provide compliant wage statements, failure to timely pay wages upon separation, failure to timely pay wages during employment, ~~failure to reimburse business expenses,~~ and engagement in unfair business practices. Based on these and other alleged Labor Code violations, and others, including alleged failure to provide written notice of paid sick leave under Labor Code section 246, *et seq.*, Plaintiffs also seek to recover penalties under PAGA pursuant to Labor Code sections 226.3, 558, 1197.1, and 2699.

Defendants deny all of the allegations made by Plaintiffs and deny that they violated any law. The Court has made no ruling on the merits of Plaintiffs' claims. The Court has only preliminarily approved this Class Action Settlement. The Court will decide whether to give final approval to the Settlement at the Final Fairness and Approval Hearing.

#### **Summary of the Settlement Terms**

Plaintiffs and Defendants have agreed to settle this case on behalf of themselves and the Class Members for the Gross Settlement Amount of \$925,000.00. The Gross Settlement includes: (1) Administration Costs up to \$10,000; (2) a service payment of up to \$5,000.00 each to Plaintiffs Salvador Rincon and Saul Cedillos for their time and effort in pursuing this case and in exchange for a broader release of claims against Defendants; (3) one-third in attorney's fees which, unless escalated, amount to 308,333.33; and up to \$20,000 in litigation cost to

**Questions? Contact the Settlement Claims Administrator toll free at [PHONE NUMBER]**

Class Counsel; and (4) payment allocated to PAGA penalties in the amount of \$20,000.00, of which 75% (or 15,000) will be paid to the California Labor and Workforce Development Agency. After deducting these sums, a total of approximately \$561,666.67 will be available for distribution to Class Members (i.e., Class Members who do not opt out of the class portion of this agreement) (“Net Settlement Amount”). An additional \$5,000 will remain for distribution to Aggrieved Employees, who are all Class Members who worked for Defendants as non-exempt, hourly paid employees in California from November 17, 2019, through April 26, 2021. (“PAGA Period”)

#### **Distribution to Class Members**

Class Members who do not opt out will receive a pro-rata payment based on the number of weeks worked by Class Members for Defendants during the Class Period as non-exempt employees (“Eligible Workweeks”). Specifically, Class Members’ payments will be calculated by dividing the number of Eligible Workweeks attributed to the Class Member by all Eligible Workweeks attributed to members of the Settlement Class, multiplied by the Net Settlement Amount. Otherwise stated, the formula for a Class Member is: (individual Class Member’s Eligible Workweeks ÷ total Settlement Class Eligible Workweeks) x Net Settlement Amount. In addition, Class Members who worked during the PAGA Period will receive a pro-rata share of the \$5,000 allocated as PAGA penalties, whether or not they opt out, based on the number of Workweeks worked by the Class Member during the PAGA Period.

Defendants’ records indicate that you worked [Eligible Workweeks] as a non-exempt employee in California between April 30, 2016 and April 30, 2021. Based on these records, your estimated payment as a Class Member would be [\$Estimated Award]. If you believe this information is incorrect and wish to dispute it, you must mail a dispute to the Settlement Administrator no later than [RESPONSE DEADLINE]. Please include any documentation you have that you contend supports your dispute.

#### **Tax Reporting**

33.334% of each Settlement Payment will be allocated as wages and reported on an IRS Form W-2; and 66.666% will be allocated as penalties and interest reported on an IRS Form 1099. This notice is not intended to provide legal or tax advice on your Settlement Share.

#### **Your Options Under the Settlement**

##### **Option 1 – Do Nothing and Receive Your Payment**

If you do not opt out, you are automatically entitled to your Settlement Check because you are a Class Member. If you do not dispute your settlement share calculation and do not opt out of the settlement, you will be bound by the settlement and receive a settlement payment. **In other words, if you are a Class Member, you do not need to take any action to receive the settlement payment set forth above.**

Class Members who do not submit a valid and timely opt out (pursuant to Option 2 below) will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released Claims he or she may have or had upon final approval of this Settlement, entry of judgment, and payment by Defendants to the Settlement Administrator.

“Released Claims” refers to, ~~all~~ during the period from April 30, 2016 through April 26, 2021: any and all claims, actions, demands, causes of action, suits, debts, obligations, damages, rights or liabilities that have been asserted by Plaintiffs in the First Amended Complaint on file in the Action, and any claims that could have been asserted

**Questions? Contact the Settlement Claims Administrator toll free at [PHONE NUMBER]**

based on the facts and/or theories alleged in the First Amended Complaint on file in the Action, including, but not limited to: claims for unpaid wages (including claims for minimum wage and overtime compensation), for failure to provide meal and rest periods and for any and all unpaid meal and unpaid rest period premiums (including premiums pursuant to Labor Code section 226.7), for unreimbursed business expenses, for interest, for penalties (including waiting time penalties pursuant to Labor Code sections 201, 202, and 203, pay stub penalties pursuant to Labor Code section 226, for claims pursuant to Labor Code sections 200, 201, 202, 203, 226, , 226.7, 510, 512, 1174, 1194, 1194.2, 1197, and 2802, for claims under Business and Professions Code section 17200 et seq. arising from the facts and/or theories asserted in the First Amended Complaint on file in the Action, as well as for claims for attorneys' fees, costs, interest, restitution, injunctive or equitable relief, and any other remedies available at law or equity arising from the facts and/or theories asserted in the First Amended Complaint on file in the Action ("Class Released Claims"). This release is limited to claims based on facts alleged in the First Amended Complaint on file in the Action. ~~Nothing in the Settlement Agreement is intended to release claims based on facts that were not alleged in the First Amended Complaint on file in this Action.~~ In addition, for Aggrieved Employees, during the period from November 17, 2019 through April 26, 2021, the release includes all claims for civil penalties under PAGA arising out of Labor Code sections 210, 226.3, 558, 1197.1, and 2699 based on the facts and/or theories alleged to have been violated in the PAGA Notice filed with the LWDA and included in the First Amended Complaint, which includes, without limitation, Labor Code sections 200, 201, 202, 203, 204, 226, 227.3, 404, 432, 510, 1174, 1194, 1197, 1198, 1198.5, 2802, and 2810.5 ("PAGA Released Claims"). This release is limited to claims based on facts that were alleged in the PAGA Notice filed with the LWDA by Plaintiffs, or either of them. ~~Nothing in the Settlement Agreement is intended to release claims based on facts that were not alleged in the PAGA Notice filed with the LWDA by Plaintiffs, or either of them.~~ claims asserted in the First Amended Complaint filed in this Action, or any and all claims that may be asserted against the Released Parties based on the factual allegations in the First Amended Complaint filed in this action, as follows: For the duration of April 30, 2016 through April 26, 2021, the release includes: (a) any and all claims, actions, demands, causes of action, suits, debts, obligations, damages, rights or liabilities that have been asserted by Plaintiffs in the Action, and any claims that could have been asserted based on the facts and/or theories alleged in the Action, including, but not limited to: claims for unpaid wages (including claims for minimum wage and overtime compensation), for failure to provide meal and rest periods and for any and all unpaid meal and unpaid rest period premiums (including premiums pursuant to Labor Code section 226.7), for unreimbursed business expenses, for interest, for penalties (including waiting time penalties pursuant to Labor Code sections 201, 202, and 203, pay stub penalties pursuant to Labor Code section 226, for claims pursuant to Labor Code sections 200, 201, 202, 203, 226, , 226.7, 510, 512, 1174, 1194, 1194.2, 1197, and 2802, for claims under Business and Professions Code section 17200 et seq. arising from the facts and/or theories asserted in the Action, as well as for claims for attorneys' fees, costs, interest, restitution, injunctive or equitable relief, and any other remedies available at law or equity arising from the facts and/or theories asserted in the Action. For individuals employed during the period from November 17, 2019 through April 26, 2021, the release includes, for the duration of the that period, all claims released during the Class Period, as well as all asserted PAGA claims for penalties under PAGA arising out of Labor Code sections 210, 226.3, 558, 1197.1, and 2699 based on the facts and/or theories alleged to have been violated in the First Amended Complaint, which includes, without limitation, Labor Code sections 200, 201, 202, 203, 204, 226, 227.3, 404, 432, 510, 1174, 1194, 1197, 1198, 1198.5, 2802, and 2810.5.

