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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

RODNEY STOVALL, on behalf of himself
and on behalf of all persons similarly situated,

Plaintiff,

vs.

JAVELIN LOGISTICS COMPANY, INC.,
CARSON CONSULTING CORP., and DOES
1-50, inclusive,

Defendants.

Case No. RG20075705

**DECLARATION OF JEAN-CLAUDE
LAPUYADE, ESQ. IN SUPPORT OF
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS AND PAGA ACTION
SETTLEMENT**

Date: August 9, 2022
Time: 3:00 p.m.
Reservation No.: A-20075705-0001

Judge: Hon. Brad Seligman
Dept.: 23

I, Jean-Claude Lapuyade, Esq., declare as follows:

1. I am over eighteen years of age and if called as a witness, I could and would competently testify to the following facts from my own personal knowledge. I am an attorney-at-law and the owner of the law firm of JCL LAW FIRM, APC (hereinafter “Class Counsel”). I am counsel of record for Plaintiff RODNEY STOVALL (hereafter “Plaintiff” or “Class Representative”) in this wage and hour class action filed against Defendant JAVELIN LOGISTICS COMPANY, INC. and Defendant CARSON CONSULTING CORP. (hereinafter collectively “Defendants”).

2. This declaration is being submitted in support of Plaintiffs’ Motion for Final Approval of Class Action Settlement.

3. Attached hereto as **Exhibit “A”** are true and correct copies of the fully executed Stipulation of Settlement of Class Action Claims and Release of Claims (hereinafter collectively “Settlement Agreement”).

4. Attached hereto as **Exhibit “B”** is a true and correct copy of the conformed April 5, 2022, Preliminary Approval Order.

5. Attached hereto as **Exhibit “C”** is a true and correct copy of the March 11, 2022, proof of filing the proposed Settlement with the LWDA.

6. Attached hereto as **Exhibit “D”** is true and correct copy of the July 18, 2022, proof of filing this motion seeking final approval of this Settlement with the LWDA.

I. INTRODUCTION

7. An objective evaluation of the proposed settlement of \$2,219,318.18 (“Gross Settlement Amount”) confirms that the relief negotiated on behalf of the Class is fair, reasonable, and valuable. The Settlement is a product of informed, adversarial, and non-collusive negotiations, between experienced counsel, and presided over by Steven Rottman, Esq. a well-respected class action mediator. After deducting any Court-approved attorneys’ fees and costs, class representative incentive payments, administration costs, and the payments to the Labor & Workforce Development Agency (“LWDA”), the net settlement fund shall be distributed to the Settlement Class based on the number of Workweeks they worked while employed by Defendant during the relevant time period. *The Settlement Class*

1 *greeted news of the Settlement with overwhelming approval as 100% of the Settlement Class choose*
2 *to participate in the Settlement.* There are zero opt-outs and zero objections to the Settlement. The
3 unanimous approval by the Settlement Class evidences the clear fairness and reasonableness of the
4 Settlement.

5 8. This Settlement provides substantial recovery for Defendant's alleged wage and hour
6 violations. Plaintiffs estimate that the Settlement, if approved, would result in a Net Settlement Amount
7 of \$1,326,586.71. This will result in an average Individual Settlement Payment of **\$792.47** and high
8 payment of **\$2,396.55**.

9 9. The relief offered by the Settlement is immediate and is particularly impressive when
10 viewed against the difficulties encountered by plaintiffs pursuing similar wage and hour cases (*see*
11 *infra*). Indeed, by settling now rather than proceeding to trial, the Settlement Class will not have to wait
12 (possibly years) for relief, nor will they have to bear the risks associated with prolonged and uncertain
13 litigation.

14 10. As discussed below, the proposed Settlement satisfies all criteria for final settlement
15 approval under California law and falls well within the range of reasonableness. Accordingly, Class
16 Representatives and Class Counsel respectfully request this Court grant final approval of the Agreement
17 and, entry of the proposed Final Approval Order and Judgment.

18 **II. OVERVIEW OF THE LITIGATION**

19 11. Defendant is a California corporation that owns and operates approximately thirteen full-
20 service travel stops in California. Defendant is part of the closely held family of companies known as
21 Love's Family of Companies. Defendant provides professional truck drivers and motorists with 24-
22 hour access to clean and safe places to purchase gasoline, diesel fuel, Compress Natural Gas (CNG),
23 travel items, electronics, snacks, restaurant offerings, and more. Plaintiff Renteria was employed by
24 Defendant as a non-exempt employee from April 2015 through March 2020. Plaintiff Espinoza was
25 employed by Defendant from January 2019 through April 2019 as a non-exempt cashier. At all times
26 during their employment, Plaintiffs earned an hourly wage plus certain non-discretionary flat-sum
27 incentive awards and were entitled to legally complaint meal and/or rest periods, and minimum, regular,

1 and overtime wages for all hours worked. Throughout their employment, Plaintiffs were subject to
2 Defendant's written policies and procedures contained in, among other documents, the Employee
3 Handbook.

4 12. Generally, Plaintiffs claim that Defendant failed to pay for all time worked, failed to
5 provide suitable seating, failed to furnish accurate itemized wage statements, failed to provide
6 compliant meal and rest periods, and failed to pay all wages upon separation of employment. Defendant
7 forcefully denies liability for each of Plaintiffs' claims. Further, Defendant asserts that it fully complied
8 with all applicable employment laws and raised several other significant defenses to Plaintiffs' claims,
9 including but not limited to, facially compliant meal and rest period policies, timely paid all wages due
10 upon separation of employment, accurately calculated the regular rate of pay, and provided suitable
11 seating.

12 13. On May 27, 2020, Plaintiff Renteria served Defendant and the Labor and Workforce
13 Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff Renteria's
14 PAGA Notice set for the facts and theories supporting Defendant's alleged violations of various
15 provisions of the California Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage
16 Order and of her intent to pursue claims under the California Labor Code Private Attorneys General
17 Act, Cal. Lab. Code Sections 2698, *et seq.* ("PAGA").

18 14. On May 28, 2020, Plaintiff Renteria filed a class action complaint in the Kern Superior
19 Court, Case Number BCV-20-101260 ("Renteria Action"). The Renteria Action alleged seven causes
20 of action against Defendant for: (1) Unfair Competition in Violation of Cal. Bus. & Prof. Code §§ 17200
21 *et. seq.*; (2) Failure to Pay Overtime Wages in Violation of Cal. Lab. Code §§ 510, *et seq.*; (3) Failure
22 to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197, 1197.1; (4) Failure to Provide
23 Meal Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (5)
24 Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the
25 Applicable IWC Wage Order; (6) Failure to Provide Accurate Itemized Wage Statements in Violation
26 of Cal. Lab. Code § 226; and (7) Failure to Provide Wages When Due in Violation of Cal. Lab. Code
27

§§ 201-203. On August 3, 2020, Plaintiff Renteria filed a First Amended Complaint (“FAC”) against Defendant adding an eighth cause of action for violations of PAGA.

15. On July 29, 2020, Plaintiff Espinoza filed a PAGA Notice with the LWDA and served the same on Defendant. On July 30, 2020, Plaintiff Espinoza filed a lawsuit in the San Bernardino Superior Court, Case Number CIV-DS-2016481 (“Espinoza Action”). The Espinoza Action alleged six causes of action against Defendant for: (1) Failure to Properly Calculate and Pay Overtime; (2) Failure to Provide Meal Breaks; (3) Failure to Provide Rest Breaks; (4) Failure to Pay All Wages Due at the End of Employment; (5) Failure to Furnish Accurate Itemized Wage Statements; and (6) Unlawful Business Practices. On October 7, 2020, Plaintiff Espinoza filed a First Amended Complaint against Defendant adding a seventh cause of action for violations of PAGA.

16. Plaintiff Renteria commenced written discovery in the Action in September 2020. After failing to answer Plaintiff Renteria’s written discovery, the Parties agreed to collectively mediate the Action. In anticipation of mediation, the Parties agreed to stay additional formal discovery and continue deadlines for class certification in the Action. To prepare for mediation, the Parties agreed to informally produce additional documents and data points subject to the mediation privilege, including but not limited to, the Class Members’ time data and certain payroll data points. As discussed *infra*, Plaintiffs’ counsel retained the forensic consultants at Econ One Research, Inc. (“Econ One”) to analyze Defendant’s time and payroll data.

17. On May 25, 2021, the Parties participated in mediation presided over by Steven Rottman, Esq., a well-respected class action mediator. At the conclusion of the negotiations, Mediator Rottman presented a mediator’s proposal that was ultimately accepted by all Parties for the Gross Settlement Amount of \$2,100,000¹. The parties subsequently executed a binding and enforceable Memorandum of Understanding (“MOU”). After reaching an agreement in principle, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion. As part of the Agreement, the Parties stipulated to the filing of a Second Amended Complaint (“SAC”) in the Espinoza Action to

¹ As discussed *infra*, an escalator provision was subsequently triggered thereby increasing the Gross Settlement Amount to \$2,219,318.18.

incorporate the claims and factual allegations asserted in the Renteria Action, as well as add Plaintiff Renteria as a named Plaintiff in the Espinoza Action.

18. The Court preliminarily approved an initial Gross Settlement Amount of \$2,100,000 based on a total of approximately 50,296 Workweeks worked by the Class during the Class Period. The Gross Settlement Amount shall be used: (1) to satisfy Individual Settlement Payments; (2) to satisfy the Class Representative Service Awards; (3) to satisfy the Class Counsel Award; (4) to satisfy the PAGA Settlement; and (5) to satisfy the Settlement Administration Costs incurred in this action.

19. As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class and should be granted final approval. This is evidenced by the unanimous approval of the Settlement by the Settlement Class and absence of any objections to the Settlement.

20. Further supporting final approval, the average Individual Settlement Payment of \$792.47 is comparable to settlement payments in similar wage and hour class actions. This result is particularly favorable considering that liability and certification were far from certain. Given the complexities of this case, the defenses asserted, the uncertainty of class certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is fair, reasonable, and adequate, and should be granted final approval.

III. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE

A. Adequate Investigation

21. Months before filing the Action, Class Counsel began its pre-filing investigation into Plaintiff's complaints. Class Counsel's investigation started with several lengthy interviews with Plaintiff. As part of the interview process, Plaintiff produced numerous documents related to his employment, including portions of Defendant's handbooks, compensation policies, and time and payroll records. At the conclusion of the interviews, Class Counsel determined that each of Plaintiffs' complaints justified further inquiry.

22. Plaintiff commenced written discovery in January 2021. After answering Plaintiff's written discovery requests and engaging in the Belaire-West procedure, the Parties agreed to mediate the Action. To prepare for mediation, Class Counsel requested several documents and data points to

1 further evaluate Plaintiff's claims and Defendants' liability exposure to the Settlement Class Members.
2 In response, Defendants produced the pay statements for approximately 27% of the Settlement Class
3 Members.

4 23. Class Counsel then retained the statisticians and economists at BCG to evaluate the Class
5 Members' payroll and time data. BCG provides data analysis and damage modeling consulting services
6 specializing in wage and hour class actions. BCG's team of financial and data analysts are credentialed
7 and experienced experts in their fields and have provided their expertise on thousands of cases. Stated
8 differently, BCG is uniquely qualified to analyze Defendant's time and payroll data.