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

**Questions? Contact the Settlement Claims Administrator toll free at [PHONE NUMBER]**

### Option 2 – Opt Out of the Settlement

If you do not wish to participate in the Settlement, you may exclude yourself by submitting a written request to be excluded from the Class. Your written request must expressly and clearly indicate that you do not want to participate in the Settlement, and you desire to be excluded from the ~~“Please exclude me from the Settlement Class in the Salvador Rincon v. New-Indy Tripaq matter” or something to that effect that you do not want to participate in the Settlement, and you desire to be excluded from the Settlement.~~ The written request for exclusion must include your name, address, the last four digits of your Social Security Number, and signature. Sign, date, and mail your written request for exclusion by U.S. First-Class Mail or facsimile to the address below.

#### [Settlement Administrator]

The written request to be excluded from the Settlement must be postmarked or received by the Administrator not later than [RESPONSE DEADLINE]. If you exclude yourself from the Settlement then you will get no payment, and retain your legal rights to pursue claims that would otherwise be released by the settlement of the Lawsuit. A Class Member however cannot opt out of the settlement of the PAGA claim and, should settlement of the PAGA claim be approved, a qualifying employee will receive a PAGA Payment whether or not they opt out of from the Settlement.

### Option 3 – File an Objection to the Settlement

If you wish to object to the Settlement, you may file a written objection stating why you object to the Settlement. Your written objection must provide the case name and number, your full name, address, the last four digits of your Social Security Number and/or employee ID, your reasons why you think the Court should not approve the Settlement, along with any legal authority, if any, you assert supports your objection, and your signature. Your written objection must be mailed to the Administrator no later than [RESPONSE DEADLINE]. However, even if you do not object in writing, you or your attorney may appear, at your own expense, at the Final Fairness and Approval Hearing to object to, or comment on, the Settlement. Please note that you cannot both object to the Settlement and exclude yourself. If the Court overrules your objection, you will be bound by the Settlement and will receive your Settlement Share.

#### Final Fairness Hearing

You may, if you wish, also appear at the Final Fairness and Approval Hearing set for [REDACTED] at [REDACTED].m. in Department 17 of the [COURTHOUSE NAME] Spring Street Courthouse of the Los Angeles Superior Court, located at [COURTHOUSE ADDRESS], 312 N. Spring Street, Los Angeles, California, 90012, and raise or discuss your objections with the Court and the Parties at your own expense. You may also retain an attorney to represent you at the Hearing at your own expense.

Due to the COVID-19 pandemic, hearings ~~are may currently being~~ conducted remotely through LACourtConnect. Class Members who wish to appear at the ~~final fairness hearing~~ Final Fairness and Approval Hearing ~~should may~~ contact Class Counsel to arrange a telephonic appearance through LACourtConnect, at least three days before the hearing if possible. Any CourtCall fees for an appearance by an objecting ~~class member~~ Class Member will not be paid by ~~class Class counsel~~ Counsel.

Questions? Contact the Settlement Claims Administrator toll free at [PHONE NUMBER]

**Additional Information**

This Notice of Class Action Settlement is only a summary of this case and the Settlement. For a more detailed statement of the matters involved in this case and the Settlement, you may visit [www.\\_\\_\\_\\_\\_.com](http://www._____.com), call the Settlement Administrator at [PHONE NUMBER] or Class Counsel:

BIBIYAN LAW GROUP, P.C.  
David D. Bibiyan  
[david@tomorrowlaw.com](mailto:david@tomorrowlaw.com)  
Diego Aviles (Spanish speaker)  
[diego@tomorrowlaw.com](mailto:diego@tomorrowlaw.com)  
8484 Wilshire Boulevard, Suite 500  
Beverly Hills, California 90211  
Telephone: (310) 438-5555  
Facsimile: (310) 270-9601

You may also refer to the pleadings, the Settlement Agreement, and other papers filed in this case, which may be inspected at the Office of the Clerk of the Los Angeles Superior Court, located at [ADDRESS], during regular business hours of each court day.

All inquiries by Class Members regarding this Notice of Class Action Settlement and/or the Settlement should be directed to the Settlement Administrator.

**PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE,  
DEFENDANTS, OR DEFENDANTS' ATTORNEYS WITH INQUIRIES.**

**Questions? Contact the Settlement Claims Administrator toll free at [PHONE NUMBER]**



**BIBIYAN LAW GROUP**, P.C.

8484 Wilshire Blvd., Suite 500  
Beverly Hills, California, 90211  
310.438.5555 T  
310.300.1705 F  
[www.employmentlawyerla.com](http://www.employmentlawyerla.com)

November 17, 2020

**PAGA NOTICE FILED ELECTRONICALLY**

Re: Notice Letter of Saul Ernesto Cedillos on Behalf of Himself and Aggrieved Employees Under California Labor section 2699.3

Employer: New-Indy Tripaq, LLC  
16069 Shoemaker Avenue  
Cerritos, CA 90703

Montebello Container Company LLC  
One Patriot Place  
Foxborough, MA 02035

Proactive Packaging and Display, Inc.  
602 S. Rockefeller Ave.  
Ontario, CA 91761

To Whom It May Concern:

This letter shall constitute notice under Labor Code section 2699.3 (hereinafter “PAGA Notice”). The \$75 filing fee for the PAGA Notice was paid online by credit card at the time this PAGA Notice was submitted online to the Department of Industrial Relations.

This PAGA Notice concerns Saul Ernesto Cedillos’s (“Employee”) employment with Employee’s former employer: New-Indy Tripaq, LLC (“New-Indy”), Proactive Packaging and Display, Inc. (“Proactive”), and Motebello Container Company LLC (“Motebello” and collectively with New-Indy and Proactive, “Employers”). Employee was employed as a non-exempt employee of Employer, with duties that included, but were not limited to, machinery maintenance from approximately July of 2020 and through approximately October of 2020. In connection with the alleged claims for failure to comply with, without limitation, Labor Code section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 246, *et seq.*, Labor Code section 2802, restraints on competition, whistleblowing and freedom of speech, Employee seeks to represent all employees of Employer. With all other claims mentioned herein, Employee seeks to represent only non-exempt employees of Employer.

Employee and other aggrieved employees are covered by Labor Code section 510 and applicable Wage Orders. Employee is informed and believes, and based thereon alleges, that Employer had and has a policy or practice of requiring its employees to work more than eight (8) hours per day, forty (40) hours per week, and/or seven (7) straight workdays in a workweek without paying them proper overtime wages, as a result of, without limitation, failing to accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees: to come early to work and

leave late work without being able to clock in for all that time, to suffer under Employer's control due to long lines for clocking in, to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue working, to clock out for rest periods, to don and doff uniforms and/or safety equipment off the clock, to attend company meetings off the clock, to make phone calls or drive off the clock; failing to include all forms of remuneration, including non-discretionary bonuses, incentive pay, meal allowances, and other forms of remuneration into the regular rate of pay for the pay periods where overtime was worked and the additional compensation was earned for the purpose of calculating the overtime rate of pay; detrimental rounding of employee time entries, editing and/or manipulation of time entries to show less hours than actually worked, and for paying straight pay instead of overtime pay to the detriment of Employee and other aggrieved employees. Consequently, Employee is informed and believes, and based thereon alleges, that Employer violated Labor Code sections 510, 1194, and applicable Wage Orders based on its practice of providing total compensation that is less than the required legal overtime compensation for the overtime worked, entitling Employee and other aggrieved employees to damages. Employer would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

Employee is informed and believes, and based thereon alleges, that Employer had and has a practice or policy of failing to compensate Employee and other aggrieved employees with minimum wages for all hours worked or otherwise under Employer's control as a result of, without limitation, failing to accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees: to come early to work and leave late work without being able to clock in for all that time, to suffer under Employer's control due to long lines for clocking in, to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue working, to clock out for rest periods, to don and doff uniforms and/or safety equipment off the clock, to attend company meetings off the clock, to make phone calls or drive off the clock; detrimental rounding of employee time entries; editing and/or manipulation of time entries to show less hours than actually worked; failing to pay reporting time pay; and failing to pay split shift premiums. As such, Employee is informed and believes, and based thereon alleges, that Employer violated, without limitation, Labor Code section 1197 and applicable Wage Orders based on its continued failure to pay minimum wages for all hours worked, entitling Employee and other aggrieved employees to actual and liquidated damages under, without limitation, Labor Code sections 1194 and 1194.2. Employer would also be liable for civil penalties pursuant to Labor Code sections 558, 1197.1, and 2699.