9 24. BCG analyzed Defendant's time and payroll data to assist in the development of various
10 damage models. Among other things, BCG determined the approximate number of work shifts,
11 workweeks, pay periods, average rate of pay, average length of shift, and average number of hours
12 worked per week and pay period during the Class Period. BCG also estimated the number of missed,
13 late, or truncated meal and rest periods, the amount of missed meal period premiums paid during the
14 Class Period, the amount of underpaid wages due to regular rate miscalculations, the amount of
15 underpaid wages due to rounding, and the amount of off-the-clock work performed by the Class
16 Members during the Class Period.

17 25. In advance of mediation, Class Counsel created several damage models predicated on the
18 BCG analysis. Class Counsel's models calculated Defendant's potential liability exposure while
19 accounting for the uncertainties of continued litigation. These damage models informed and guided
20 Class Counsel during the mediated settlement discussions.

21 26. Overall, Class Counsel thoroughly investigated the claims at issue, including: (1)
22 determining Plaintiff's suitability as a putative class representative through interviews, background
23 investigations, and analysis of his employment file; (2) evaluating all of Plaintiff's potential claims; (3)
24 researching similar wage and hour class actions as to the claims brought, the nature of the positions,
25 and the type of employer; (4) analyzing the Settlement Class's time and payroll records; (5) analyzing
26 Defendant's labor policies and practices; (6) researching settlements in similar cases as well as
27 outstanding issues which could affect settlement approval; (7) evaluating Plaintiff's claims and
28

1 estimating Defendants' liability for purposes of settlement; (8) drafting the mediation brief; and (9)
2 participating in the mediation. This investigation allowed Class Counsel to fully assess the nature and
3 magnitude of the claims being settled, as well as the impediments to recovery, such as to make an
4 independent assessment of the reasonableness of the terms to which the Parties have agreed.

5 27. Class Counsel only agreed to enter the Settlement following his thorough investigation
6 and evaluation of Plaintiff's claims. Based on his investigation of the facts, applicable law, and
7 marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated
8 with litigation, and the various defenses asserted by Defendants, Class Counsel firmly believes this
9 Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair,
10 reasonable, and adequate, the Court should preliminarily approve the Settlement.

11 **B. The Parties Settled Following Mediation**

12 28. The Settlement is the product of a mediation session and subsequent negotiations with a
13 respected mediator over the terms of the Settlement. At the conclusion of the negotiations, Mediator
14 Rottman presented a mediator's proposal that was ultimately accepted by all Parties. The negotiations
15 were adversarial, conducted at arm's length and tempered by the efforts of both sides to serve the
16 interests of their clients. The amount of the service awards was not negotiated until after the parties
17 agreed to the Gross Settlement Amount and many other terms.

18 **C. Class Counsel is Experienced in Similar Litigation**

19 29. Plaintiff is represented by competent and experienced counsel to pursue his claims. I
20 established the JCL Law Firm, APC ("Firm"), in 2010. The Firm is a boutique plaintiff firm representing
21 aggrieved employees and consumers throughout California in wage and hour class actions and complex
22 multi-party product liability matters. The Firm currently consists of myself, Jean-Claude Lapuyade,
23 Esq. (Partner/Owner), Eduardo Garcia (Associate Attorney), Sydney Castillo-Johnson (Associate
24 Attorney), Tesla Stone (Paralegal), Jennifer Hemming (Legal Secretary), and Sara Christensen (Legal
25 Assistant).

26 30. I am qualified to represent the Plaintiff, the State of California, and the Aggrieved
27 Employees. I have extensive experience with wage and hour class and representative actions litigation

1 like this matter, and employment matters in general. Additionally, I have extensive complex mass tort
2 litigation experience and complex construction product liability experience. I can, will and have
3 adequately represented the interests of the Plaintiff, the State of California, and the Aggrieved
4 Employees throughout this action.

5 31. I have represented consumers and employees in California class actions, and complex
6 multi-party product liability actions exclusively for more than 14 years. I have been in practice as a
7 plaintiffs' civil litigation attorney since April 2007.

8 32. I have significant class counsel and collective action counsel experience. I served as class
9 and/or collective (PAGA) counsel in the following matters:

10 a. *Felix v. TVI, Inc., d.b.a. Savers*, Santa Clara Superior Court Case No.
11 21CV376407 (February 18, 2022) Hon. Sunil R. Kulkarni approved a \$1.8 million dollar
12 class action and PAGA action settlement for, *inter alia*, unpaid off-the-clock work. The
13 Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA
14 counsel for the State of California.

15 b. *Munoz v. AMTCR*, San Bernardino Superior Court Case No. CIV-DS2001914
16 (August 24, 2021) Hon. David Cohn approved a \$1.8 million dollar class and PAGA
17 settlement for, *inter alia*, inaccurate itemized wage statements. The JCL Law Firm, APC
18 acted as class counsel for the settlement class and as representative PAGA counsel the
19 State of California and the Aggrieved Employees.)

20 c. *Nunes v. Home Depot U.S.A., Inc.*, San Joaquin Superior Court Case No. STK-
21 CV-UOE-2020-0011011 (October 20, 2021 – Hon. Roger Ross approved a \$1.5 million
22 dollar class and PAGA settlement for, *inter alia*, miscalculated meal period premiums
23 and appointed Jean-Claude Lapuyade, Esq, as Class Counsel.)

24 d. *Pillsbury v. T&T Restaurants CA, Inc.*, Del Norte Superior Court Case No. CVUJ-
25 20-1214 (December 14, 2021 – Hon. Darren McElfresh approved \$550 billing rate and
26 appointed Jean-Claude Lapuyade, Esq, as Class Counsel in a wage and hour class action
27 settlement.)

e. *Rodriguez v. RSI Home Products, Inc.*, San Bernardino Superior Court Case No. CIVDS2023354 (July 30, 2021 – Hon. David Cohn approved a \$1.45 million class and PAGA settlement for, *inter alia*, failure to comply with piece-rate laws, and appointed the JCL Law Firm, APC as Class Counsel)

f. *Elias Kaser v. Aviation Consultants, Inc.*, Orange County Superior Court Case No. 30-2021-01191204-CU-OE-CXC (September 22, 2021 – Hon. Peter J. Wilson approved \$550 billing rate in a representative California Labor Code Private Attorney General Act settlement).

g. *Jer Vang v. Bridge Property Management*, Alameda County Superior Court, Case No RG19047434 (January 8, 2021 – Hon. Winifred Smith approved a class and PAGA settlement for, *inter alia*, unpaid off the clock work. The JCL Law Firm, APC acted as class counsel for the settlement class and as representative PAGA counsel the State of California and the Aggrieved Employees.)

h. *Johnson v. Volt Management Corp., Inc. et al.*, Los Angeles County Superior Court, Case No. 19STCV16466 (December 11, 2020 – Hon. Amy Hogue approved a PAGA Settlement negotiated on behalf of the State of California and the aggrieved employees by the JCL Law Firm, APC.)

i. *Salazar v. Frontier Auto Sales Inc., dba Frontier Toyota*, Los Angeles Superior Court, Case No. 19STCV20382 (November 24, 2020 – Hon. John P. Doyle appointed the JCL Law Firm, APC as class counsel and approved a class and PAGA settlement for, *inter alia*, missed meal and rest periods.)

j. *Villalobos v. Alterra Group, LLC et al.*, Los Angeles County Superior Court, Case No. 19STCV19448 (November 11, 2020 – Hon. Richard Fruin approved a PAGA Settlement for, *inter alia*, unreimbursed business expenses. The JCL Law Firm, APC acted as counsel for the plaintiff, the State of California and the Aggrieved Employees.)

k. *Stevens et al., v. Bank of England*, San Diego County Superior Court Case No. 37-2019-00018662-CU-OE-CTL (October 16, 2020 – Hon. John Meyer appointed JCL

Law Firm as Class Counsel and granted final approval of wage and hour class action for, *inter alia*, off-the-clock work.)

l. *Frazier v. ASA Carlton, Inc.*, San Diego Superior Court Case No. 37-2019-00036147 (October 9, 2020 Hon. Kenneth Medel appointed the JCL Law Firm as Class Counsel and granted final approval of wage and hour class action for off-the-clock work.)

m. *Krake et al., v. Central Valley Diner, Inc.*, Placer County Superior Court Case No. SCV0041645 (September 4, 2020 – Hon. Michael Jones appointed JCL Law Firm as class counsel and granted final approval of wage and hour class action for meal period violations.)

n. *Conner v. Ascendant Marketing, LLC et al.*, San Diego Superior Court Case No. 37-2019-00026864-CU-OE-CTL (July 24, 2020 Hon. Joel Wohlfeil granted approval of PAGA Settlement for, among other things, off-the-clock work. JCL Law Firm, APC acted as lead counsel.)

o. *Guerrero v. Estancia Operations, LLC.*, San Diego Superior Court Case No. 37-2019-00028963 (August 25, 2020 – Hon. Katherine Bacal approved PAGA Settlement for, *inter alia*, missed meal and rest periods. JCL LAW Firm, APC, acted as lead counsel.)

p. *Moreno v. Dash Lube, et al.*, United States District Court, Southern District of California, Case No. 18cv1922 DMS (AHG) (December 13, 2019 – Granted class certification of Labor Code Section 226 claim and appointed JCL Law Firm, APC, as Class Counsel.)

q. *Perkins et al., v. Tahiti Enterprises, Inc., et al.*, Orange County Superior Court Case No. 30-2016-00863095 (October 22, 2019 – Hon. Peter Wilson appointed JCL Law Firm, APC, as Class Counsel and granted final approval for an unlawful housing class action settlement arising out of Civil Code Section 1940.1.)

r. *Hill v. Stemak Holdings, Ltd.*, San Diego Superior Court Case No., 37-2018-00000747 (January 28, 2020 – Hon. Kenneth Medel appointed JCL Law Firm, APC as

class counsel and granted final approval of wage and hour class action for unpaid overtime.)

s. *Shachno et al., v. KT Hotels, LLC, et al.* San Diego Superior Court Case No. 37-2018-00043601 (May 31, 2019 – Hon. Gregory Pollack appointed JCL Law Firm, APC, as Class Counsel and granted preliminary approval for the wage and hour class action settlement involving nearly 900 current and former employees. Final approval scheduled for October 4, 2019)

t. *Almanza v. The Express Group, Inc.*, San Bernardino Superior Court Case No. CIVDS1722542 (April 19, 2019 – Hon. David Cohn appointed the JCL Law Firm, APC, as Class Counsel and granted final approval for a wage and hour class action settlement for *inter alia*, missed meal and rest periods and independent contractor misclassification.)

u. *Moschetto v. Pillow Global, Inc. San Diego Superior Court*, Case No. 37-2017-00024031-CU-OE-CTL (April 5, 2019 – Hon. John S. Meyer appointed JCL LAW Firm, APC, as Class Counsel and granted final approval for a wage and hour wage class action settlement involving misclassified house cleaners.)

v. *Burke v. Friendship Hotel, LLC*, San Diego County Superior Court Case No. 37-2017-00022517-CU-OE-CTL (March 10, 2019 – final approval granted on for an unlawful housing class action arising under Civil Code Section 1940.2)

w. *Terrado et al., v. Accredited Debt Relief, LLC*, San Diego County Superior Court Case No. 37-2018-00014181-CU-OE-CTL (February 8, 2019 – Hon. Gregory W. Pollock appointed JCL Law Firm, APC as Class Counsel and granted final approval for a wage and hour class action settlement for meal and rest period violations);

x. *Macaspac v. San Antonio Regional Hospital*, San Bernardino Superior Court Case No. CIVDS1512625, (July 27, 2018 – Hon. Thomas S. Garza appointed JCL Law Firm, APC, as Class Counsel and granted final approval for a wage and hour class action settlement involving claims for on duty meal and rest periods.);

y. *Summerlin et al. v. Maplebear, Inc. dba Instacart*, Los Angeles Superior Court Case No. BC603030 (2018 - certified and settled wage and hour class action.)

z. *Ortega v. Prime Healthcare*, San Diego Superior Court Case No. 37-2014-00011240-CU-OE-CTL (2018 – Approved PAGA only settlement for on duty meal and rest periods)

aa. *Engstrom v. Bender-Rosenthal, Inc.* San Diego Superior Court Case No. 37-2016-00012373-CU-OE-CTL (2017 - Certified and settled class action for employee misclassification);

bb. *Crawford v. Outlook Amusements, Inc.*, Los Angeles Superior Court Case No. BC617160 (2017 - Certified and settled wage and hour class action.);

cc. *Hernandez v. Sunglass Hut Trading, LLC*, San Bernardino Superior Court Case No. CIVDS1505181 (2016 - Certified and settled wage and hour class action);

dd. *Burns v. Shalom, LLC*, San Diego Superior Court, Case No., 37-2013-00058356-CU-BT-CTL (2015 - certified and settled class action for unlawful housing practices arising out of Civil Code Section 1940.1);

33. Since 2010, I have successfully tried two (2) cases to conclusion, each resulting in a favorable verdict for the firm's clients.

34. Finally, I have published appellate experience in *William Blanchette et al., v. The Superior Court of Imperial County, (GHA Enterprises)*, 8 Cal.App.5th 521.

35. Consequently, I have been named to the prestigious Thomson Reuters, Super Lawyers, Rising Star in 2015, 2016, 2017 and, again, in 2018. According to Thomson Reuters, the Super Lawyers, Rising Star list recognizes the top 2.5% of eligible attorneys. (see https://www.superlawyers.com/about/selection_process.html.)

D. Strength of Plaintiff's Case

36. Here, the Settlement is clearly within the "ballpark" of reasonableness because the Settlement provides a sizeable recovery to the Settlement Class Members and need not necessarily

1 obtain 100 percent of the damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*,
2 91 Cal.App.4th at 250. While the Gross Settlement Amount of \$2,219,318.18 represents a discount on
3 Defendant's potential exposure if Plaintiffs established liability on all claims and were awarded the full
4 amount of the estimated damages at trial, this compromise is reasonable because (1) the formidable
5 defenses raised by Defendant presented a risk that could award significantly less in damages than
6 Plaintiffs' estimate and (2) any theoretical post-trial recovery may require many more years of litigation,
7 resulting in added fees and costs without any guarantee of recovery for the Class.

8 37. Although Class Counsel believes strongly in Plaintiffs' claims, it would be misguided to
9 ignore the asserted defenses. If successful on any one its defenses, Defendant could defend the action
10 or, at least, drastically undercut Plaintiffs' claims.

11 **E. Risks of Continued Litigation**

12 38. With respect to the most immediate challenge, i.e., class certification, the risks attendant
13 to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart*
14 *Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded
15 a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed
16 the trial court to enter judgement in favor of the employer. *See also O'Conner v. Uber Technologies,*
17 *Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
18 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
19 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
20 1077, 1088 ("[T]he reason, if any, that employees might not take their breaks were predominantly
21 individualized questions of fact not susceptible to class treatment."); *Ali v. U.S.A. Cab Ltd.* (2009) 176
22 Cal.App.4th 1333, 1341 (affirming denial of certification because employees' declarations attesting to
23 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
24 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
25 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
26 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
27 certification of driver meal and rest period claims based on the predominance of individual issues).

Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring settlement.

39. Although Plaintiffs are confident about the strength of their claims, Plaintiffs nevertheless recognize that Defendant has factual and legal defenses that, if successful, would potentially defeat or impair the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can drastically affect the value of Plaintiffs' claims and, in fact, already has. Recently, the California Court of Appeal, Second District, held that meal and rest period violations do not entitle employees to pursue the derivative waiting time and itemized wage statement penalties. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal.App.5th 444 (*review granted*). The *Naranjo* decision gutted Plaintiffs' claims for Labor Code Section 226 penalties and Labor Code Section 203 waiting time penalties predicated on meal and rest period violations.

40. As demonstrated by the decisions in *Magadia, supra*, 999 F.3d 668 and *O'Conner v. Uber Technologies* (N.D. Cal. 2018) 82 F.Supp.3d 1133 and *Duran v. U.S. Bank National Assn.* (2014) 59 Cal.4th 1, the complexities and duration of further litigation cannot be overstated. There is little doubt that if Defendant faced a large adverse judgement, Defendant undoubtedly has the resources to post a bond and appeal. A post-judgment appeal by Defendant would have required many more years to resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh an uncertain result three or more years in the future.

41. Class Representatives and Class Counsel recognize the expense and length of a trial against Defendant through possible appeals which could take another three years. In arriving at their informed belief that the present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome and risk inherent in complex actions such as this one. Class Counsel is also mindful of and recognize the inherent problems of proof under, and alleged defenses to, the claims asserted in the litigation. Moreover, post-trial motions and appeals would have been inevitable. Costs would have mounted, and recovery would have been delayed if not denied, thereby reducing the benefits of an

ultimate victory. Class Representatives and Class Counsel believe that the Settlement confers substantial monetary and non-monetary benefits upon the Class. Based upon their evaluation, Class Representatives and Class Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the Class, is fair, reasonable, and adequate, and should be granted final approval. With respect to the most immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgement in favor of the employer. (See also *O'Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); see also *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest period claims based on the predominance of individual issues).) Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring settlement.

F. The Gross Settlement Amount is Fair and Reasonable

42. The Gross Settlement Amount of \$2,219,318.18 in this case is fair and well within the range of recognized reasonableness. As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and reasonable considering the nature and magnitude of the claims being

1 settled and the various potential impediments to recovery. Class Counsel developed varied economic
2 damages models measuring Defendant's liability exposure while accounting for the uncertainties of
3 continued litigation. The various models were informed by Class Counsel's investigation, including the
4 analysis of a significant sample of time and payroll data. As detailed in greater depth during the
5 preliminary approval process, Class Counsel projected a range of Defendant's liability exposure for the
6 claims asserted on behalf of the Settlement Class. The Gross Settlement Amount represents
7 approximately 34.11% of Defendant's *class-wide* liability exposure as estimated by Class Counsel at
8 the time of mediation.

9 43. Clearly the goal of this litigation to obtain redress for the class has been met by this
10 Settlement. Given the amount of the Settlement, the risks of litigation and the arm's length negotiations
11 between experienced counsel, the settlement is fair and reasonable, and is therefore entitled to final
12 approval.

13 **IV. THE PENALTIES UNDER PAGA ARE REASONABLE**

14 44. Here, Plaintiffs and Defendant negotiated a good faith PAGA Settlement in the amount
15 of \$80,000 which is 3.6% of the Gross Settlement Amount. This amount falls well within the range of
16 approved PAGA Settlements. Seventy-Five percent (75%) of the PAGA Settlement (\$60,000) will be
17 paid to the LWDA ("LWDA Payment") with the remaining twenty-five percent (25%) to be distributed
18 to the Aggrieved Employees, which is within the range of PAGA penalties approved by courts and
19 should be approved.

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45. Further on April 28, 2022, Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a copy of the Settlement and the Motion for Preliminary Approval with the LWDA. On May 18, 2022, Plaintiffs gave the LWDA notice of this motion seeking final approval of this settlement.

JCL LAW FIRM, APC

EXHIBIT A

JEAN-CLAUDE LAPUYADE, ESQ. (SBN 248676)
JCL LAW FIRM, APC
3990 OLD TOWN AVENUE, SUITE C204
SAN DIEGO, CA 92110
TEL: 619-599-8292
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ZAKAY LAW GROUP, APLC
SHANI O. ZAKAY (STATE BAR #277924)
3990 OLD TOWN AVENUE, SUITE C204
SAN DIEGO, CA 92110
TEL: (619) 255-9047
FAX: (858) 404-9203

ATTORNEYS FOR PLAINTIFF AND THE PUTATIVE CLASS

DANIEL F. PYNE, ESQ. (SBN # 131955)
HOPKINS & CARLEY, A LAW CORPORATION
70 SOUTH FIRST STREET
SAN JOSE, CA 95113

ATTORNEYS FOR DEFENDANTS

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

RODNEY STOVALL, on behalf of himself
and on behalf of all persons similarly
situated,

PLAINTIFF,

vs.

JAVELIN LOGISTICS COMPANY, INC.;
CARSON CONSULTING GROUP CORP.,
and DOES 1 through 50, Inclusive;

DEFENDANTS.

Case No.: RG-20075705

[Action Filed 09/30/2020]

**STIPULATION OF SETTLEMENT OF
CLASS ACTION CLAIMS AND
RELEASE OF CLAIMS**

Judge: Honorable Brad Seligman
Dept.: 23

1 This Stipulation of Class Action Settlement and Release of Claims is entered into by and
2 between Plaintiff RODNEY STOVALL (hereinafter "Plaintiff"), individually, on behalf of the
3 Settlement Class, and in his representative capacity on behalf of the State of California and the
4 Aggrieved Employees, and Defendant JAVELIN LOGISTICS COMPANY, INC. ("Javelin") and
5 Defendant CARSON CONSULTING CORP. ("Carson") (hereinafter collectively "Defendants"):

6 **I. DEFINITIONS**

- 7 A. "Action" shall mean the putative class action lawsuit designated *Stovall v. Javelin*
8 *Logistics, Inc.*, Alameda County Superior Court, Case No. RG-20075705, filed
9 September 30, 2020 (hereinafter the "Action").
- 10
- 11 B. "Aggrieved Employees" shall mean all employees who are or previously were
12 employed by Javelin Logistics Company, Inc. in California and who were classified
13 as non-exempt employees during the PAGA Period, and/or were employed by Carson
14 Consulting Corp. and assigned to provide service to Javelin Logistics Company, Inc.
15 during the PAGA Period.
- 16
- 17 C. "Agreement" or "Settlement Agreement" means this Stipulation of Settlement of
18 Class Action and Release of Claims.
- 19
- 20 D. "Class Counsel" shall mean Jean-Claude Lapuyade, Esq. of JCL Law Firm, APC and
21 Shani Zakay of Zakay Law Group, APLC.
- 22
- 23 E. "Class Counsel Award" means the award of fees and expenses that the Court
24 authorizes to be paid to Class Counsel for the services they have rendered to Plaintiff
25 and the Settlement Class in the Action, consisting of attorneys' fees currently not to
26 exceed one-third of the Gross Settlement Amount currently estimated to be \$233,000
27 out of \$699,000.00 plus costs of up to \$15,000.00. Class Counsel's award for
28

attorneys' fees will be divided equally between Class Counsel (50% to JCL Law Firm, APC and 50% to Zakay Law Group, APLC).

F. "Class Data" means information regarding Class Members that Defendants will in good faith compile from its records and provide to the Settlement Administrator. It shall be formatted as a Microsoft Excel spreadsheet and shall include: each Class Member's full name; last known address; Social Security Number; start dates and end dates of employment.

G. "Class Members" or the "Class" means all employees who are or previously were employed by Javelin Logistics Company, Inc. in California and who were classified as non-exempt employees during the Class Period, and/or were employed by Carson Consulting Corp. and assigned to provide service to Javelin Logistics Company, Inc. during the Class Period.