Employee is informed and believes, and based thereon alleges, that Employer had and has a policy or practice of compelling its employees to work in excess of five (5) and ten (10) hours per day without being afforded uninterrupted, timely, and complete 30-minute meal periods or compensation in lieu thereof including, without limitation: by interrupting meal periods; not providing timely meal periods; failing to provide first and second meal periods; providing short meal periods; requiring that employees carry cellular telephones or walkie-talkies during meal periods; not permitting employees to leave the premises; otherwise requiring on-duty/on-call meal periods; and auto-deducting meal periods that could not be auto-deducted by law or during which

employees worked. Consequently, Employee is informed and believes, and based thereon alleges, that Employer violated Labor Code section 512, entitling Employee and other aggrieved employees to premium payments under Labor Code section 226.7. However, Employee is informed and believes that those premium payments under Labor Code section 226.7 were not made, either, for these non-compliant meal periods. Employer would thus be liable for civil penalties pursuant to Labor Code sections 558 and 2699 for both failing to authorize the taking of compliant meal periods, as well as for failing to provide premium pay under Labor Code section 226.7.

Employee is informed and believes, and based thereon alleges, that Employer maintains policies or practices of compelling its non-exempt employees, including, without limitation, Employee, to work over four-hour periods (or major fractions thereof) without authorizing and permitting Employee and other aggrieved employees to take uninterrupted, timely, and complete ten-minute rest periods in which the employees are completely relieved of all of their duties, including, without limitation: by failing to provide rest periods all together; requiring that they be bundled together and/or with meal periods; interrupting them; requiring that employees carry cellular telephones or walkie-talkies during rest periods not providing them in a timely fashion; and not permitting employees to leave the premises; and otherwise requiring on-duty/on-call rest periods. As such, Employee is informed and believes, and based thereon alleges, that Employee and other aggrieved employees are entitled to relief under, without limitation, Labor Code section 226.7. However, Employee is informed and believes that those premium payments under Labor Code section 226.7 were not made, either, for these non-compliant rest periods. Employer would thus be liable for civil penalties pursuant to Labor Code sections 558 and 2699 for both failing to authorize the taking of compliant rest periods, as well as for failing to provide premium pay under Labor Code section 226.7.

Employee is informed and believes, and based thereon alleges, that Employer maintains policies or practices of failing to permit Employee and other aggrieved employees from taking cooldown rest periods in the shade as required under California Code of Regulations, Title 8, Section 3395 and premium pay in lieu thereof under Labor Code section 226.7. As a result, Employer would be liable for civil penalties under Labor Code sections 558 and 2699.

In addition to the above, Employee is informed and believes, and based thereon alleges that Employer failed and continue to fail to keep adequate or accurate time records including wage statements and similar payroll documents under Labor Code section 226, documents signed to obtain or hold employment under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records under Labor Code section 1174, making it difficult for Employee and other aggrieved employees to calculate their unpaid wages and/or premium payments. Employer also failed to provide these documents to Employee and other aggrieved employees upon request. This would entitle Employee and other aggrieved employees to penalties prescribed by Labor Code sections 226 and 1198.5. Employer would also be liable for civil penalties pursuant to Labor Code sections 558, 1174.5 and 2699.

As a result of, among other things, Employer's herein-described policy or practice of failing to: accurately record time; failing to pay overtime and minimum wages; provide meal periods; provide rest periods; and provide compensation in lieu of meal or rest periods; as described above, Employee is informed and believes, and based thereon alleges, that Employer also intentionally failed and continues to fail to furnish aggrieved employees, including, without limitation, Employee, with itemized wage statements that accurately reflect: gross wages earned; total hours worked by the employee; net wages earned; all deductions; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee; the legal name and address of the other; and other such information as required by Labor Code section 226, subdivision (a). Specifically, Employer intentionally failed to furnish employees with itemized wage statements that accurately reflect the hours worked by Mr. Cedillos and other aggrieved employees and the rates of pay at which they were or should have been paid, thus resulting in a failure to reflect gross and net wages earned and paid at each rate, as well. Consequently, since Employer would have failed to comply with Labor Code section 226, subdivision (a), Employee and other aggrieved employees would be entitled to recover penalties under, without limitation, Labor Code section 226, subdivision (e). Employer would also be liable for civil penalties pursuant to Labor Code sections 226.3, 558, and 2699.

Employee is informed and believes, and based thereon alleges, that Employer also failed and refused, and continue to fail and refuse, to timely pay compensation to Employee and other terminated or resigned employees, including but not limited to, all overtime wages owed; all minimum wages owed; and all premium pay owed as set out above. Consequently, Employer would be liable for waiting time penalties for having violated California Labor Code sections 201, 202, and 203. Employer would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

Employee is further informed and believes, and based thereon alleges that Employer failed and refused, and continues to fail and refuse, to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft Protection Act of 2011) by, among other things, failing to provide Employee and other aggrieved employees with the rates of pay and overtime rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the regular payday designated by Employer, the name of the employer, including any "doing business as" names used, the name, address and telephone number of the workers' compensation insurance carrier, information regarding paid sick leave, and other pertinent information required to be disclosed by Employer under Labor Code section 2810.5. Employee is informed and believes that failure to provide such information, including rates of pay that are in effect, has permitted Employer to pay employees at rates of pay that were not agreed upon and violate minimum wage and overtime wage laws in California. Among other relief, employees may collect from Employer in connection with these violations' civil penalties pursuant to Labor Code sections 558 and 2699.

Employee is informed and believes, and based thereon alleges that Employer also failed and refused, and continues to fail and refuse, to reimburse employees, including, without limitation, Employee and other aggrieved employees, with their costs incurred for driving personal vehicles (*i.e.*, mileage and gas), purchasing uniforms, providing uniform and other deposits,

separately laundering mandatory uniforms, for the purchase of tools and safety equipment, including, without limitation, an impact gun, drill bits, drills, and for the purchase and maintenance of cellular phones and cellular phone plans, in direct consequence of the discharge of their duties, or of their obedience to the directions of Employer, as required by Labor Code section 2802, and other statutory and common law offenses. As a result, Employer are liable to reimburse Employee and other aggrieved employees for these costs incurred in furtherance of work duties. In addition, Employer would be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

Employee is further informed and believes, and based thereon alleges, that Employer has or had a policy or practice of failing to reimburse deposits made, including uniform deposits together with all interest owed at the separation of employment in violation of Labor Code section 404, entitling Employee and other aggrieved employees to damages in the amount of the deposit and accrued interest. Employer would also be liable for civil penalties under Labor Code sections 558 and 2699.

Employee is further informed and believes, and based thereon alleges, that Employer has or had a policy or practice of failing to provide Employee and other aggrieved employees with the amount of paid sick leave required to be provided pursuant to California and local laws (including, without limitation, Labor Code section 246, *et seq.*, and, when applicable, Los Angeles Municipal Code section 187.01 *et seq.*). Employee is further informed and believes that Employer also did not permit its use upon request by Employee and other aggrieved employees as contemplated under California and local laws. As such, Employer would be liable for civil penalties for violation of the paid sick leave regulations under Labor Code sections 558 and 2699.

Employee is informed and believes, and based thereon alleges that Employer had and has a policy or practice of failing to pay aggrieved employees their paid time off and vacation time owed upon separation of employment as wages at their final rate of pay in violation of Labor Code section 227.3 and applicable Wage Orders. As such, Employer would be liable for civil penalties for violation of Labor Code section 227.3 under Labor Code section 558 and 2699.

Employee is informed and believes, and based thereon alleges that Employer had and has a policy or practice of failing to pay aggrieved employees their wages in accordance with Labor Code Section 204, which requires that: “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive of any calendar month, shall be paid for between the 1st and 10th day of the following month.” Employee is informed and believes and based thereon alleges that Employer did not and do not pay Employee and other aggrieved employees in accordance with Labor Code Section 204. As such, Employee is informed and believes, and based thereon alleges that Employer violated Labor Code section 204. Employer would be liable for civil penalties pursuant to Labor Code sections 210, 558 and 2699.

Employee is informed and believes, and based thereon alleges that Employer had and has a policy or practice of failing to pay Employee and other aggrieved employees their wages in accordance with Labor Code section 203.1, which requires an employer, who has paid an employee in the regular course of their employment wages by check, and that payment on the check is refused because the account has insufficient funds, to pay those wages as a penalty from the due date thereof at the same rate until paid, but not more than 30 days. As a result, Employee and other aggrieved employees have incurred fees and have had to wait longer times for replacement checks (if any) to be issued, all to the detriment of Employee and other aggrieved employees. Thus, Employee is informed and believes, and based thereon alleges that Employer violated Labor Code section 203.1. Employer would also be liable for civil penalties pursuant to Labor Code sections 210, 558 and 2699.

Employee is informed and believes, and based thereon alleges that Employer had and has a policy or practice of preventing Employee and/or other aggrieved employees from using or disclosing the skills, knowledge and experience they obtained at Employer for purposes of competing with Employer, including, without limitation, preventing Employees from disclosing their wages in negotiating a new job with a prospective employer, and from disclosing who else works at Employer and under what circumstances that they might be receptive to an offer from a rival employer. As such, Employee is informed and believes that this violates Business and Professions Code sections 17200, 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor Code sections 232, 232.5, and 1197.5, subdivision (k). Employer would be liable for civil penalties pursuant to Labor Code section 2699.

Employee is informed and believes, and based thereon alleges that Employer had and has a policy or practice of preventing Employee and/or other aggrieved employees from disclosing violations of state and federal law, either within Employer to their managers or outside Employer to private attorneys or government officials, among others, in violation of Business and Professions Code section 17200, and, thus, in violation of Labor Code section 1102.5. In addition, Employee is informed and believes that these policies and/or practices prevent Employee and/or other aggrieved employees from disclosing information about unsafe or discriminatory working conditions, or about wage and hour violations in violation of Labor Code section 232 and 232.5. These violations of the Labor Code would expose Employer to liability for civil penalties pursuant to Labor Code section 2699.

Employee is informed and believes, and based thereon alleges that Employer had and has a policy or practice of preventing Employee and/or other aggrieved employees from engaging in lawful conduct during non-work hours, thus violating state statutes entitling employees to disclose wages, working conditions, and illegal conduct, including, without limitation, Labor Code sections 96, subdivision (k), 98.6, 232, 232.5, and 1197.5, subdivision (k). Employee is informed and believes that this lawful conduct includes the exercise of Employee and/or other aggrieved employee's constitutional rights of freedom of speech and economic liberty and would thus expose Employer to liability for civil penalties pursuant to Labor Code section 2699.

California Labor and Workforce Development Agency  
November 17, 2020  
Page 7

Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), please advise within sixty-five (65) calendar days of the postmarked date of this notice whether the LWDA intends to investigate the violations alleged above. Our office understands that if we do not receive a response within sixty-five (65) calendar days of the postmark date of this PAGA Notice that the LWDA intends to investigate these allegations, Employee may immediately thereafter file a civil complaint against Employer to allege causes of action for civil penalties under the Private Attorney General Act for the herein-described alleged violations of the Labor Code.

Very truly yours,

BIBIYAN LAW GROUP, P.C.

/s/ Diego Aviles  
Diego Aviles

cc: Montebello Container Company LLC (via U.S. Certified Mail, Return Receipt Requested)  
New-Indy Tripaq, LLC (via U.S. Certified Mail, Return Receipt Requested)  
Proactive Packaging and Display, Inc. (via U.S. Certified Mail, Return Receipt Requested)



Search all conversations



28

## Thank you for your Proposed Settlement Submission External



**DIR PAGA Unit** lwdadonotreply@dir.ca.gov via formassembly.com  
to me

11/19/2021 04:52:52 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to [paga](#)

DIR PAGA Unit on behalf of  
Labor and Workforce Development Agency

Website: [http://labor.ca.gov/Private Attorneys General Act.htm](http://labor.ca.gov/Private_Attorneys_General_Act.htm)

Reply

Forward

**BIBIYAN LAW GROUP, P.C.**

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Attorneys for Plaintiffs, SALVADOR RINCON and  
SAUL ERNESTO CEDILLOS, on behalf of  
themselves and all others similarly situated and aggrieved

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

SALVADOR RINCON and SAUL  
ERNESTO CEDILLOS, on behalf of  
themselves and all others similarly situated  
and aggrieved

Plaintiffs,

v.

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

[Assigned to the Hon. Maren Nelson in Dept. 17]

**DECLARATION OF JODEY LAWRENCE  
ON BEHALF OF SETTLEMENT  
ADMINISTRATOR IN SUPPORT OF  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT**

HEARING INFORMATION:

DATE: April 11, 2022

TIME: 9:00 am

DEPT: 17



1 mailing is returned as undeliverable, the Settlement Administrator will attempt to obtain a current  
2 address for the Settlement Class Member to whom the returned Class Notice Packet had been mailed  
3 by undertaking skip tracing. If the Settlement Administrator is successful in obtaining a new address,  
4 it will promptly re-mail the Class Notice Packet to the Settlement Class Member. Further, any Class  
5 Notice Packets that are returned to the Settlement Administrator with a forwarding address before  
6 the Response Deadline shall be promptly re-mailed to the forwarding address affixed thereto.

7         9.       PSA has been appointed as a Settlement Administrator in both State and Federal  
8 Courts.

9         10.       A true and correct copy of PSA's Curriculum Vitae is attached hereto as Exhibit A.

10        11.       Phoenix Settlement Administrators has adequate procedure in place to safeguard the  
11 data and funds to be entrusted to it. PSA's Technology and Banking groups are directly involved  
12 with Management on all issues of Information Security and Settlement Fund transfer, as it pertains  
13 to the continuance of business processes, and all risk, vulnerability, security and assessments as it  
14 pertains to information. The group, along with internal systems in place, monitor and communicate  
15 with Management on a Preventative and comprehensive level, in order to prevent potential Strategic  
16 or Compliance Risks. All processing of confidential and personal information is handled and  
17 maintained within the organization and therefore all data received is kept within a strict chain of  
18 custody internally. All informational assets are classified and assigned based on initial case  
19 assessment, client and procedural requirements. The Technology Group handles all higher-level  
20 ownership of information and physical peripherals, as well as ownership of direct / indirect assets  
21 associated with technology and the continuance of business, Specific Users, Groups or Entities are  
22 assigned Shared Ownership or Management Capability based on procedural needs, and security  
23 level granted.