H. "Class Period" means the period from April 6, 2016, to October 15, 2021.

I. "Class Representative Service Award" means the amount that the Court authorizes to be paid to the Class Representative, in addition to his Individual Settlement Payment and his pro-rata share of the PAGA Settlement, in recognition of his efforts and risks in assisting with the prosecution of the Action.

J. "Class Representative" shall mean plaintiff RODNEY STOVALL.

K. "Court" means the Superior Court for the State of California, County of Alameda currently presiding over the Action.

1 L. "Defendants" shall mean JAVELIN LOGISTICS COMPANY, INC. and CARSON
2 CONSULTING CORP.

3
4 M. "Effective Date" means the earliest date, following entry by the Court of an order
5 and judgment finally approving this Settlement, upon which one of the following have
6 occurred: (i) if no objection is filed to the settlement and no objector appears at the
7 hearing on final approval, the date of the Court's entry of the order granting final
8 approval, (ii) if an objection is filed to the settlement and/or an objector appears at the
9 hearing on final approval, then the earlier of the following: (a) the expiration of all
10 potential appeal periods without a filing of a notice of appeal of the final approval
11 order or judgment; (b) final affirmance of the final approval order and judgment by
12 an appellate court as a result of any appeal(s), or (c) final dismissal or denial of all
13 such appeals (including any petition for review, rehearing, certiorari, etc.) such that
14 the final approval order and judgment is no longer subject to further judicial review.
15
16

17 N. "Funding Date" shall mean thirty (65) calendar days after the Effective Date and is
18 the date Defendants transfer the Gross Settlement Amount into the QSF in accord
19 with the terms of this Agreement.

20
21 O. "Individual Settlement Payment" means the amount payable from the Net Settlement
22 Amount to each Settlement Class Member and excludes any amounts distributed to
23 Aggrieved Employees pursuant to PAGA.

24
25 P. "Net Settlement Amount" or "NSA" means the Gross Settlement Amount, less Class
26 Counsel Award, Class Representative Service Award, PAGA Settlement, and
27 Settlement Administration Costs.
28

- 1 Q. "Notice Packet" means the Class Notice to be provided to the Class Members by the
2 Settlement Administrator in the form set forth as Exhibit A to this Agreement (other
3 than formatting changes to facilitate printing by the Settlement Administrator).
- 4 R. "PAGA" means the California Labor Code Private Attorneys General Act of 2004,
5 Labor Code § 2698 *et seq.*
- 6
7 S. "PAGA Payment Ratio" means the respective pay periods during the PAGA Period
8 for each Aggrieved Employee divided by the sum total of the pay periods for all
9 Aggrieved Employees during the PAGA Period.
- 10
11 T. "PAGA Period" means the period of April 6, 2019 to October 15, 2021 (the "PAGA
12 Period").
- 13
14 U. "PAGA Settlement" shall mean Forty Thousand Dollars (\$40,000) to be allocated
15 from the Gross Settlement Amount.
- 16
17 V. "Parties" means Plaintiff and Defendants, collectively, and "Party" shall mean either
18 Plaintiff or Defendants, individually.
- 19
20 W. "Payment Ratio" means the respective Workweeks for each Class Member divided
21 by the sum total Workweeks for all Class Members.
- 22
23 X. "Plaintiff" shall mean RODNEY STOVALL.
- 24
25 Y. "QSF" means the Qualified Settlement Fund established, designated and maintained
26 by the Settlement Administrator to fund the Gross Settlement Amount.
- 27
28 Z. "Released Class Claims" means all class claims alleged, or wage-and-hour class

claims which could have been alleged based on the facts, in the operative complaint which occurred during the Class Period (including, but not limited to, claims for failure to pay minimum wages in violation of Labor Code sections 1194, 1197 and 1197.1, failure to pay overtime wages in violation of Labor Code section 510, failure to provide meal periods in violation of Labor Code sections 226.7 and 512 and applicable Wage Orders, failure to provide rest breaks in violation of Labor Code sections 226.7 and 512 and applicable Wage Orders, failure to provide wage statements in violation of Labor Code section 226, failure to pay wages when due in violation of Labor Code sections 201, 202 and 203, and violation of Business & Professions Code section 17200 arising from these labor code violations) and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period.

AA. "Released PAGA Claims" means all PAGA claims alleged in the operative complaint and Plaintiffs PAGA notice to the LWDA which occurred during the PAGA Period (including, but not limited to, claims for PAGA penalties arising from failure to pay minimum wages in violation of Labor Code sections 1194, 1197 and 1197.1, failure to pay overtime wages in violation of Labor Code section 510, failure to provide meal periods in violation of Labor Code sections 226.7 and 512 and applicable Wage Orders, failure to provide rest breaks in violation of Labor Code sections 226.7 and 512 and applicable Wage Orders, failure to provide wage statements in violation of Labor Code section 226, failure to pay wages when due in violation of Labor Code sections 201, 202 and 203, and violation of Labor Code section 2698), and expressly excluding all other claims, including claims for vested benefits, wrongful termination,

1 unemployment insurance, disability, social security, workers' compensation, and
2 PAGA claims outside of the PAGA Period (the "PAGA Release").

3
4 BB. "Released Parties" shall mean Defendants and their current and former shareholders,
5 members, directors, officers and employees.

6
7 CC. "Response Deadline" means the date forty-five (45) days after the Settlement
8 Administrator mails Notice Packets to Class Members and the last date on which
9 Class Members may submit requests for exclusion or objections to the Settlement.

10
11 DD. "Settlement" means the disposition of the Action pursuant to this Agreement.

12
13 EE. "Settlement Administrator" means ILYM Group Inc., 14771 Plaza Drive, Ste. L,
14 Tustin, CA 92780; Tel: 1-888-250-6810; Fax: 1-888-845-6185. The Settlement
15 Administrator establishes, designates and maintains, as a QSF under Internal Revenue
16 Code section 468B and Treasury Regulation section 1.468B-1, into which the amount
17 of the Gross Settlement Amount is deposited for the purpose of resolving the claims
18 of Settlement Class Members. The Settlement Administrator shall maintain the funds
19 until distribution in an account(s) segregated from the assets of Defendants and any
20 person related to Defendants. *All accrued interest shall be paid and distributed to*
21 *the Settlement Class Members as part of their respective Individual Settlement*
22 *Payment.*

23
24 FF. "Settlement Class Members" or "Settlement Class" means all Class Members who
25 have not submitted a timely and valid request for exclusion as provided in this
26 Agreement.
27
28

GG. “Gross Settlement Amount” means Six Hundred Ninety-Nine Thousand Dollars (\$699,000.00) that Defendants must pay into the QSF in connection with this Settlement, inclusive of the sum of the Individual Settlement Payments, the Class Representative Service Awards, the Class Counsel Award, PAGA Settlement and the Settlement Administration Costs and *exclusive* of the employer’s share of payroll tax, if any, triggered by any payment under this Settlement.

HH. “Workweeks”, for purposes of calculating the distribution of the Net Settlement Amount, means the number of weeks of employment during the Class Period that each Class Member was employed by Defendants in California.

II. RECITALS

A. On July 4, 2020, Plaintiff Stovall filed a Notice of Violations with the Labor and Workforce Development Agency (LWDA) and served the same on Defendants.

B. On September 30, 2020, Plaintiff Stovall filed the class action lawsuit for:

1. Unfair Competition in Violation of Bus. and Prof. Code sections 17200 *et seq*;
2. Failure to pay minimum wages in violation of California Labor Code sections 1194, 1197 & 1197.1;
3. Failure to pay overtime wages in violation of California Labor Code sections 510 *et seq*
4. Failure to provide required meal periods in violation of California Labor Code sections 226.7 and 512 and the applicable IWC wage order;

1 5. Failure to provide required rest periods in violation of California Labor Code
2 sections 226.7 and 512 and the applicable IWC wage order;

3
4 6. Failure to provide accurate itemized wage statements in violation of California
5 Labor Code section 226;

6
7 7. Failure to provide wages when due in violation of Cal. Lab. Code sections
8 201, 202 and 203; and

9 8. Violation of the Private Attorneys General Act [Labor Code section 2698, *et*
10 *seq.*].

11
12 C. The Class Representative believes he has claims based on alleged violations of the
13 California Labor Code, and the Industrial Wage Commission Orders, and that class
14 certification is appropriate because the prerequisites for class certification can be
15 satisfied in the Action, and this action is manageable as a PAGA representative
16 action.
17

18 D. Defendants deny any liability or wrongdoing of any kind associated with the claims
19 alleged in the Action, disputes any wages, damages and penalties claimed by the
20 Class Representative are owed, and further contend that, for any purpose other than
21 settlement, the Action is not appropriate for class or representative action treatment.
22 Defendants contend, among other things, that at all times they complied with the
23 California Labor Code and the Industrial Wage Commission Orders.
24

25 E. The Class Representative is represented by Class Counsel. Class Counsel conducted
26 an investigation into the facts relevant to the Action, including conducting an
27
28

1 independent investigation as to the allegations, reviewing documents and
2 information exchanged through informal discovery, and reviewing documents and
3 information provided by Defendants pursuant to informal requests for information
4 to prepare for mediation. Defendants produced for the purpose of settlement
5 negotiations certain employment data concerning the Settlement Class, which Class
6 Counsel reviewed and analyzed with the assistance of an expert. Furthermore, Class
7 Counsel propounded formal discovery, including sets of special interrogatories to
8 each named Defendant. Class Counsel engaged in a comprehensive review and
9 analysis of Defendants' discovery responses. Based on their own independent
10 investigation and evaluation, Class Counsel are of the opinion that the Settlement
11 with Defendants is fair, reasonable and adequate, and is in the best interest of the
12 Settlement Class in light of all known facts and circumstances, including the risks of
13 significant delay, defenses asserted by Defendants, uncertainties regarding class
14 certification, and numerous potential appellate issues. Although they deny any
15 liability, Defendants are agreeing to this Settlement solely to avoid the
16 inconveniences and cost of further litigation. The Parties and their counsel have
17 agreed to settle the claims on the terms set forth in this Agreement.

21 F. On September 10, 2020, the Parties participated in mediation presided over by Hon.
22 Brian C. Walsh (Ret.), a respected jurist and experienced wage and hour class action
23 mediator. The mediation concluded without a settlement, but Judge Walsh made a
24 mediator's proposal, which was accepted by all Parties. The agreement was
25 memorialized in the form of a Memorandum of Understanding.

1 G. This Agreement replaces and supersedes the Memorandum of Understanding and any
2 other agreements, understandings, or representations between the Parties. This
3 Agreement represents a compromise and settlement of highly disputed claims.
4 Nothing in this Agreement is intended or will be construed as an admission by
5 Defendants that the claims in the Action of Plaintiff or the Class Members have merit
6 or that Defendants bears any liability to Plaintiff or the Class on those claims or any
7 other claims, or as an admission by Plaintiff that Defendants' defenses in the Action
8 have merit.
9

10
11 H. The Parties believe that the Settlement is fair, reasonable and adequate. The
12 Settlement was arrived at through arm's-length negotiations, taking into account all
13 relevant factors. The Parties recognize the uncertainty, risk, expense and delay
14 attendant to continuing the Action through trial and any appeal. Accordingly, the
15 Parties desire to fully, finally, and forever settle, compromise and discharge all
16 disputes and claims arising from or relating to the Action.
17

18 I. The Parties agree to certification of the Class for purposes of this Settlement only. If
19 for any reason the settlement does not become effective, Defendants reserve the right
20 to contest certification of any class for any reason and reserves all available defenses
21 to the claims in the Action.
22

23 Based on these Recitals that are a part of this Agreement, the Parties agree as follows:
24

25 **III. TERMS OF AGREEMENT**

26 A. Settlement Consideration and Settlement Payments by Defendants.
27
28

1 1. Settlement Consideration. In full and complete settlement of the Action, and
2 in exchange for the releases set forth below, Defendants and the Released
3 Parties will pay the sum of the Individual Settlement Payment, the Class
4 Representative Service Award, the Class Counsel Award, PAGA Settlement,
5 and the Settlement Administration Costs, as specified in this Agreement, equal
6 to the Gross Settlement Amount of Six Hundred Ninety-Nine Thousand
7 Dollars (\$699,000.00). The Parties agree that this is a non-reversionary
8 Settlement and that no portion of the Gross Settlement Amount shall revert to
9 Defendants. Other than the Defendants' share of employer payroll taxes, or
10 as otherwise specified in the Agreement, Defendants shall not be required to
11 pay more than the Gross Settlement Amount, except as provided for
12 hereinbelow.