24        12.       In addition to high levels of Data Center Policies/Procedures and  
25 Facility/Maintenance Security Protocols, PSA's conducts semiannual training to maintain additional  
26 safeguards such as:

- 27         a.       Phoenix Settlement Administration Business Continuity Policy
- 28         b.       Phoenix Settlement Administration Disaster Recovery Plan

- 1 c. Phoenix Settlement Administration Incident Response Plan
- 2 d. Phoenix Settlement Administration Personal Computer Security Policy
- 3 e. Phoenix Settlement Administration Phoenix Data Archiving and Retention Policy
- 4 f. Phoenix Settlement Administration Phoenix Personnel Security Policy
- 5 g. Phoenix Settlement Administration Risk Assessment
- 6 h. Phoenix Settlement Administration Service Provider Risk Assessment
- 7 i. Phoenix Settlement Administrator Classification and Access Rights Policy
- 8 j. Phoenix Settlement Administrator Password Policy
- 9 k. Phoenix Settlement Administrators Certification of Destruction
- 10 l. Phoenix Settlement Administrators Security Awareness Training Program.
- 11 13. PSA currently maintains an errors and omissions insurance policy, which
- 12 includes a data breach provision.
- 13 14. PSA costs are reasonable and competitive when compared to the industry.
- 14 15. PSA only employs a certified and/or qualified translator to translate Court-
- 15 approved Notices for postings on PSA's website for dissemination to the Class.
- 16 16. To complete the Settlement Administration for Maria Salvador Rincon and Saul
- 17 Ernesto Cedillos v. New-Indy Tripaq, LLC, the Settlement Administration will include hard cost
- 18 and hourly costs detailed below:
- 19 • Hard Cost: Postage, Printing Supplies, Toll Free Setup, QSF Bank Setup, NCOA,
- 20 Skip Tracing, Re-Mail and Translation costs.
- 21 • Hourly Cost: The hourly rates include Programming Database & Setup, Project
- 22 Management, Notice Packet Formatting, Programming Undeliverable, Programming Claims
- 23 Database, Programming Calculations, Disbursement Review, Printing of Notice & Checks,
- 24 Reconcile Uncashed Checks, Conclusion Reports, Potential Tax Filing and Case
- 25 Management/Maintenance.
- 26 17. Having factored in the hard and hourly cost, the settlement administration for this
- 27 project has a Will Not Exceed Fee of \$10,000.00. A detailed breakdown of PSA's cost is attached
- 28 hereto as Exhibit B.

1 I declare under penalty of perjury under the laws of the United States and state of California  
2 that the foregoing is true and correct.

3 Executed on March 14, 2022, at Orange, California.

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Jodey Lawrence

## EXHIBIT A



CLASS ACTION SETTLEMENT SOLUTIONS

1411 N. Batavia, Suite 105 Orange, CA 92867

800-523-5773

[www.phoenixclassaction.com](http://www.phoenixclassaction.com)

## CURRICULUM VITAE

### Phoenix Settlement Administrators. PSA Overview

Phoenix Settlement Administrators, PSA, is an emerging, National, Class Action Notification and Claims Administration firm, located in San Diego and Newport Beach California. PSA's core competencies ensure delivery of the highest quality and accuracy to its Clients and Class members. With a combined 28 years of expert experience, PSA's Managing Partners, Case Supervisors, Managers and Associates, Data Programming, and Certified Secure Strategic Partners, possess all the qualities that our Clients expect throughout the Noticing and Administration process, to Final Approval. It is our Value Pricing, Efficiency, Experience, Consultative Expertise and Delivery, that has perpetuated PSA, as an emerging leader in Class Action Settlement Administration. Expert PSA staff members are currently managing, Consumer and Product Liability, TCPA, Complex Labor & Employment, FLSA, ERISA and PAGA cases.

PSA has over 100 Attorney & Law Firm Clients, which have entrusted us with the management of their claim's administration, because of the "Boutique" attention every case receives. PSA is value driven on all size cases. large or small, cases receive expert management, secure data custody, neutral communication and a dedicated team. This seamless process maintains superior case continuity to ensure our clients receive timely final approval and conclusion to their actions. Phoenix Settlement Administrators implements its successful C.A.S.E. solutions on all our class action matters.

With 10's of Millions of dollars in award distributions currently under management since our inception, PSA has the ability and strengths to manage all levels of Complex Cases. PSA's Staff "Synergy" is our greatest attribute. It allows our people to work closely together and solve our client's case issues. PSA prides itself as a true "Third Party Administrator" and holds Neutrality as a mantra. Because of this approach, both Defense and Plaintiff Clients, experience fairness, trust and confidence in us, and allows for continued business from both parties. PSA has been appointed Third Party Administrator in State and Federal Courts.

We look forward to working with you on your next Class Action Noticing Campaign or Claims Administration. Let us design a C.A.S.E. solution, which will allow us to showcase the difference you'll experience. Superior Service, Class Savings Value Pricing and Timely Outcomes is why our clients come back to PSA.



**PHOENIX**  
SETTLEMENT ADMINISTRATORS

CLASS ACTION SETTLEMENT SOLUTIONS

### Expert Core Services

Initial Planning and Consultative Service on Class Action Cases and Noticing Plans.

State/Nationwide Noticing Expertise: Privacy, Media, Publication, Internet & Email Campaigns.

Attorney General(s) CAFA Notification

Claims Programming, Administration, Processing and Reporting.

24/7/365 Multi-Lingual Call Center Support and Claims Processing

Secure Data Management Environment, Individual Firewalls, Encrypted Data and Storage

Settlement Fund Calculations, Solutions, Award Distribution, Award Reconciliation

Tax Filings: State, Federal, EDD, ETT, FUTA, PAGA Payments

### Partial PSA Client List, Defense and Plaintiff

Fisher & Phillips  
Gordon & Rees  
Paul Plevin Sullivan & Connaughton  
Call & Jensen  
Drinker Biddle  
McKenna Long & Aldridge  
Greenberg Traurig  
Manning & Kass  
Littler Mendelson  
Kring & Chung  
Orrick Herrington & Sutcliffe  
Ogletree Deakins Nash Smoak & Stewart  
Perkins Coie  
Ross Wersching & Wolcott  
Winston & Strawn  
Sheppard Mullins  
Lewis Brisbois Bisgaard & Smith  
Morgan Lewis & Bockius  
Paul Hastings  
Park & Zheng  
Sidley Austin  
Higgs Fletcher & Mack  
Jackson Lewis  
Norton Rose Fulbright

Law Offices of Jonathan Ricasa  
Dente Law Firm  
Mahoney Law Group  
Law Office of Thomas Rutledge  
Law Office of Briana Kim  
Dychter Law Firm  
Garay Law Firm  
Olsen Law Offices  
Gould & Associates  
Cohelan, Khoury & Singer  
Ridout, Lyon & Ottoson  
Carter Law Firm  
Law Office of Justian Jusuf  
The Phelps Law Group  
The Emilio Law Group  
Zeldes, Haeggquist & Eck  
Markham Law Firm  
Arias Ozzello & Gignac  
David Yeremian & Associates  
Aegis Law Firm  
Rukin Hyland Doria & Tindall  
Malk Law Firm  
Spiro Law Corp  
Levine Law Group, APC

Phoenix Settlement Administrators 411 N. Batavia, Suite 105 Orange, CA 92867

Phone: 800-784-2174 Fax: 619.338.0308

[www.psaaction.com](http://www.psaaction.com)

## EXHIBIT B



#### CASE ASSUMPTIONS

|                       |             |
|-----------------------|-------------|
| Class Members         | 650         |
| Opt Out Rate          | 1%          |
| Opt Outs Received     | 7           |
| Total Class Claimants | 644         |
| Subtotal Admin Only   | \$10,000.00 |

**WILL NOT EXCEED \$10,000.00**

**For 650 Class Members**

Price good for scope of quote

**July 16, 2021**

### Case: Rincon v. New-Indy Opt-Out wLanguage Administration

Phoenix Contact: Jodey Lawrence

Contact Number: 949.566.1455

Email: Jodey@phoenixclassaction.com

Requesting Attorney: David D. Bibiyan

Firm: Bibiyan Law Group, P.C.

Contact Number: (310) 438-5555

Email: david@tomorrowlaw.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PSA will need to adjust this Estimate accordingly.

Estimate is based on 650 Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable additional formatting needed. A rate of \$150 per hour will be charged for any additional analysis or programming.

| Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)/ Spanish Translation / Website |            |              |           |                   |
|----------------------------------------------------------------------------------------------------|------------|--------------|-----------|-------------------|
| Administrative Tasks:                                                                              | Rate       | Hours/Units  | Line Item | Estimate          |
| Programming Manager                                                                                | \$125.00   | 2            |           | \$250.00          |
| Programming Database & Setup                                                                       | \$125.00   | 2            |           | \$250.00          |
| Toll Free Setup*                                                                                   | \$128.57   | 1            |           | \$128.57          |
| Call Center & Long Distance                                                                        | \$1.25     | 65           |           | \$81.25           |
| NCOA (USPS)                                                                                        | \$100.00   | 1            |           | \$100.00          |
| Language Translation                                                                               | \$1,000.00 | 1            |           | \$1,000.00        |
|                                                                                                    |            | <b>Total</b> |           | <b>\$1,809.82</b> |

\* Up to 120 days after disbursement

| Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage |          |              |                    |
|-------------------------------------------------------------|----------|--------------|--------------------|
| Project Action                                              | Rate     | Hours/Units  | Line Item Estimate |
| Notice Packet Formatting                                    | \$100.00 | 3            | \$300.00           |
| Data Merge & Duplication Scrub                              | \$0.15   | 650          | \$97.50            |
| Notice Packet & Opt-Out Form                                | \$1.50   | 650          | \$975.00           |
| Estimated Postage (up to 2 oz.)*                            | \$0.70   | 650          | \$455.00           |
|                                                             |          | <b>Total</b> | <b>\$1,827.50</b>  |

\* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



# PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

## Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

| Project Action:             | Rate    | Hours/Units | Line Item Estimate |
|-----------------------------|---------|-------------|--------------------|
| Case Associate              | \$50.00 | 4           | \$200.00           |
| Skip Tracing Undeliverables | \$1.00  | 130         | \$130.00           |
| Remail Notice Packets       | \$1.50  | 130         | \$195.00           |
| Estimated Postage           | \$0.70  | 130         | \$91.00            |
| Programming Undeliverables  | \$50.00 | 2           | \$100.00           |
| Total                       |         |             | \$716.00           |

## Database Programming / Processing Opt-Outs, Deficiencies or Disputes

| Project Action:                     | Rate     | Hours/Units | Line Item Estimate |
|-------------------------------------|----------|-------------|--------------------|
| Programming Claims Database         | \$100.00 | 3           | \$300.00           |
| Non Opt-Out Processing              | \$150.00 | 1           | \$150.00           |
| Case Associate                      | \$55.00  | 3           | \$165.00           |
| Opt-Outs/Deficiency/Dispute Letters | \$8.50   | 16          | \$8.50             |
| Case Manager                        | \$85.00  | 2           | \$170.00           |
| Total                               |          |             | \$793.50           |

## Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

| Project Action:                       | Rate     | Hours/Units | Line Item Estimate |
|---------------------------------------|----------|-------------|--------------------|
| Programming Calculations              | \$100.00 | 2           | \$200.00           |
| Disbursement Review                   | \$100.00 | 2           | \$200.00           |
| Programming Manager                   | \$7.00   | 2           | \$14.00            |
| QSF Fees, Bank Account & EIN 3 Yrs    | \$75.00  | 3           | \$225.00           |
| Check Run Setup & Printing            | \$100.00 | 2           | \$200.00           |
| Mail Class Checks, W2 and 1099 *      | \$1.50   | 644         | \$965.25           |
| Estimated Postage Checks, W2 and 1099 | \$0.55   | 644         | \$353.93           |
| Total                                 |          |             | \$2,158.18         |

\* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



# PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

| Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations                                                           |            |             |                    |
|--------------------------------------------------------------------------------------------------------------------------------------------------------|------------|-------------|--------------------|
| Project Action:                                                                                                                                        | Rate       | Hours/Units | Line Item Estimate |
| Case Supervisor                                                                                                                                        | \$100.00   | 2           | \$200.00           |
| Remail Undeliverable Checks<br>(Postage Included)                                                                                                      | \$1.50     | 20          | \$30.00            |
| Case Associate                                                                                                                                         | \$50.00    | 3           | \$150.00           |
| Reconcile Uncashed Checks                                                                                                                              | \$75.00    | 3           | \$225.00           |
| Conclusion Reports                                                                                                                                     | \$100.00   | 2           | \$200.00           |
| Case Manager Conclusion                                                                                                                                | \$70.00    | 2           | \$140.00           |
| Final Reporting & Declarations                                                                                                                         | \$125.00   | 2           | \$250.00           |
| IRS & QSF Annual Tax Reporting *<br>(State Tax Reporting Included)                                                                                     | \$1,500.00 | 1           | \$1,500.00         |
| Total                                                                                                                                                  |            |             | \$2,695.00         |
| * All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility. |            |             |                    |
| Estimate Total:                                                                                                                                        |            |             | \$10,000.00        |



# PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

## **TERMS AND CONDITIONS**

**Provisions:** The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

**Data Conversion and Mailing:** The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

**Claims:** PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are \$10.00 per opt-out.

**Payment Terms:** All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

### **Tax Reporting Requirements**

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

1 **BIBIYAN LAW GROUP, P.C.**

David D. Bibiyán (SBN 287811)

2 *david@tomorrowlaw.com*

Diego Aviles (SBN 315533)

3 *diego@tomorrowlaw.com*

8484 Wilshire Blvd., Suite 500

4 Beverly Hills, California 90211

Tel: (310) 438-5555; Fax: (310) 300-1705

5 Attorneys for Plaintiffs, SALVADOR RINCON and  
6 SAUL ERNESTO CEDILLOS, on behalf of  
7 themselves and all others similarly situated and aggrieved

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

10 SALVADOR RINCON and SAUL  
11 ERNESTO CEDILLOS, on behalf of  
12 themselves and all others similarly situated  
and aggrieved,

13 Plaintiffs,

14 v.

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

19 Defendants.

CASE NO.: 20STCV17118

[Assigned to the Hon. Maren Nelson in Dept.  
17]

**DECLARATION OF SALVADOR  
RINCON IN SUPPORT OF PLAINTIFFS'  
MOTION FOR PRELIMINARY  
APPROVAL OF SETTLEMENT**

HEARING INFORMATION:

DATE: April 11, 2022

TIME: 9:00 am

DEPT: 17

**DECLARATION OF SALVADOR RINCON**

I, Salvador Rincon, state and declare, as follows:

1. I am a party to this action. I am fully competent to make this declaration. I have personal knowledge of the facts set forth herein, except for those stated on information and belief, and as to those I am informed and believe them to be true. If called upon to testify, I could and would testify as set forth herein.

2. I make this Declaration in support of Plaintiffs' Motion for Preliminary Approval of Class Action and Representative Action Settlement.

3. I was employed by defendants New-Indy Tripaq, LLC, Triple A Containers, Inc. McDonald Packaging, Inc., Proactive Packaging and Display, Inc. and Montebello Container Company LLC, (collectively, "Defendants"), who I believe are joint employers, as a non-exempt, hourly-paid employee, with assembler duties that included, but were not limited to, assembling wooden components for packaging, from approximately February of 2010 through approximately May of 2017.

4. During my employment with Defendants, I believe I was not paid for all time worked because I had to wait in line to clock into Defendant's timeclock and I was required to begin work prior to the start of my shift time when there were large orders. I believe I was also paid at the incorrect rate of pay because I was paid at a regular rate of pay when I worked more than 40 hours in a weekly pay period, instead of an overtime rate of pay. I brought this action to recover any unpaid wages for myself and others who were also not paid for all time worked due to Defendants' practices.