13
14
15 2. Class Size. At the time of mediation, Defendants estimated that the Settlement
16 Class was comprised of 290 individuals who collectively worked
17 approximately 24,000 workweeks ("Projected Workweeks") during the Class
18 Period. In regard hereto, Defendants will provide a declaration under penalty
19 of perjury confirming the number of applicable Class Members and Projected
20 Workweeks during the Class Period. If the number of Class Members and/or
21 the number of workweeks is greater than 110% of the estimate provided for
22 herein, the end date of the Release Period and Class Period will be adjusted so
23 that the number of workweeks in the Releases Period and Class Period does
24 not exceed 110% of the estimate.
25
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1 3. Settlement Payment. Defendants shall pay, via wire transfer, the Gross
2 Settlement Amount to the Settlement Administrator on the Funding Date.

3
4 4. Defendants' Share of Payroll Taxes. Defendants' share of employer side
5 payroll taxes is in addition to the Gross Settlement Amount and shall be paid
6 together with the Gross Settlement Amount.

7
8 B. Release by Settlement Class Members. As of the Funding Date, in exchange for the
9 consideration set forth in this Agreement, Plaintiff and the Settlement Class Members
10 release the Released Parties from the Released Class Claims for the Class Period.

11 C. Release by the Aggrieved Employees. As of the Funding Date, in exchange for the
12 consideration set forth in this Agreement, the Plaintiff, the LWDA and the State of
13 California release the Released Parties from the PAGA Released Claims for the PAGA
14 Period. As a result of this release, the Aggrieved Employees shall be precluded from
15 bringing claims against Defendants for the PAGA Released Claims.

16
17 D. Conditions Precedent: This Settlement will become final and effective only upon the
18 occurrence of all of the following events:

- 19
20 1. The Court enters an order granting preliminary approval of the Settlement;
21
22 2. The Court enters an order granting final approval of the Settlement and a Final
23 Judgment;
24
25 3. If an objector appears at the final approval hearing, the time for appeal of the
26 Final Judgment and Order Granting Final Approval of Class Action
27 Settlement expires; or, if an appeal is timely filed, there is a final resolution of
28

1 any appeal from the Judgment and Order Granting Final Approval of Class
2 Action Settlement; and

3
4 4. Defendants fully fund the Gross Settlement Amount.

5
6 E. Nullification of Settlement Agreement. In the event that this Settlement Agreement is
7 not preliminarily or finally approved by the Court, fails to become effective, or is
8 reversed, withdrawn or modified by the Court, or in any way prevents or prohibits
9 Defendants from obtaining a complete resolution of the Released Claims, or if
10 Defendants fail to fully fund the Gross Settlement Amount:

11
12 1. This Settlement Agreement shall be void *ab initio* and of no force or effect,
13 and shall not be admissible in any judicial, administrative or arbitral
14 proceeding for any purpose or with respect to any issue, substantive or
15 procedural;

16
17 2. The conditional class certification (obtained for any purpose) shall be void *ab*
18 *initio* and of no force or effect, and shall not be admissible in any judicial,
19 administrative or arbitral proceeding for any purpose or with respect to any
20 issue, substantive or procedural; and

21
22 3. None of the Parties to this Settlement will be deemed to have waived any
23 claims, objections, defenses or arguments in the Action, including with respect
24 to the issue of class certification.

25
26 4. Defendants shall bear the sole responsibility for any cost to issue or reissue
27 any curative notice to the Settlement Class Members and all Settlement
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Administration Costs incurred to the date of nullification if such curative notice is necessary as a result of the fault of the Defendants.

F. Certification of the Settlement Class. The Parties stipulate to conditional class certification of the Class for the Class Period for purposes of settlement only. In the event that this Settlement is not approved by the Court, fails to become effective, or is reversed, withdrawn or modified by the Court, or in any way prevents or prohibits Defendants from obtaining a complete resolution of the Released Claims, the conditional class certification (obtained for any purpose) shall be void *ab initio* and of no force or effect, and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural.

G. Tax Liability. The Parties make no representations as to the tax treatment or legal effect of the payments called for, and Class Members and/or Aggrieved Employees are not relying on any statement or representation by the Parties in this regard. Class Members and/or Aggrieved Employees understand and agree that they will be responsible for the payment of any taxes and penalties assessed on the Individual Settlement Payments and/or Aggrieved Employees' individual shares of the PAGA Settlement described and will be solely responsible for any penalties or other obligations resulting from their personal tax reporting of Individual Settlement Payments and/or Aggrieved Employees' individual shares of the PAGA Settlement.

H. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section, the "acknowledging party" and each Party to this Agreement other than the acknowledging party, an "other party") acknowledges and agrees that: (1) no provision of this Agreement, and no written communication or disclosure between or among the

1 Parties or their attorneys and other advisers, is or was intended to be, nor shall any
2 such communication or disclosure constitute or be construed or be relied upon as, tax
3 advice within the meaning of United States Treasury Department circular 230 (31 CFR
4 part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his,
5 her or its own, independent legal and tax counsel for advice (including tax advice) in
6 connection with this Agreement, (b) has not entered into this Agreement based upon
7 the recommendation of any other Party or any attorney or advisor to any other Party,
8 and (c) is not entitled to rely upon any communication or disclosure by any attorney
9 or adviser to any other party to avoid any tax penalty that may be imposed on the
10 acknowledging party, and (3) no attorney or adviser to any other Party has imposed
11 any limitation that protects the confidentiality of any such attorney's or adviser's tax
12 strategies (regardless of whether such limitation is legally binding) upon disclosure by
13 the acknowledging party of the tax treatment or tax structure of any transaction,
14 including any transaction contemplated by this Agreement.
15
16

17
18 I. Preliminary Approval Motion. At the earliest practicable time, Plaintiff shall file with
19 the Court a Motion for Order Granting Preliminary Approval and supporting papers,
20 which shall include this Settlement Agreement. Plaintiff will provide Defendants with
21 a draft of the Motion at least five business days prior to the filing of the Motion to give
22 Defendants an opportunity to propose changes or additions to the Motion.
23

24 J. Settlement Administrator. The Settlement Administrator shall be responsible for:
25 establishing and administering the QSF; calculating, processing and mailing payments
26 to the Class Representatives, Class Counsel, LWDA and Class Members; printing and
27 mailing the Notice Packets to the Class Members as directed by the Court; receiving
28

1 and reporting the objections and requests for exclusion; calculating, deducting and
2 remitting all legally required taxes from Individual Settlement Payments and
3 distributing tax forms for the Wage Portion and Non-Wage Portion of the Individual
4 Settlement Payments and/or Aggrieved Employees' individual shares of the PAGA
5 Settlement; processing and mailing tax payments to the appropriate state and federal
6 taxing authorities; providing declaration(s) as necessary in support of preliminary
7 and/or final approval of this Settlement; and other tasks as the Parties mutually agree
8 or the Court orders the Settlement Administrator to perform. The Settlement
9 Administrator shall keep the Parties timely apprised of the performance of all
10 Settlement Administrator responsibilities by among other things, sending a weekly
11 status report to the Parties' counsel stating the date of the mailing, the of number of
12 Elections Not to Participate in Settlement it receives (including the numbers of valid
13 and deficient), and number of objections received.

14
15
16 K. Notice Procedure.

17
18 1. Class Data. No later than ten (10) business days after the Preliminary
19 Approval Date, Defendants shall provide the Settlement Administrator with
20 the Class Data for purposes of preparing and mailing Notice Packets to the
21 Class Members.

22
23 2. Notice Packets.

24
25 a) The Notice Packet shall contain the Notice of Class Action Settlement
26 in a form substantially similar to the form attached as Exhibit A. The
27 Notice of Class Action Settlement shall inform Class Members and
28

1 Aggrieved Employees that they need not do anything in order to
2 receive an Individual Settlement Payment and/or Aggrieved
3 Employees' individual shares of the PAGA Settlement and to keep the
4 Settlement Administrator apprised of their current mailing address, to
5 which the Individual Settlement Payments and/or Aggrieved
6 Employees' individual shares of the PAGA Settlement will be mailed
7 following the Funding Date. The Notice of Class Action Settlement
8 shall set forth the release to be given by all members of the Class who
9 do not request to be excluded from the Settlement Class and/or
10 Aggrieved Employees' in exchange for an Individual Settlement
11 Payment and/or Aggrieved Employees' individual shares of the PAGA
12 Settlement, the number of Workweeks worked by each Class Member
13 during the Class Period and PAGA Period, if any, and the estimated
14 amount of their Individual Settlement Payment if they do not request
15 to be excluded from the Settlement and each Aggrieved Employee's
16 share of the PAGA Settlement, if any. The Settlement Administrator
17 shall use the Class Data to determine Class Members' Workweeks and
18 PAGA Workweeks. The Notice will also advise the Aggrieved
19 Employees that they will release the Released PAGA Claims and will
20 receive their share of the PAGA Settlement regardless of whether they
21 request to be excluded from the Settlement.
22
23
24

- 25
26 b) The Notice Packet's mailing envelope shall include the following
27 language: "IMPORTANT LEGAL DOCUMENT- YOU MAY BE
28 ENTITLED TO PARTICIPATE IN A CLASS ACTION

1 SETTLEMENT; A PROMPT REPLY TO CORRECT YOUR
2 ADDRESS IS REQUIRED AS EXPLAINED IN THE ENCLOSED
3 NOTICE.”
4

5 3. Notice by First Class U.S. Mail and Email. Upon receipt of the Class Data,
6 the Settlement Administrator will perform a search based on the National
7 Change of Address Database to update and correct any known or identifiable
8 address changes. No later than fourteen (14) calendar days after receiving the
9 Class Data from Defendants, the Settlement Administrator shall mail and
10 email copies of the Notice Packet to all Class Members via regular First-Class
11 U.S. Mail and electronic mail. The Settlement Administrator shall exercise
12 its best judgment to determine the current mailing address for each Class
13 Member. The address identified by the Settlement Administrator as the
14 current mailing address shall be presumed to be the best mailing address for
15 each Class Member.
16
17

18 4. Undeliverable Notices. Any Notice Packets returned to the Settlement
19 Administrator as non-delivered on or before the Response Deadline shall be
20 re-mailed to any forwarding address provided. If no forwarding address is
21 provided, the Settlement Administrator shall promptly attempt to determine a
22 correct address by lawful use of skip-tracing, or other search using the name,
23 address and/or Social Security number of the Class Member involved, and
24 shall then perform a re-mailing, if another mailing address is identified by the
25 Settlement Administrator. In addition, if any Notice Packets, which are
26 addressed to Class Members who are currently employed by Defendants, are
27
28