5. During my employment with Defendants, I often took meal periods that were after the fifth hour, short, or not duty-free because, among other reasons, I was not allowed to leave Defendants' premises during my meal period. I also recall not being provided an opportunity to take a second meal period. I witnessed other non-exempt employees often taking meal periods that were after the fifth hour, short, or not duty-free, as well.

6. I was often not provided with an opportunity to take a full, uninterrupted, and duty-free 10-minute rest period every four hours or major fraction thereof during my employment with

1 Defendants because, among other things, I was not allowed to leave Defendants' premises during  
2 my rest period and was not allowed to take my rest period at my workstation. I believe my  
3 coworkers were also not afforded the opportunity to take full, uninterrupted, duty-free rest periods,  
4 either.

5 7. I do not recall receiving any premium pay for the full, uninterrupted 10-minute  
6 rest periods I was not provided an opportunity to take and am informed and believe that my  
7 coworkers were not provided premium pay for not being provided with the opportunity to take  
8 full, uninterrupted 10-minute rest periods, either.

9 8. Before and during the course of litigation, I was actively involved in assisting my  
10 attorneys to support the wage and hour claims asserted. My involvement began before the initial  
11 complaint was filed wherein, I provided first-hand knowledge and documentation as to  
12 Defendants' practices, their ownership and corporate structure, and their wage and hour policies  
13 and practices.

14 9. Part of the information I relayed was with regard to Defendants' timekeeping policies  
15 and practices as well as their meal and rest period policies and practices.

16 10. I provided my attorneys with all the documentation, in my possession, that was  
17 provided to me by Defendants during my employment.

18 11. I assisted in reviewing time and payroll records with my attorneys, and reviewed  
19 Defendants' employment policies and informed my attorneys whether those policies matched  
20 Defendants' practices.

21 12. My attorneys called me to ask me questions several times throughout the litigation  
22 and I contacted my attorneys several times to stay updated on the case and offer my assistance on  
23 any matters I could be helpful with. I was also available for mediation by telephone, during  
24 which I was called to answer the questions posed by the mediator regarding the asserted claims,  
25 as well as arguments raised by Defendants. In addition, I worked with my attorneys over the next  
26 several weeks to understand and execute a long form settlement agreement and a revised long  
27 form settlement agreement.

28 13. Over the past few months since mediation has been resolved, I have stayed in touch

1 with my attorneys to ensure that there was no undue delay in payment for other class members for  
2 whom I brought this Action.

3 14. I believe that, through the present, I have spent approximately twenty-three (23)  
4 hours in connection with this matter, which included time spent having preliminary calls with my  
5 attorneys; doing an intake with my attorneys; time spent searching for documents relating to my  
6 employment; time spent reading and understanding the long form settlement agreement and the  
7 revised long form settlement agreement; time spent answering calls to discuss Defendants'  
8 timekeeping, pay, and meal and rest period policies, to review time and payroll records; time spent  
9 discussing with my attorneys Defendants' policies and practices; time spent in connection with  
10 mediation; and time spent checking in on the status of the case, among other things. I also spent  
11 time preparing this declaration to support Plaintiffs' Motion for Preliminary Approval of the Class  
12 Action and Representative Action Settlement.

13 15. I feel that by bringing this lawsuit, I could stand up for not only my rights but the  
14 rights of other employees who suffered from the same unfair wage practices. I believe that current  
15 employees might not want to share their experiences with Defendants since they feared losing  
16 their jobs. This is certainly understandable as I, too, have to provide for myself and others.

17 16. By bringing this lawsuit, I have put the interests of the class ahead of my own.

18 17. I understood that I could possibly earn a small enhancement if this case resolved  
19 favorably. I also knew that I could face retaliation from Defendants and backlash from former  
20 coworkers who are loyal to Defendants. I have also had to provide a broader release of claims to  
21 Defendants than that provided by my coworkers for whom I brought this suit as part of the  
22 settlement. My understanding, in addition, is that if I brought this case individually, I may have  
23 earned more compensation individually and on a much quicker timeline than the timeline to  
24 resolve this Action.

25 18. My goal in bringing this lawsuit was to obtain a recovery on behalf of other non-  
26 exempt, hourly-paid employees of Defendants that also were not paid all wages they were owed,  
27 even more importantly, to put an end to what I believe are illegal practices on the part of  
28 Defendants. I believe I have achieved both through this lawsuit and settlement.

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PROOF OF SERVICE

1 **BIBIYAN LAW GROUP, P.C.**  
David D. Bibiyan (SBN 287811)  
2 *david@tomorrowlaw.com*  
Diego Aviles (SBN 315533)  
3 *diego@tomorrowlaw.com*  
8484 Wilshire Blvd., Suite 500  
4 Beverly Hills, California 90211  
Tel: (310) 438-5555; Fax: (310) 300-1705

5 Attorneys for Plaintiffs, SALVADOR RINCON and  
6 SAUL ERNESTO CEDILLOS, on behalf of  
themselves and all others similarly situated and aggrieved  
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

10 SALVADOR RINCON and SAUL  
11 ERNESTO CEDILLOS, on behalf of  
themselves and all others similarly situated  
12 and aggrieved,

13 Plaintiffs,

14 v.

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

19 Defendants.  
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CASE NO.: 20STCV17118

[Assigned to the Hon. Maren Nelson in Dept.  
17]

**DECLARATION OF SAUL ERNESTO  
CEDILLOS IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL OF  
SETTLEMENT**

HEARING INFORMATION:

DATE: April 11, 2022  
TIME: 9:00 am  
DEPT: 17

**DECLARATION OF SAUL ERNESTO CEDILLOS**

I, Saul Ernesto Cedillos, state and declare, as follows:

1. I am a party to this action. I am fully competent to make this declaration. I have personal knowledge of the facts set forth herein, except for those stated on information and belief, and as to those I am informed and believe them to be true. If called upon to testify, I could and would testify as set forth herein.

2. I make this Declaration in support of Plaintiffs' Motion for Preliminary Approval of Class Action and Representative Action Settlement.

3. I was employed by defendants New-Indy Tripaq, LLC, Proactive Packaging and Display, Inc. and Montebello Container Company LLC (collectively, "Defendants"), who I believe are joint employers, as a non-exempt, hourly-paid employee, with maintenance mechanic duties that included, but were not limited to, working on machinery, building repairs, and assisting in organizing, unpacking, and fixing doors, from approximately July of 2020 through approximately October of 2020.

4. During my employment with Defendants, I believe I was not paid for all time worked because I had to wait in line to clock into Defendants' timeclock and I was required to respond to work related phone calls on my personal cell phone after work hours. I believe I was also paid at the incorrect rate of pay because Defendants' timeclocks would malfunction. I brought this action to recover any unpaid wages for myself and others who were also not paid for all time worked due to Defendants' practices.

5. During my employment with Defendants, I often took meal periods that were after the fifth hour, short, or not duty-free because, among other reasons, I was not allowed to leave Defendants' premises during my meal period. I witnessed other non-exempt employees often taking meal periods that were after the fifth hour, short, or not duty-free, as well.

6. I was often not provided with an opportunity to take a full, uninterrupted, and duty-free 10-minute rest period every four hours or major fraction thereof during my employment with Defendants because, among other things, I was not allowed to leave Defendants' premises during my rest period. I believe my coworkers were also not afforded the opportunity to take full,

1 uninterrupted, duty-free rest periods, either.

2 7. I do not recall receiving any premium pay for the full, uninterrupted 10-minute  
3 rest periods I was not provided an opportunity to take and am informed and believe that my  
4 coworkers were not provided premium pay for not being provided with the opportunity to take  
5 full, uninterrupted 10-minute rest periods, either.

6 8. Before and during the course of litigation, I was actively involved in assisting my  
7 attorneys to support the wage and hour claims asserted. My involvement began before the initial  
8 complaint was filed wherein, I provided first-hand knowledge and documentation as to  
9 Defendants' practices, their ownership and corporate structure, and their wage and hour policies  
10 and practices.

11 9. Part of the information I relayed was with regard to Defendants' timekeeping policies  
12 and practices as well as their meal and rest period policies and practices.

13 10. I provided my attorneys with all the documentation, in my possession, that was  
14 provided to me by Defendants during my employment.

15 11. I assisted in reviewing time and payroll records with my attorneys, and reviewed  
16 Defendants' employment policies and informed my attorneys whether those policies matched  
17 Defendants' practices.

18 12. My attorneys called me to ask me questions several times throughout the litigation  
19 and I contacted my attorneys several times to stay updated on the case and offer my assistance on  
20 any matters I could be helpful with. I was also available for mediation by telephone, during  
21 which I was called to answer the questions posed by the mediator regarding the asserted claims,  
22 as well as arguments raised by Defendants. In addition, I worked with my attorneys over the next  
23 several weeks to understand and execute a long form settlement agreement and a revised long  
24 form settlement agreement.

25 13. Over the past few months since mediation has been resolved, I have stayed in touch  
26 with my attorneys to ensure that there was no undue delay in payment for other class members for  
27 whom I brought this Action.

28 14. I believe that, through the present, I have spent approximately sixteen (16) hours

1 in connection with this matter, which included time spent having preliminary calls with my  
2 attorneys; doing an intake with my attorneys; time spent searching for documents relating to my  
3 employment; time spent reading and understanding the long form settlement agreement and the  
4 revised long form settlement agreement; time spent answering calls to discuss Defendants'  
5 timekeeping, pay, and meal and rest period policies, to review time and payroll records; time spent  
6 discussing with my attorneys Defendant's policies and practices; time spent in connection with  
7 mediation; and time spent checking in on the status of the case, among other things. I also spent  
8 time preparing this declaration to support Plaintiffs' Motion for Preliminary Approval of the Class  
9 Action and Representative Action Settlement.

10 15. I feel that by bringing this lawsuit, I could stand up for not only my rights but the  
11 rights of other employees who suffered from the same unfair wage practices. I believe that current  
12 employees might not want to share their experiences with Defendants since they feared losing  
13 their jobs. This is certainly understandable as I, too, have to provide for myself and others.

14 16. By bringing this lawsuit, I have put the interests of the class ahead of my own.

15 17. I understood that I could possibly earn a small enhancement if this case resolved  
16 favorably. I also knew that I could face retaliation from Defendants and backlash from former  
17 coworkers who are loyal to Defendants. I have also had to provide a broader release of claims to  
18 Defendants than that provided by my coworkers for whom I brought this suit as part of the  
19 settlement. My understanding, in addition, is that if I brought this case individually, I may have  
20 earned more compensation individually and on a much quicker timeline than the timeline to  
21 resolve this Action.

22 18. My goal in bringing this lawsuit was to obtain a recovery on behalf of other non-  
23 exempt, hourly-paid employees of Defendants that also were not paid all wages they were owed,  
24 even more importantly, to put an end to what I believe are illegal practices on the part of  
25 Defendants. I believe I have achieved both through this lawsuit and settlement.

26 19. I have no interest in the governance or work of Legal Aid at Work, which the Parties  
27 have designated as the *cy pres* recipient, nor do I have a conflict of interest in their work.  
28

20. I have no conflict with any non-exempt, hourly-paid employees that worked for Defendants that would thwart my ability to represent their interests in this Action.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct this 16 Day of March 2022, at Santa Ana, California.



SAUL ERNESTO CEDILLOS

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Attorneys for Plaintiffs, SALVADOR RINCON and  
SAUL ERNESTO CEDILLOS, on behalf of  
themselves and all others similarly situated and aggrieved

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

SALVADOR RINCON and SAUL  
ERNESTO CEDILLOS, on behalf of  
themselves and all others similarly situated  
and aggrieved

Plaintiffs,

v.

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

[Assigned to the Hon. Maren Nelson in Dept.  
17]

**DECLARATION OF ALEXANDER M.  
CHEMERS IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL**

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I, Alexander M. Chemers, declare as follows:

1. I am a shareholder at the law firm of Ogletree, Deakins, Nash, Smoak & Stewart, P.C., counsel of record for New-Indy TriPAQ LLC in this action. I am a member in good standing of the State Bar of California. I have personal knowledge of the facts set forth in this Declaration and, if called as a witness, could and would testify competently to such facts under oath.

2. I do not have any interest or involvement in the governance or work of the proposed *cy pres*, Legal Aid at Work. To my knowledge and based on the information at my disposal, my law firm does not have an interest or involvement in the governance or work of the proposed *cy pres* either.

Executed on March 16, 2022, at Los Angeles, California.

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

14  
15

Alexander M. Chemers

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

SALVADOR RINCON and SAUL  
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Defendants.

CASE NO.: 20STCV17118

[Assigned to the Hon. Maren Nelson in Dept.  
17]

**DECLARATION OF BRAD  
MCCROSKEY IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL**

**DECLARATION OF BRAD MCCROSKEY**

I, Brad McCroskey, declare as follows:

1. I make this Declaration in support of Plaintiffs' Motion for Preliminary Approval. I have personal knowledge of the facts set forth in this Declaration and, if called as a witness, could and would testify competently to such facts under oath.

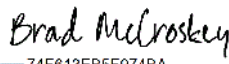
2. By way of an Asset Purchase Agreement dated December 12, 2016, New-Indy TriPAQ, LLC bought the assets of Triple A Containers, Inc. ("Triple A"). Prior to January 1, 2017, I was an owner of Triple A. I submit this declaration on behalf of myself and Triple A, as its former owner.

3. I do not have any interest or involvement in the governance or work of the proposed *cy pres*, Legal Aid at Work.

4. Triple A is no longer an operational entity, and thus also does not have any interest or involvement in the governance or work of the proposed *cy pres*, Legal Aid at Work.

Executed on March 3/15/2022, 2022, at Irvine, California.

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

DocuSigned by:  
  
74E613EB5E974BA...  
Brad McCroskey

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

SALVADOR RINCON and SAUL  
ERNESTO CEDILLOS, on behalf of  
themselves and all others similarly situated  
and aggrieved

Plaintiffs,

v.

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CONTAINERS, INC., a California  
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INC., a surrendered Delaware corporation;  
BRAD MCCROSKEY, an individual; and  
DOES 1 through 100, inclusive

Defendants.

CASE NO.: 20STCV17118

[Assigned to the Hon. Maren Nelson in Dept.  
17]

**DECLARATION OF LARRY ITO IN  
SUPPORT OF PLAINTIFFS' MOTION  
FOR PRELIMINARY APPROVAL**

**DECLARATION OF LARRY ITO**

I, Larry Ito, declare as follows:

1. I am the Vice President, Human Resources for New-Indy TriPAQ LLC. I have personal knowledge of the facts set forth in this Declaration and, if called as a witness, could and would testify competently to such facts under oath.

2. To my knowledge, New-Indy TriPAQ LLC does not have any interest or involvement in the governance or work of the proposed *cy pres*, Legal Aid at Work.

Executed on March 16, 2022, at Ontario, California.

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

DocuSigned by:

*Larry Ito*  
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Larry Ito

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

SALVADOR RINCON and SAUL  
ERNESTO CEDILLOS, on behalf of  
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Plaintiffs,

v.

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INC., a surrendered Delaware corporation;  
BRAD MCCROSKEY, an individual; and  
DOES 1 through 100, inclusive

Defendants.

CASE NO.: 20STCV17118

[Assigned to the Hon. Maren Nelson in Dept.  
17]

**DECLARATION OF EDSON K.  
MCCLELLAN IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL**

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