1 returned to the Settlement Administrator as non-delivered and no forwarding
2 address is provided, the Settlement Administrator shall notify Defendants.
3 Defendants will request that the currently employed Class Member provide a
4 corrected address, and transmit to the Administrator any corrected address
5 provided by the Class Member. Class Members who received a re-mailed
6 Notice Packet shall have their Response Deadline extended fifteen (15) days
7 from the original Response Deadline.
8

9
10 5. Disputes Regarding Individual Settlement Payments. Class Members will
11 have the opportunity, should they disagree with Defendant's records regarding
12 the start and end dates of employment to provide documentation and/or an
13 explanation to show contrary dates. If there is a dispute, the Settlement
14 Administrator will consult with the Parties to determine whether an
15 adjustment is warranted. The Settlement Administrator shall determine the
16 eligibility for, and the amounts of, any Individual Settlement Payments under
17 the terms of this Agreement. The Settlement Administrator's determination
18 of the eligibility for and amount of any Individual Settlement Payment shall
19 be binding upon the Class Member and the Parties.
20

21
22 6. Disputes Regarding Administration of Settlement. Any disputes not resolved
23 by the Settlement Administrator concerning the administration of the
24 Settlement will be resolved by the Court under the laws of the State of
25 California. Before any such involvement of the Court, counsel for the Parties
26 will confer in good faith to resolve the disputes without the necessity of
27 involving the Court.
28

1 7. Exclusions. The Notice of Class Action Settlement contained in the Notice
2 Packet shall state that Class Members who wish to exclude themselves from
3 the Settlement must submit a written request for exclusion by the Response
4 Deadline. The written request for exclusion must state that the Class Member
5 wishes to exclude himself or herself from the Settlement and (1) must contain
6 the name, address, and the last four digits of the Social Security number of the
7 person requesting exclusion; (2) must be signed by the Class Member; (3)
8 must be postmarked or fax stamped by the Response Deadline and returned to
9 the Settlement Administrator at the specified address or fax telephone number;
10 and (4) contain a typewritten or handwritten notice stating in substance: "I
11 wish to opt out of the settlement of the class action lawsuit entitled *Stovall v.*
12 *Javelin Logistics Company, Inc., Alameda County Superior Court, Case No.*
13 *RG-20075705.* I understand that by requesting to be excluded from the
14 settlement, I will receive no money from the Settlement described in this
15 Notice." The request for exclusion will not be valid if it is not timely
16 submitted, if it is not signed by the Class Member, or if it does not contain the
17 name and address and last four digits of the Social Security number of the
18 Class Member. The date of the postmark on the mailing envelope or fax stamp
19 on the request for exclusion shall be the exclusive means used to determine
20 whether the request for exclusion was timely submitted. Any Class Member
21 who requests to be excluded from the Settlement Class will not be entitled to
22 an Individual Settlement Payment and will not be otherwise bound by the
23 terms of the Settlement or have any right to object, appeal or comment
24 thereon. However, any Class Member that submits a timely request for
25 thereon. However, any Class Member that submits a timely request for
26 thereon. However, any Class Member that submits a timely request for
27 thereon. However, any Class Member that submits a timely request for
28 thereon. However, any Class Member that submits a timely request for

1 exclusion that is also an Aggrieved Employee will still receive his/her pro rata
2 share of the PAGA Settlement, as specified below, and in consideration, will
3 be bound by the Release by the Aggrieved Employees as set forth herein.
4 Settlement Class Members who fail to submit a valid and timely written
5 request for exclusion on or before the Response Deadline shall be bound by
6 all terms of the Settlement and any final judgment entered in this Action if the
7 Settlement is approved by the Court. No later than fourteen (14) calendar days
8 after the Response Deadline, the Settlement Administrator shall provide
9 counsel for the Parties with a final list of the Class Members who have timely
10 submitted written requests for exclusion. At no time shall any of the Parties
11 or their counsel seek to solicit or otherwise encourage members of the Class
12 to submit requests for exclusion from the Settlement.
13
14

- 15 8. Objections. The Notice of Class Action Settlement contained in the Notice
16 Packet shall state that Class Members who wish to object to the Settlement
17 may submit to the Settlement Administrator a written statement of objection
18 (“Notice of Objection”) by the Response Deadline. The postmark date of
19 mailing shall be deemed the exclusive means for determining that a Notice of
20 Objection was served timely. The Notice of Objection must be signed by the
21 Settlement Class Member and state: (1) the case name and number; (2) the
22 name of the Settlement Class Member; (3) the address of the Settlement Class
23 Member; (4) the last four digits of the Settlement Class Member’s Social
24 Security number; (4) the basis for the objection; and (5) if the Settlement Class
25 Member intends to appear at the Final Approval/Settlement Fairness Hearing.
26
27 Class Members who fail to make objections in writing in the manner specified
28

1 above may still make their objections orally at the Final Approval/Settlement
2 Fairness Hearing with the Court's permission. Settlement Class Members will
3 have a right to appear at the Final Approval/Settlement Fairness Hearing to
4 have their objections heard by the Court. At no time shall any of the Parties
5 or their counsel seek to solicit or otherwise encourage Class Members to file
6 or serve written objections to the Settlement or appeal from the Order and
7 Final Judgment. Class Members who submit a written request for exclusion
8 may not object to the Settlement. Class Members may not object to the PAGA
9 Settlement
10 Settlement
11

12 L. Funding and Allocation of the Gross Settlement Amount. Defendants are required to
13 pay the Gross Settlement Amount on or before the Funding Date, plus any employer's
14 share of payroll taxes as mandated by law within the time specified herein.
15

16 1. Calculation of Individual Settlement Payments. Individual Settlement
17 Payments shall be paid from the Net Settlement Amount and shall be paid
18 pursuant to the formula set forth herein. Using the Class Data, the Settlement
19 Administrator shall add up the total number of Workweeks for all Class
20 Members. The respective Workweeks for each Class Member will be divided
21 by the total Workweeks for all Class Members, resulting in the Payment Ratio
22 for each Class Member. Each Class Member's Payment Ratio will then be
23 multiplied by the Net Settlement Amount to calculate each Class Member's
24 estimated Individual Settlement Payments. Each Individual Settlement
25 Payment will be reduced by any legally mandated employee tax withholdings
26 (e.g., employee payroll taxes, etc.). Individual Settlement Payments for Class
27
28

Members who submit valid and timely requests for exclusion will be redistributed to Settlement Class Members who do not submit valid and timely requests for exclusion on a pro rata basis based on their respective Payment Ratios.

2. Calculation of Individual Payments to the Aggrieved Employees. Using the Class Data, the Settlement Administrator shall add up the total number of pay periods for all Aggrieved Employees during the PAGA Period. The respective pay periods for each Aggrieved Employee will be divided by the total pay periods for all Aggrieved Employees, resulting in the “PAGA Payment Ratio” for each Aggrieved Employee. Each Aggrieved Employee’s PAGA Payment Ratio will then be multiplied by the Aggrieved Employee Payment to calculate each Aggrieved Employee’s estimated share of the PAGA Settlement.

3. Allocation of Individual Settlement Payments. For tax purposes, Individual Settlement Payments shall be allocated as follows: 1/3 wages (“Wage Portion”); 1/3 as penalties and 1/3 as interest (“Non-Wage Portion”).

4. Allocation of Aggrieved Employee Payments. For tax purposes, Aggrieved Employee Settlement Payments shall be allocated and treated as 100% penalties and shall be reported on IRS Form 1099.

5. No Credit Toward Benefit Plans. The Individual Settlement Payments and individual shares of the PAGA Settlement made to Settlement Class Members and/or Aggrieved Employees under this Settlement Agreement, as well as any other payments made pursuant to this Settlement Agreement, will not be

1 utilized to calculate any additional benefits under any benefit plans to which
2 any Class Members may be eligible, including, but not limited to profit-
3 sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans,
4 sick leave plans, PTO plans, and any other benefit plan. Rather, it is the
5 Parties' intention that this Settlement Agreement will not affect any rights,
6 contributions, or amounts to which any Class Members may be entitled under
7 any benefit plans.
8

9
10 6. All monies received by Settlement Class Members under the Settlement which
11 are attributable to wages shall constitute income to such Settlement Class
12 Members solely in the year in which such monies actually are received by the
13 Settlement Class Members. It is the intent of the Parties that Individual
14 Settlement Payments and individual shares of the PAGA Settlement provided
15 for in this Settlement agreement are the sole payments to be made by Defendants
16 to Settlement Class Members and/or Aggrieved Employees in connection with
17 this Settlement Agreement, with the exception of Plaintiff, and that the
18 Settlement Class Members and/or Aggrieved Employees are not entitled to any
19 new or additional compensation or benefits as a result of having received the
20 Individual Settlement Payments and/or their shares of the PAGA Settlement.
21

22
23 7. Mailing. Individual Settlement Payments and Aggrieved Employee Payments
24 shall be mailed by regular First-Class U.S. Mail to Settlement Class Members'
25 and/or Aggrieved Employees last known mailing address no later than fifteen
26 (15) calendar days after the Funding Date.
27
28

1 8. Expiration. Any checks issued to Settlement Class Members and Aggrieved
2 Employees shall remain valid and negotiable for one hundred and eighty (180)
3 days from the date of their issuance. If a Settlement Class Member and/or
4 Aggrieved Employee does not cash his or her settlement check within 90 days,
5 the Settlement Administrator will send a letter to such persons, advising that
6 the check will expire after the 180th day, and invite that Settlement Class
7 Member and/or Aggrieved Employee to request reissuance in the event the
8 check was destroyed, lost or misplaced. In the event an Individual Settlement
9 Payment and/or Aggrieved Employee's individual share of the PAGA
10 Settlement check has not been cashed within one hundred and eighty (180)
11 days, all funds represented by such uncashed checks, plus any interest accrued
12 thereon, shall be distributed consistent with California Code of Civil
13 Procedure Section 384 as follows: to The Children's Advocacy Institute
14 (CAI), founded at the nonprofit University of San Diego School of Law in
15 1989. Neither Class Counsel, nor Defendants' counsel, Plaintiff and
16 Defendants have any interest, pecuniary or otherwise, in CAI.

17
18
19
20 9. Class Representative Service Award. In addition to the Individual Settlement
21 Payment and his individual share of the PAGA Settlement to be paid to
22 Plaintiff, Plaintiff will apply to the Court for an award of not more than
23 \$10,000, as the Class Representative Service Award. Defendants do not
24 presently intend to oppose a Class Representative Service Award of not more
25 than \$10,000 for Plaintiff. The Settlement Administrator shall pay the Class
26 Representative Service Award, either in the amount stated herein if approved
27 by the Court or some other amount as approved by the Court, to Plaintiff from
28

1 the Gross Settlement Amount no later than ten (10) calendar days after the
2 Funding Date. Any portion of the requested Class Representative Service
3 Awards that are not awarded to the Class Representatives shall be part of the
4 Net Settlement Amount and shall be distributed to Settlement Class Members
5 as provided in this Agreement. The Settlement Administrator shall issue an
6 IRS Form 1099 — MISC to Plaintiff for his Class Representative Service
7 Award. Plaintiff shall be solely and legally responsible to pay any and all
8 applicable taxes on his Class Representative Service Award and shall hold
9 harmless the Released Parties from any claim or liability for taxes, penalties,
10 or interest arising as a result of the Class Representative Service Awards. The
11 Class Representative Service Award shall be in addition to Plaintiff's
12 Individual Settlement Payment as a Settlement Class Member. Approval of
13 this Settlement shall not be conditioned on Court approval of the requested
14 amount of the Class Representative Service Award. If the Court reduces or
15 does not approve the requested Class Representative Service Award, Plaintiff
16 shall not have the right to revoke the Settlement, and it will remain binding.
17
18
19

- 20 10. Class Counsel Award. Defendants understand a motion by Class Counsel for
21 attorneys' fees not to exceed one-third of the Gross Settlement Amount
22 currently estimated to be \$233,000 plus costs and expenses supported by
23 declaration not to exceed Fifteen Thousand Dollars (\$15,000.00), from the
24 Gross Settlement Amount will be filed. Any portion of the requested Class
25 Counsel Award that is not awarded to Class Counsel shall be part of the Net
26 Settlement Amount and shall be distributed to Settlement Class Members as
27 provided in this Agreement. The Settlement Administrator shall allocate and
28

1 pay the Class Counsel Award to Class Counsel from the Gross Settlement
2 Amount no later than five (5) calendar days after the Funding Date. Class
3 Counsel shall be solely and legally responsible to pay all applicable taxes on
4 the payment made pursuant to this paragraph. The Settlement Administrator
5 shall issue an IRS Form 1099 — MISC to Class Counsel for the payments
6 made pursuant to this paragraph. In the event that the Court reduces or does
7 not approve the requested Class Counsel Award, Plaintiff and Class Counsel
8 shall not have the right to revoke the Settlement, or to appeal such order, and
9 the Settlement will remain binding.
10

- 11
- 12 11. PAGA Settlement. Forty Thousand Dollars (\$40,000) shall be allocated from
13 the Gross Settlement Amount for settlement of claims for civil penalties under
14 the Private Attorneys General Act of 2004 (“PAGA Settlement”). The
15 Settlement Administrator shall pay seventy-five percent (75%) of the PAGA
16 Settlement (\$30,000) to the California Labor and Workforce Development
17 Agency no later than twenty-five (25) calendar days after the Funding Date
18 (hereinafter “LWDA Payment”). Twenty-five percent (25%) of the PAGA
19 Settlement (\$10,000) will be distributed to the Aggrieved Employees as
20 described in this Agreement (hereinafter “Aggrieved Employee Payment”).
21 For purposes of distributing the PAGA Settlement to the Aggrieved
22 Employees, each Aggrieved Employee shall receive their pro-rata share of the
23 Aggrieved Employee Payment using the PAGA Payment Ratio as defined
24 above.
25
26
27
28

12. Settlement Administration Costs. The Settlement Administrator shall be paid for the costs of administration of the Settlement from the Gross Settlement Amount. The estimate of the Settlement Administration Costs is \$9,000. The Settlement Administrator shall be paid the Settlement Administration Costs no later than twenty-five (25) calendar days after the Funding Date.

M. Final Approval Motion. Class Counsel and Plaintiff shall use best efforts to file with the Court a Motion for Order Granting Final Approval and Entering Judgment, within twenty-eight (28) days following the expiration of the Response Deadline, which motion shall request final approval of the Settlement and a determination of the amounts payable for the Class Representative Service Award, the Class Counsel Award, the PAGA Settlement, and the Settlement Administration Costs.

1. Declaration by Settlement Administrator. No later than fourteen (7) days after the Response Deadline, the Settlement Administrator shall submit a declaration in support of Plaintiff's motion for final approval of this Settlement detailing the number of Notice Packets mailed and re-mailed to Class Members, the number of undeliverable Notice Packets, the number of timely requests for exclusion, the number of objections received, the amount of the average Individual Settlement Payment and highest Individual Settlement Payment, the Settlement Administration Costs, and any other information as the Parties mutually agree or the Court orders the Settlement Administrator to provide.

2. Final Approval Order and Judgment. Class Counsel shall present an Order Granting Final Approval of Class Action Settlement to the Court for its

1 approval, and Judgment thereon, at the time Class Counsel files the Motion
2 for Final Approval.

3
4 N. Review of Motions for Preliminary and Final Approval. Class Counsel will provide
5 an opportunity for Counsel for Defendants to review the Motions for Preliminary and
6 Final Approval, including the Order Granting Final Approval of Class Action
7 Settlement, and Judgment before filing with the Court. The Parties and their counsel
8 will cooperate with each other and use their best efforts to affect the Court's approval
9 of the Motions for Preliminary and Final Approval of the Settlement, and entry of
10 Judgment.

11
12 O. Cooperation. The Parties and their counsel will cooperate with each other and use
13 their best efforts to implement the Settlement.

14
15 P. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action,
16 except such proceedings necessary to implement and complete the Settlement, pending
17 the Final Approval/Settlement Fairness Hearing to be conducted by the Court

18
19 Q. Amendment or Modification. This Agreement may be amended or modified only by
20 a written instrument signed by counsel for all Parties or their successors-in-interest.

21
22 R. Entire Agreement. This Agreement and any attached Exhibit constitute the entire
23 Agreement among these Parties, and no oral or written representations, warranties or
24 inducements have been made to any Party concerning this Agreement or its Exhibit
25 other than the representations, warranties and covenants contained and memorialized
26 in this Agreement and its Exhibit.
27
28

1 S. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and
2 represent they are expressly authorized by the Parties whom they represent to negotiate
3 this Agreement and to take all appropriate Action required or permitted to be taken by
4 such Parties pursuant to this Agreement to effectuate its terms, and to execute any other
5 documents required to effectuate the terms of this Agreement. The persons signing
6 this Agreement on behalf of Defendants represent and warrant that he/she is authorized
7 to sign this Agreement on behalf of Defendants. Plaintiff represents and warrants that
8 she is authorized to sign this Agreement and that she has not assigned any claim, or
9 part of a claim, covered by this Settlement to a third-party.
10

11
12 T. No Public Comment: The Parties and their counsel agree that they will not issue any
13 press releases, initiate any contact with the press, respond to any press inquiry, or have
14 any communication with the press about the fact, amount or terms of the Settlement
15 Agreement. Class Counsel further agrees not to use the Settlement Agreement or any
16 of its terms for any marketing or promotional purposes. Nothing herein will restrict
17 Class Counsel from including publicly available information regarding this settlement
18 in future judicial submissions regarding Class Counsel's qualifications and experience.
19 Further, Class Counsel will not include, reference or use the Settlement Agreement for
20 any marketing or promotional purposes, either before or after the Motion for
21 Preliminary Approval is filed.
22

23
24 U. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure
25 to the benefit of, the successors or assigns of the Parties, as previously defined.
26

27 V. California Law Governs. All terms of this Agreement and the Exhibit and any disputes
28 shall be governed by and interpreted according to the laws of the State of California.

1 W. Counterparts. This Agreement may be executed in one or more counterparts. All
2 executed counterparts and each of them shall be deemed to be one and the same
3 instrument provided that counsel for the Parties to this Agreement shall exchange
4 among themselves copies or originals of the signed counterparts.

5
6 X. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this Settlement
7 is a fair, adequate and reasonable settlement of this Action and have arrived at this
8 Settlement after extensive arms-length negotiations, taking into account all relevant
9 factors, present and potential.

10
11 Y. Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction with
12 respect to the interpretation, implementation and enforcement of the terms of this
13 Agreement and all orders and judgments entered in connection therewith, and the
14 Parties and their counsel submit to the jurisdiction of the Court for purposes of
15 interpreting, implementing and enforcing the settlement and all orders and judgments
16 entered in connection with this Agreement.

17
18
19 Z. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid,
20 the Court shall first attempt to construe the provisions valid to the fullest extent
21 possible consistent with applicable precedents so as to define all provisions of this
22 Agreement valid and enforceable.

23
24 AA. No Unalleged Claims. Plaintiff and Class Counsel represent that they do not currently
25 intend to pursue any claims against the Released Parties, including, but not limited to,
26 any and all claims relating to or arising from Plaintiff's employment with Defendants,
27 regardless of whether Class Counsel is currently aware of any facts or legal theories
28

1 upon which any claims or causes of action could be brought against Released Parties,
2 including those facts or legal theories alleged in the operative complaint in this Action.
3 The Parties further acknowledge, understand and agree that this representation is
4 essential to the Agreement and that this Agreement would not have been entered into
5 were it not for this representation.
6

7 BB. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class
8 certification for purposes of this settlement only.
9

10 CC. No Admissions by the Parties. Plaintiff has claimed and continues to claim that the
11 Released Claims have merit and give rise to liability on the part of Defendants.
12 Defendants claim that the Released Claims have no merit and do not give rise to
13 liability. This Agreement is a compromise of disputed claims. Nothing contained in
14 this Agreement and no documents referred to and no action taken to carry out this
15 Agreement may be construed or used as an admission by or against the Defendants or
16 Plaintiff or Class Counsel as to the merits or lack thereof of the claims asserted. Other
17 than as may be specifically set forth herein, each Party shall be responsible for and
18 shall bear its/his own attorney's fees and costs.
19
20

21 IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:
22

23 DATED: 2/4/2022
24

DocuSigned by:
Rodney Stovall
E27056BDED59422...
25
26
27
28

RODNEY STOVALL

IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANTS:

1
2 DATED: 2/7/2022

Transigned by:
Michael Bonino
JAVELIN LOGISTICS COMPANCY, INC.
Michael Bonino

Printed Name
C.F.O.

3
4
5
6
7 DATED: 2/24/22

Title
Tracy Carson
CARSON CONSULTING CORP.

Tracy Carson
Printed Name
CEO
Title

8
9
10
11
12
13
14
15 IT IS SO AGREED AS TO FORM BY COUNSEL:

16 DATED: _____

JCL LAW FIRM, A.P.C.

17 By: _____

18 Attorneys for Plaintiff and the Settlement Class
19 Members

20
21
22 DATED: _____

ZAKAY LAW GROUP, APLC

23 By: _____

24 Attorneys for Plaintiff and the Settlement Class
25 Members

1
2 DATED: _____

JAVELIN LOGISTICS COMPANCY, INC.

3
4 Printed Name

5
6 Title

7 DATED: _____

CARSON CONSULTING CORP.

9
10 Printed Name

11
12 Title

13
14
15 IT IS SO AGREED AS TO FORM BY COUNSEL:

16 DATED: 2/4/2022

JCL LAW FIRM, A.P.C.

17
18 By: _____

DocuSigned by:

Jean-Claude Lapuyade

0EBC25D5B9CD469...

19 Attorneys for Plaintiff and the Settlement Class
20 Members

21
22 DATED: 2/4/2022

ZAKAY LAW GROUP, APLC

23
24 By: _____

DocuSigned by:

Shani D. Zakay

4ECDE73A91D4420...

25 Attorneys for Plaintiff and the Settlement Class
26 Members

1 DATED: 2/8/2022

DANIEL F. PYNE
HOPKINS & CARLEY, A LAW CORPORATION

By: Daniel F. Pyne

Attorneys for Defendants

35JUV15248.2

EXHIBIT B

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)

Eduardo Garcia (State Bar #290572)

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San Diego, CA 92121

Telephone: (619)599-8292

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Jackland K. Hom (State Bar #327243)

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jackland@zakaylaw.com

julieann@zakaylaw.com

Attorneys for Plaintiff RODNEY STOVALL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

RODNEY STOVALL, on behalf of himself
and on behalf of all persons similarly situated,

Plaintiff,

v.

JAVELIN LOGISTICS COMPANY, INC.,
CARSON CONSULTING CORP., and DOES
1-50, inclusive,

Defendants.

Case No. RG20075705

[Complaint Filed: 09/30/20]

~~PROPOSED~~ ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT

Hearing Date: April 5, 2022

Hearing Time: 3:00 p.m.

Reservation ID: 783815354451

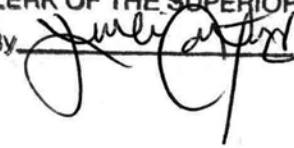
Judge: Seligman

Dept.: 23

FILED
ALAMEDA COUNTY

APR 05 2022

CLERK OF THE SUPERIOR COURT

By  Deputy

1 This matter having come before the Superior Court of the State of California, in and for the
2 County of Alameda, at 3:00 p.m. on April 5, 2022, with Jean-Claude Lapuyade, Esq., of the JCL
3 Law Firm, APC, and Shani O. Zakay, Esq. of the Zakay Law Group, APLC, as counsel for Plaintiff
4 RODNEY STOVALL ("Plaintiff") and Daniel F. Pyne, Esq. of Hopkins & Carley, A Law
5 Corporation, appearing for defendant JAVELIN LOGISTICS COMPANY, INC and CARSON
6 CONSULTING CORP. (hereinafter collectively "Defendant"). The Court, having carefully
7 considered the briefs, argument of counsel and all the matters presented to the Court, and good
8 cause appearing, hereby GRANTS Plaintiff's Motion for Preliminary Approval of Class Action
9 Settlement.

10 **IT IS HEREBY ORDERED:**

11 1. The Court preliminarily approves the Stipulation of Settlement of Class Action
12 Claims and Release of Claims ("Settlement Agreement" or "Agreement") a true and correct copy
13 of which is attached hereto as **Exhibit "1"**. This is based on the Court's determination that the
14 Settlement Agreement is within the range of possible final approval, pursuant to the provisions of
15 Section 382 of the California Code of Civil Procedure and California Rules of Court, rule 3.769.

16 2. This Order incorporates by reference the definitions in the Agreement, and all
17 terms defined therein shall have the same meaning in this Order as set forth in the Agreement.

18 3. Subject to the terms of the Settlement Agreement, the Gross Settlement Amount
19 that Defendants shall pay is Six Hundred Ninety-Nine Thousand Dollars and Zero Cents
20 (\$699,000.00). It appears to the Court on a preliminary basis that the settlement amount and
21 terms are fair, adequate, and reasonable as to the entire Class when balanced against the probable
22 outcome of further litigation relating to certification, liability, and damages issues. It further
23 appears that investigation and research have been conducted such that counsel for the Parties are
24 able to reasonably evaluate their respective positions. It further appears to the Court that
25 settlement at this time will avoid substantial additional costs by all Parties, as well as avoid the
26 delay and risks that would be presented by the further prosecution of the litigation. It further
27 appears that the Settlement has been reached as the result of intensive, serious, and non-collusive
28 arms-length negotiations.

1 4. The Court preliminarily finds that the Settlement appears to be within the range of
2 reasonableness of a settlement that could ultimately be given final approval by this Court. The
3 Court has reviewed the monetary recovery that is being granted as part of the Settlement and
4 preliminarily finds that the monetary settlement awards made available to the Settlement Class
5 are fair, adequate, and reasonable when balanced against the probable outcome of further
6 litigation relating to certification, liability, and damages issues.

7 5. The Court recognizes that Plaintiff and Defendants stipulate and agree to
8 certification of a class for settlement purposes only. This stipulation will not be deemed
9 admissible in this, or any other proceeding should this Settlement not become final. For
10 settlement purposes only, the Court conditionally certifies the following Class:

11 “All of employees who are or previously were employed by
12 Javelin Logistics Company, Inc., in California and who were
13 classified as non-exempt employees during the Class Period [April
14 6, 2016 to October 15, 2021], and/or were employed by Carson
15 Consulting Corp. and assigned to provide service to Javelin
16 Logistics Company, Inc., during the Class Period.”

17 6. The Court concludes that, for settlement purposes only, the Class meets the
18 requirements for certification under section 382 of the California Code of Civil Procedure in that:
19 (a) the Class is ascertainable and so numerous that joinder of all members of the Class is
20 impracticable; (b) common questions of law and fact predominate, and there is a well-defined
21 community of interest amongst the Class with respect to the subject matter of the litigation; (c)
22 the claims of the Class Representative are typical of the claims of the Class; (d) the Class
23 Representative will fairly and adequately protect the interests of the Class; (e) a class action is
24 superior to other available methods for the efficient adjudication of this controversy; and (f)
25 Class Counsel are qualified to act as counsel for the Class Representative in his individual
26 capacity and as the representative of the Class Members.

27 7. For settlement purposes only, the Court provisionally appoints plaintiff Rodney
28 Stovall as the representative of the Settlement Class.

1 8. The Court provisionally appoints Jean-Claude Lapuyade, Esq., of the JCL Law
2 Firm, A.P.C. and Shani Zakay of the Zakay Law Group, APLC, as Class Counsel for the
3 Settlement Class.

4 9. The Court hereby approves, as to form and content, the Proposed Notice of
5 Pendency of Class and Representative Action Settlement ("Class Notice") attached as Exhibit
6 "A" to the Agreement provided it includes the language in the attached addendum.

7 10. . The Court finds that the notice as amended appears to fully and accurately inform
8 the Class of all material elements of the proposed Settlement, including right of any Class
9 Member to be excluded from the Class by submitting a written request for exclusion, and of each
10 Class Member's right and opportunity to object to the Settlement. The Court further finds that the
11 distribution of the notice substantially in the manner and form set forth in the Agreement and this
12 Order meets the requirements of due process, is the most reasonable notice under the
13 circumstances, and shall constitute due and sufficient notice to all persons entitled thereto. The
14 Court orders the mailing of the notices by first class mail, pursuant to the terms set forth in the
15 Agreement.

16 11. The Court hereby appoints ILYM Group, Inc., as Settlement Administrator. Within
17 ten (10) business days of this order, Defendants shall provide, to the Settlement Administrator
18 the Class Data, including information regarding Class Members that Defendants will in good
19 faith compile from their records, including each Settlement Class Member's full name; last
20 known address; Social Security Number; dates of employment during the Class Period. Within
21 fourteen (14) calendar days after receiving the Class Data from Defendants, the Settlement
22 Administrator shall mail the Class Notice to all identified, potential members of the Class via
23 first class U.S. Mail using the most current mailing address information available.

24 12. The Court hereby preliminarily approves the proposed procedure for exclusion
25 from the Settlement. Any Class Member may individually choose to opt out of and be excluded
26 from the Settlement as provided in the Notice by following the instructions for requesting
27 exclusion from the Settlement of the Released Claims that are set forth in the Notice. All
28 requests for exclusion must be postmarked or received by the Response Deadline which is forty-

1 five (45) calendar days after the date the Class Notice is mailed to the Class Members or, in the
2 case of a re-mailed Notice, not more than fifteen (15) calendar days after the original Response
3 Deadline. Any such person who chooses to opt out of and be excluded from the Settlement will
4 not be entitled to an Individual Settlement Payment under the Settlement and will not be bound
5 by the Settlement, or have any right to object, appeal or comment thereon. Settlement Class
6 members who have not requested exclusion shall be bound by all determinations of the Court, the
7 Agreement and Judgment. A request for exclusion may only opt out that particular individual,
8 and any attempt to affect an opt-out of a group, class, or subclass of individuals is not permitted
9 and will be deemed invalid.

10 13. Any Class Member who has not opted out may appear at the final approval hearing
11 and may object or express the Member's views regarding the Settlement and may present
12 evidence and file briefs or other papers that may be proper and relevant to the issues to be heard
13 and determined by the Court as provided in the Notice. Class Members will have forty-five (45)
14 days from the date the Settlement Administrator mails the Class Notice to postmark their written
15 objections to the Settlement Administrator.

16 14. A final approval hearing shall be held before this Court on **August 9, 2022 at 3:00**
17 **p.m.** in Department 1 of the Alameda County Superior Court to determine all necessary matters
18 concerning the Settlement, including: whether the proposed settlement of the Action on the terms
19 and conditions provided for in the Agreement is fair, adequate and reasonable and should be
20 finally approved by the Court; whether an Order Granting Final Approval should be entered
21 herein; whether the plan of allocation contained in the Agreement should be approved as fair,
22 adequate and reasonable to the Class; and to finally approve the Class Counsel Award, Class
23 Representative Service Award, and the Settlement Administration Costs. All papers in support of
24 the motion for final approval and the motion for Class Counsel Award and Class Representative
25 Enhancement Award shall be filed with the Court and served on all counsel no later than sixteen
26 (16) court days before the hearing.

27 15. Neither the Settlement nor any exhibit, document, or instrument delivered
28 thereunder shall be construed as a concession or admission by Defendants in any way, and shall

1 not be used as evidence of, or used against Defendants as, an admission or indication in any way,
2 including with respect to any claim of any liability, wrongdoing, fault or omission by Defendants
3 or with respect to the truth of any allegation asserted by any person. Whether or not the
4 Settlement is finally approved, neither the Settlement, nor any exhibit, document, statement,
5 proceeding or conduct related to the Settlement, nor any reports or accounts thereof, shall in any
6 event be construed as, offered or admitted in evidence as, received as or deemed to be evidence
7 for any purpose adverse to the Defendants, including, but not limited to, evidence of a
8 presumption, concession, indication or admission by Defendants of any liability, fault,
9 wrongdoing, omission, concession or damage.

10 16. In the event the Settlement does not become effective in accordance with the terms
11 of the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to
12 become effective for any reason, this Order shall be rendered null and void and shall be vacated,
13 and the Parties shall revert to their respective positions as of before entering into the Agreement.
14 In such an event, the Court's orders regarding the Settlement, including this Preliminary
15 Approval Order, shall not be used or referred to in litigation for any purpose. Nothing in this
16 paragraph is intended to alter the terms of the Settlement Agreement with respect to the effect of
17 the Settlement Agreement if it is not approved.

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22 17. The Court reserves the right to adjourn or continue the date of the final approval
23 hearing and all dates provided for in the Agreement without further notice to Settlement Class
24 and retains jurisdiction to consider all further applications arising out of or connected with the
25 proposed Settlement.

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27 **IT IS SO ORDERED.**
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DATED:

9/5/22

JUDGE OF THE SUPERIOR COURT



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JUDGE OF THE SUPERIOR COURT

Addendum to Order:

"The pleadings and other records in this litigation may be examined online on the Alameda County Superior Court's website, known as 'eCourt Public Portal,' at <https://eportal.alameda.courts.ca.gov>.

After arriving at the website, click the 'Search ' tab at the top of the page, then select the Document Downloads link, enter the case number and click 'Submit.' Images of every document filed in the case may be viewed at a minimal charge. You may also view images of every document filed in the case free of charge by using one of the computer terminal kiosks available at each court location that has a facility for civil filings.

To view the Register of Actions, go to the 'Search ' tab at the top of the page, then select the 'Search by Case Number' enter the case number, select 'Search' and click the link to the case name. You will be see the Register of Actions and more."

EXHIBIT C

Tesla Stone

From: DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
Sent: Friday, March 11, 2022 1:51 PM
To: Tesla Stone
Subject: Thank you for your Proposed Settlement Submission

03/11/2022 01:50:16 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 pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT D