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Attorney for Plaintiff,
BILL WOOD

**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA**

BILL WOOD, an individual, on behalf
 of himself, other current and former
 aggrieved employees, and the State of
 California, as a private attorneys
 general,

Plaintiff,

vs.

**BELTMANN GROUP
 INCORPORATED d/b/a BELTMANN
 RELOCATION GROUP**, a Minnesota
 corporation; **NORTH AMERICAN
 VAN LINES, INC.**, a Delaware
 corporation; **CRST SPECIALIZED
 TRANSPORTATION, INC.**, an
 Indiana corporation; and **DOES 1
 through 10, Inclusive**,

Defendants.

) Case No.: 8:20-cv-02092-JLS (ADS)

) **Honorable Josephine L. Staton**

)

) **PLAINTIFF BILL WOOD'S REPLY
 TO DEFENDANT BELTMANN**

) **GROUP INCORPORATED d/b/a**

) **BELTMANN RELOCATION**

) **GROUP'S RESPONSE TO MOTION**

) **FOR APPROVAL OF SETTLEMENT**

) **RULE 68 JUDGMENT**

)

) Hearing:

) Date: August 11, 2023

) Time: 10:30 a.m.

) Courtroom: 8A

)

)

) *[Filed concurrently with Declaration of*

) *J.B. Twomey; [Revised Proposed] Order*

) *and Judgment]*

)

)

1 I. INTRODUCTION

2 With judgment at a fixed amount, Defendant is keen on throwing its
 3 successful motion practice away in an effort to minimize its ongoing exposure by
 4 broadening Plaintiff's PAGA class. Specifically, Defendant is now requesting that
 5 this Court broaden the PAGA class by including Non-Final Mile Delivery Drivers
 6 ("Non-FMDDs") despite this Court ordering Plaintiff's PAGA class/definition of
 7 Aggrieved Employees to **"include only the following . . . final mile delivery**
 8 **drivers"** ("FMDDs") when granting Defendant's Motion to Dismiss and Strike
 9 Plaintiff's Second Amended Complaint ("SAC"). (Motion to Dismiss SAC, Doc.
 10 48; Court Order, Doc. 51 at p. 4 (emphasis added); Plaintiff's Third Amended
 11 Complaint ("TAC"), Doc. 52 ¶ 4.)

12 Excluding Non-FMDDs from a PAGA class that this Court ordered to include
 13 only FMDDs seems logical and appropriate. If, however, this Court determines the
 14 proper resolution to the PAGA claim requires including the eight (8) Non-FMDDs
 15 in the PAGA class, the \$125,000.00 PAGA allocation, free from requests for
 16 attorney's fees and reimbursement of costs, remains fair, adequate and reasonable
 17 standing on its own.

18 Finally, Plaintiff's proposed equitable tranches appeared warranted as the
 19 percentage of penalties each PAGA sub-group delivered to the expected recovery
 20 came into focus during the detailed analysis required when drafting Plaintiff's
 21 moving papers. (Plaintiff's Motion, Doc. 74-1 at pp. 7:3-15:4.) After reviewing
 22 Defendant's opposition and upon further consideration, Plaintiff acknowledges that
 23 the complexity and cost of adopting the tranches may outweigh the benefit of the
 24 same, making the more typical PAGA award appropriate, i.e., each PAGA class
 25 member be awarded a pro-rata share of the PAGA penalties based on the number of
 26 weekly pay periods worked during the PAGA period. In the event this Court agrees
 27 such a PAGA payment is proper, for this Court's ease, Plaintiff concurrently files a
 28 [Revised Proposed] Order including the same, and other provisions.

II. ARGUMENT

a. Non-Final Mile Delivery Drivers Should Not be Included in a PAGA Class That This Court Ordered to Include Only Final Mile Delivery Drivers.

The PAGA Group should not include Non-FMDDs because on August 16, 2022, this Court granted Defendant's Motion to Dismiss SAC (Def's Motion to Dismiss SAC, Doc. 48.), ". . . with leave to amend so that Plaintiff may revise the SAC's definition of the **PAGA class to include only the following**: Plaintiff and any and all of Defendants' current and former non-exempt **final mile delivery drivers** in California who were misclassified as independent contractors from August 26, 2019 to present." (Court Order, Doc. 51 at p. 4) (emphasis added.) Plaintiff's TAC was revised as ordered. (TAC, Doc. 52 ¶ 4.)

Defendant argues FMDDs and Non-FMDDs "are only loose terms used to describe different drivers based on their typical load deliveries," (Response, Doc. 82 at p. 4:21-22) that these classifications are "a distinction without difference,"¹ (*Id.* at p. 5:15); and that Plaintiff assigned the "Non-FMDD" label to these eight (8) employees (*Id.* at 1:18.) In reality, it is Defendant (a) making the distinction(s), (b) identifying these differing classifications, and (c) assigning the "Non-FMDD" label for the unavoidably logical reason: FMDDs and Non-FMDDs are distinct; thus, with difference.

A Non-FMDD is not a FMDD. However, Plaintiff would be none-the-wiser to Defendant's distinct employee classifications but for Defendant's pre-mediation production that informed Plaintiff that during the period August 26, 2019 through date of mediation, January 11, 2023 ("PAGA Mediation Period"), it employed a total

¹Merriam-Webster's online Dictionary's relevant definition(s) of "distinction" evidences Defendant employing an oxymoron: 1: the act of perceiving someone or something as being not the same and often treating as separate or different: the distinguishing of a difference; also: the difference distinguished; 2: something that distinguishes; 3: the quality or state of being distinguishable" (<https://www.merriam-webster.com/dictionary/distinction>.)

1 of: (a) Forty (40) current and former FMDDs, and (b) Eleven (11) current and former
 2 employees *that Defendant identified as Non-FMDDs*,² all having worked a total of
 3 4,573 weekly pay periods. **(Declaration of J.B. Twomey (“Twomey Decl.”), ¶ 3).**
 4 Presumably Defendant informed Plaintiff about the Non-FMDDs in advance of
 5 mediation for the common practice of hoping to tie-up loose ends with the aid of a
 6 mediator, *e.g.*, the unloading of additional/maximum exposure not yet formally
 7 plead, but within the nexus of the operative complaint’s allegations. Mediation was
 8 unsuccessful and Plaintiff’s PAGA class remained only FMDDs.

9 Next came Defendant’s Rule 68 Offer. (Doc. 59 at pp. 4-7.)

10 Next came Plaintiff’s acceptance of the Rule 68 Offer. (*Id.* at pp. 1-3) and
 11 with it, Defendant’s broadening and restructuring of the PAGA class during the meet
 12 and confer process in advance of this motion.

13 Specifically, with the judgment at a fixed amount, Defendant informed
 14 Plaintiff that some of the drivers Defendant initially assumed did not perform final
 15 mile deliveries actually did perform some final mile deliveries, thus, during the
 16 period August 26, 2019 through date of acceptance of the Rule 68 Offer, April 5,
 17 2023 (“Rule 68 PAGA Period”), Defendant now employed a total of: (a) Forty-seven
 18 (47) current and former FMDDs having worked 4,611 weekly pay periods (an
 19 average of 98.1 workweeks per FMDD), and (b) Eight (8) current and former Non-
 20 FMDDs having worked a total of 528 weekly pay periods. (Response, Doc. 82 at p.
 21 6:1-5.)

22 Applying the same 98.1 average workweeks per FMDD to the forty (40)
 23 current and former FMDDs of the PAGA Mediation Period, results in a total of 3,924
 24 FMDD workweeks (40 FMDDs x 98.1 average workweeks per FMDD) during the
 25

26
 27 ² Defendant described Non-FMDDs as, “drivers [that] deliver loads to locations that
 28 may not be the final destination.”

1 same. Thus, during the twelve (12) weeks after mediation and the date Plaintiff
 2 accepted the Rule 68 Offer (January 12, 2023 to April 5, 2023), Defendant
 3 discovered 687 additional FMDD workweeks (4,611 workweeks – 3,924). (*Id.*; see
 4 also the true and correct copy of the online Date to Date Calculator for January 12,
 5 2023 to April 5, 2023 attached to Twomey Decl. as Exhibit 1 and incorporated
 6 herein.) Plaintiff accepted Defendant’s recently discovered seven (7) additional
 7 FMDDs, and the 687 FMDD workweeks, indeed, including them in his analysis in
 8 the moving papers. (Plaintiff’s Motion, Doc. 74-1 at pp. 7:3-15:4.) Additionally,
 9 and as discussed with more specificity below, Plaintiff, after dutifully considering
 10 Defendant’s position, changed his initial meet and confer position from that of
 11 excluding the Sub-FMDDs to including them in the PAGA class.
 12

13 Despite the preceding, Defendant does the following in consecutive sentences.
 14 First, Defendant admits to the ***narrowing of the PAGA class to only final mile***
 15 ***delivery drivers***, and immediately thereafter, claims the “**only conceivable reason**
 16 **that** Plaintiff now insists on ***excluding ‘Non-FMDDs’ from relief***” is to justify his
 17 individual allocation. (Response, Doc. 82 at p. 6: 12-19.)

18 Defendant wants its cake and to eat it too. Defendant narrows the PAGA class
 19 to only FMDDs via successful motion practice (Court Order, Doc. 51 at p. 4.), then
 20 when a fixed judgment amount is in place, seeks to add Non-FMDDs to the PAGA
 21 class, let alone, discovering an additional seven (7) “FMDDs” with approximately
 22 687 FMDD workweeks in tow.

23 Defendant is the pot calling the kettle black. The only conceivable reason
 24 Defendant now insists on broadening the PAGA class; the same class it fought so
 25 hard to narrow (Mot. to Dismiss/Strike Compl., Doc. 19; Mot. to Dismiss/Strike
 26 FAC, Doc. 38; Motion to Dismiss SAC, Doc. 48), is to minimize its ongoing
 27 exposure by injecting Non-FMDDs into the fixed judgment amount.
 28

If Plaintiff felt it necessary to justify his individual award by excluding certain

employees from the PAGA Group, he would have maintained his initial position during the meeting of counsel regarding excluding the large group of twenty-six (26) Sub-FMDDs from the PAGA Class; specifically, the employees, drivers, helpers, agents, workers, contractors, and/or individuals that were not directly contracted with Defendant, *i.e.*, the twenty-six (26) persons who worked/are working for individuals and/or entities that are/were directly contracted with Defendant. (Twomey Decl. ¶ 5). Plaintiff had long-held the position of excluding the Sub-FMDDs from the PAGA class, first taking it in his Opposition to Defendant's Motion to Dismiss SAC:

Wood's SAC's definition of the PAGA class was not limited only to Beltmann's Final Mile Delivery Drivers in order that the class would also include the Final Mile Delivery Drivers employees, drivers, helpers, agents, workers, contractors, and individuals that also provide/d services under, and were contemplated in, the parties' contracts. Nevertheless, Wood is agreeable to defining more precisely the aggrieved employees for whom he seeks to recover civil penalties to ensure the PAGA claims can be fairly and efficiently tried; specifically, the PAGA class would be comprised only of **any and all of Defendants' current and former non-exempt Final Mile Delivery Drivers in California whom were misclassified as independent contractors from August 26, 2019 to present.**

(Plaintiff's Opposition to Motion to Dismiss SAC, Doc. 50 at p. 1:15-24) (underlined emphasis added) (bolded emphasis in original.) Plaintiff was aware, and as discussed in Plaintiff's moving papers, the Sub-FMDDs brought with them two (2) layers of threshold manageability concerns that Defendant would seek to capitalize upon: (a) misclassification and (b) joint employer liability. (*Id.*; see Plaintiff's Motion, Doc. 74-1 at pp. 9:15-11:7; *see also* Defendant's Rgs Responses, Doc. 74-10.)

Despite Plaintiff's long-standing position regarding the Sub-FMDDs, he embraced the meet and confer process, dutifully considered Defendant's position, and amicably resolved the issue by including the twenty-six (26) Sub-FMDDs in the PAGA class. (Twomey Decl. ¶ 6).

1 Plaintiff is not excluding the Non-FMDDs from the PAGA class to justify his
 2 individual allocation as Defendant would have this Court believe. The PAGA
 3 allocation and Plaintiff's individual allocation stand justified on their own. Non-
 4 FMDDs are excluded from the PAGA class because Non-FMDDs are not FMDDs.
 5 However, if this Court believes otherwise, the \$125,000.00 PAGA allocation
 6 remains fair, adequate and reasonable to cover the additional eight (8) Non-FMDDs.

7
 8 **b. If This Court Believes the Non-FMDDs Should be Included in the PAGA**
 9 **Class, the \$125,000.00 PAGA Allocation Remains Fair, Adequate and**
 10 **Reasonable Standing on its Own.**

11 Under the typical pro-rata payment model, the \$125,000.00 PAGA allocation
 12 would result in a gross PAGA payment of \$27.10 ($\$125,000.00 / 4,611$ total weekly
 13 pay periods) for each weekly pay period worked by each of the forty-seven (47)
 14 FMDDs ("47 FMDD PAGA Class") during the Rule 68 PAGA Period (August 26,
 2019 through April 5, 2023).

15 If adding the eight (8) Non-FMDDs and their 538 additional weekly pay
 16 periods ("55 PAGA Class"), the gross PAGA weekly pay period payment equals
 17 \$24.28 ($\$125,000.00 / 5,149$ total weekly pay periods). There are 188.43 weeks, or
 18 189 weekly pay periods during the Rule 68 PAGA Period, resulting in a maximum
 19 gross payment of \$4,588.92 (189 weekly pay periods x \$24.28) for the 55 PAGA
 20 Class. (A true and correct copy of the online Date to Date Calculator for August 26,
 21 2019 through April 5, 2023 is attached to Twomey Decl. as Exhibit 2 and
 22 incorporated herein.) The 55 PAGA Class carries an average gross PAGA payment
 23 of \$2,272.73 ($\$125,000.00 / 55$) per class member.

24 To determine the estimated expected recovery for the 55 PAGA Class, the
 25 additional eight (8) members are added proportionally to the various sub-class
 26 formulas found in Plaintiff's moving papers, resulting in the following sub-classes:

- 27 (a) Eighteen (18) COAL Box Truckers accounting for 1685 workweeks,
- 28 (b) Nine (9) COAL Semi-Truckers accounting for 936 workweeks,

(c) Eighteen (18) Sub-Box Trucker accounting for 1685 workweeks, and

(d) Ten (10) Sub-Semi-Truck accounting for 936 workweeks.

The estimated expected PAGA recovery on claims for the failure to pay overtime is \$46,337.50.³ The estimated expected PAGA recovery on claims for meal period violations is \$46,337.50.⁴ The estimated expected PAGA recovery on claims for rest period violations is \$92,675.00.⁵ The estimated expected PAGA recovery on claims for failure to reimburse business expenses is \$139,505.00.⁶ The estimated expected PAGA recovery on claims for wage statement violations is \$139,505.00.⁷

Thus, the total estimated expected PAGA recovery for the 55 PAGA Class is \$464,360.00. The \$125,000.00 PAGA allocation results in a twenty-seven percent (27%) rate of recovery ($\$125,000.00 / \$464,360.00$). The \$125,000.00 equates to twenty-eight percent (28%) of total judgment ($\$125,000.00 / \$450,000.00$). The PAGA class members are not estopped from pursuing their individual claims separate and apart from PAGA. And Plaintiff does not seek attorney's fees and costs reimbursement from the common PAGA fund, keeping \$31,250.00 (if attorney's fees were awarded at the bench-mark rate of 25%), and \$2,604.00 (if out-of-pocket costs were awarded on a proportional scale based on individual and PAGA allocations ($\$9,300.00 \times .28$)) in the PAGA fund.

³ $(\$50.00 \times 1685 \text{ COAL Box Trucker weeks} \times .5 \text{ manageability}) + (\$50.00 \times 1685 \text{ Sub-Box Trucker weeks} \times .5 \text{ manageability} \times .1 \text{ joint employer})$.

⁴ $(\$50.00 \times 1685 \text{ COAL Box Trucker weeks} \times .5 \text{ manageability}) + (\$50.00 \times 1685 \text{ Sub-Box Trucker weeks} \times .5 \text{ manageability} \times .1 \text{ joint employer})$.

⁵ $(\$100.00 \times 1685 \text{ COAL Box Trucker weeks} \times .5 \text{ manageability}) + (\$100.00 \times 1685 \text{ Sub-Box Trucker weeks} \times .5 \text{ manageability} \times .1 \text{ joint employer})$.

⁶ $(\$100.00 \times 1685 \text{ COAL Box Truck weeks} \times .5 \text{ manageability}) + (\$100.00 \times 1685 \text{ Sub-Box Truck weeks} \times .5 \text{ manageability} \times .1 \text{ joint employer}) + (\$100.00 \times 843 \text{ COAL Semi-Trucker weeks} \times .5 \text{ manageability}) + (\$100.00 \times 936 \text{ Sub-Semi-Trucker weeks} \times .5 \text{ manageability} \times .1 \text{ joint employer})$.

⁷ $(\$100.00 \times 1685 \text{ COAL Box Trucker weeks} \times .5 \text{ manageability}) + (\$100.00 \times 1685 \text{ Sub-Box Trucker weeks} \times .5 \text{ manageability} \times .1 \text{ joint employer}) + (\$100.00 \times 843 \text{ COAL Semi-Trucker weeks} \times .5 \text{ manageability}) + (\$100.00 \times 936 \text{ Sub-Semi-Trucker weeks} \times .5 \text{ manageability} \times .1 \text{ joint employer})$.

1 The above-described results, including percentage of total
 2 settlement/judgment allocated to resolving the PAGA, are in line with, or exceed
 3 values found in other cases identified below, including before this very Court.

4 The case most similar to Plaintiff's is *Rendon v. Infinity Fasteners, Inc.*,
 5 wherein the court approved a \$57,000.00 individual settlement, with a \$3,000.00
 6 PAGA payment that was just 7.4% of the \$40,400.00 estimated expected PAGA
 7 penalties, and just 5% of the total settlement. *Rendon v. Infinity Fasteners,*
 8 *Inc.* (E.D. Cal., Apr. 12, 2023, 1:20-cv-01538-ADA-BAM) [pp. 8]. *See Also*
 9 *Navarrete v. Sprint/United Mgmt.*, 8:19-cv-00794-JLS-ADS [pp. 4] (C.D. Cal., Nov.
 10 24, 2021) (approving PAGA award of \$100,000.00 in \$2,750,000.00 settlement,
 11 including \$916,666.00 in attorneys' fees); *Freeman v. Zillow, Inc.*, SACV 14-01843-
 12 JLS(DFMx) (C.D. Cal., Oct. 11, 2017) [pp. 5] (approving PAGA award of
 13 \$60,000.00 in \$6,000,000.00 settlement, including \$1,800,000.00 in attorneys' fees);
 14 *Yong-hui Chen v. W. Dig. Corp.*, Case No.: 8:19-cv-00909-JLS-DFM (C.D. Cal.,
 15 Jan. 13, 2021) [pp. 4] (approving PAGA award of \$100,000.00 in \$7,750,000.00
 16 settlement, including \$2,382,510.00 in attorneys' fees); *McKenzie v. Federal*
 17 *Express Corp.*, CV 10-02420 GAF (PLAx), Dkt. 139 & 141 (C.D. Cal.) (approving
 18 settlement in an amount of \$8.25 million, with \$82,500 for PAGA claim); *DeStefan*
 19 *v Frito-Lay*, 8:10-cv-00112-DOC (C.D. Cal.) (approving a class settlement of \$2
 20 million, with \$10,000 for PAGA); *Martino v. Ecolab Inc.*, No. 3:14CV04358 (N.D.
 21 Cal. 2017) (approving \$100,000 as PAGA penalties, or 0.48% of \$21,000,000
 22 settlement); *Moppin v. Los Robles Medical Center*, No. 5:15CV01551 (C.D. Cal.
 23 2017) (approving \$15,000 for PAGA penalties, or 0.40% of \$3,775,000.00
 24 settlement); *Mejia v. DHL Express (USA) Inc.*, No. 2:15CV00890 (C.D. Cal. 2017)
 25 (approving \$5,000.00 for PAGA penalties, or 0.34% of \$1,450,000 settlement);
 26 *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D.
 27 Cal. Apr. 3, 2009) (approving \$1,500.00 PAGA payment to LWDA, or .49% of
 28

1 \$408,420.32 settlement, with maximum potential recovery of \$1,026,000); *Moore v.*
 2 *Fitness International, LLC*, 3:12-CV-1551-LAB-NLS (S.D. Cal., Jan. 21, 2014) [pp.
 3 1] (approving \$2,500.00 for PAGA claims where attorney's fees award alone
 4 amounted to \$200,000.00); *Jack v. Hartford Fire Ins. Co.*, No. 3:09-cv-1683-
 5 MMA(JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) [pp. 10, 12]
 6 (approving \$3,000.00 for PAGA penalties in \$1,200,000.00 settlement); *Singer v.*
 7 *Becton Dickinson & Co.*, No. 08cv821 IEG (BLM), 2010 WL 2196104, at *2 (S.D.
 8 Cal. June 1, 2010) (approving \$3,000.00 payment to LWDA for PAGA penalties in
 9 \$1,000,000.00 settlement).

10 The \$125,000.00 allocation to the 47 FMDD PAGA Class stands on its own
 11 as fair, adequate and reasonable. If this Court finds it proper to include the Non-
 12 FMDDs in the FMDD only PAGA class, the \$125,000.00 PAGA allocation remains
 13 fair, adequate and reasonable. If by including the Non-FMDDs, or otherwise, this
 14 Court requires a larger PAGA allocation, this Court should not adopt Defendant's
 15 proposal. (See Response, Doc. 82 at p. 8:7-13.) At the offset, Defendant is incorrect
 16 regarding Plaintiff's individual recovery period.⁸ Plaintiff's individual claims were
 17 equitably tolled for the same sixty-five (65) days alongside his PAGA claim, given
 18 Plaintiff did not sit on his rights, in fact, the claims were brought within their
 19 applicable statutory limitations, and after Defendant had timely notice of the factual
 20 and legal bases of those claims via the PAGA notice. See *Byrd v. Masonite Corp.*,
 21 215 F. Supp. 3d 859, 866 (C.D. Cal. 2016) (equitably tolling the statute of limitations
 22 for plaintiff's statutory *Labor Code* section 226 claims based on timely filed PAGA
 23 notice). Instead, Plaintiff suggests multiplying the additional 538 workweeks by the
 24 47 FMDD PAGA Class' gross weekly PAGA payment of \$27.10.
 25
 26

27 ⁸ Save Defendant correctly pointing out that Plaintiff's spreadsheets mistakenly
 28 extended his cell phone reimbursement from February 27, 2017 through August 25,
 2017, totaling \$921.71 in overcalculation, including prejudgment interest.

III. CONCLUSION.

For all the reasons set forth herein and in Plaintiff's initial moving papers, Plaintiff respectfully requests this Court approve this Motion for PAGA Settlement and Entry of Rule 68 Judgment, and enter final judgment in favor of Plaintiff and against Defendant in the amount of \$450,000.00, with \$125,000.00 as and for resolution of the PAGA claim and for the PAGA class that includes only FMDDs, and \$325,000.00 for Plaintiff as and for resolution of his individual claims.

Respectfully submitted.

Dated: July 28, 2023

TWOMEY LAW, P.C.

/s/ J.B. Twomey
J.B. Twomey
Attorney for Plaintiff,
BILL WOOD

TWOMEY LAW, P.C.
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Attorney for Plaintiff,
BILL WOOD

**UNITED STATES DISTRICT COURT
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BILL WOOD, an individual, on behalf
of himself, other current and former
aggrieved employees, and the State of
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**BELTMANN GROUP
INCORPORATED d/b/a BELTMANN
RELOCATION GROUP**, a Minnesota
corporation; **NORTH AMERICAN
VAN LINES, INC.**, a Delaware
corporation; **CRST SPECIALIZED
TRANSPORTATION, INC.**, an
Indiana corporation; and **DOES 1
through 10**, Inclusive,

Defendants.

) Case No.: 8:20-cv-02092-JLS (ADS)

) **Honorable Josephine L. Staton**

)

) **DECLARATION OF J.B. TWOMEY**

) **IN SUPPORT OF PLAINTIFF BILL**

) **WOOD'S REPLY TO DEFENDANT**

) **BELTMANN GROUP**

) **INCORPORATED d/b/a BELTMANN**

) **RELOCATION GROUP'S**

) **RESPONSE TO MOTION FOR**

) **APPROVAL OF SETTLEMENT OF**

) **THE PAGA AND ENTRY OF RULE**

) **68 JUDGMENT**

) Hearing:

) Date: August 11, 2023

) Time: 10:30 a.m.

) Courtroom: 8A

)

) *[Filed concurrently with Plaintiff's Reply*

) *to Defendant's Response; [Revised*

) *Proposed] Order and Judgment]*

)

)

)

)

)

1 I, J.B. Twomey, declare as follows:

2 1. I am an attorney licensed to practice before the United States District Court
3 for the Central District of California.

4 2. I am the sole managing agent and practicing attorney of the law firm Twomey
5 Law, P.C., attorney of record for Plaintiff, Bill Wood (“Plaintiff” or “Wood”), in
6 the above-captioned case. As such, I am fully familiar with the facts, pleadings, all
7 filed documents, and history of this matter. I am submitting this declaration in
8 support of Plaintiff Bill Wood’s Reply to Defendant Beltmann Group Incorporated
9 d/b/a Beltmann Relocation Group’s Response to Motion for Approval of Settlement
10 of the PAGA and Entry of Rule 68 Judgement. The following facts are within my
11 own personal knowledge, and if called as a witness, I could and would testify
12 competently to the matters stated herein.

13 3. Defendant’s pre-mediation production that informed Plaintiff that during the
14 period August 26, 2019 through date of mediation, January 11, 2023 (“PAGA
15 Mediation Period”), it employed a total of: (a) Forty (40) current and former
16 FMDDs, and (b) Eleven (11) current and former employees *that Defendant*
17 *identified as Non-FMDDs*,¹ all having worked a total of 4,573 weekly pay periods.

18 4. A true and correct copy of the online Date to Date Calculator for January 12,
19 2023 to April 5, 2023 is attached hereto as Exhibit 1 and incorporated herein.

20 5. If Plaintiff felt it necessary to justify his individual award by excluding certain
21 employees from the PAGA Group, he would have maintained his initial position
22 during the meeting of counsel regarding excluding the large group of twenty-six
23 (26) Sub-FMDDs from the PAGA Class; specifically, the employees, drivers,
24 helpers, agents, workers, contractors, and/or individuals that were not directly
25
26

27 ¹ Defendant described Non-FMDDs as, “drivers [that] deliver loads to locations that
28 may not be the final destination.”

1 contracted with Defendant, *i.e.*, the twenty-six (26) persons who worked/are
2 working for individuals and/or entities that are/were directly contracted with
3 Defendant.

4 6. Despite Plaintiff's long-standing position regarding the Sub-FMDDs, he
5 embraced the meet and confer process, dutifully considered Defendant's position,
6 and amicably resolved the issue by including the twenty-six (26) Sub-FMDDs in
7 the PAGA class.

8 7. A true and correct copy of the online Date to Date Calculator for August 26,
9 2019 through April 5, 2023 is attached hereto as Exhibit 2 and incorporated herein.

10 8. I certify that at or around the time Plaintiff's Reply, this declaration and the
11 [Revised Proposed] Order were filed with this Court, they were also submitted
12 electronically to California's Labor and Workforce Development Agency as a
13 "Proposed Settlement of PAGA case" at <https://dir.tfaforms.net/315>.
14

15
16 I declare under penalty of perjury under the laws of the United States that the
17 foregoing is true and correct to the best of my knowledge.
18

19 Executed on July 28, 2023.
20

21 /s/ J.B. Twomey

22 J.B. Twomey
23
24
25
26
27
28

EXHIBIT 1

Days Calculator: Days Between Two Dates

How many days, months, and years are there between two dates?

[Count Days](#)[Add Days](#)[Workdays](#)[Add Workdays](#)[Weekday](#)[Week No](#)

From and including: **Thursday, January 12, 2023**

To and including: **Wednesday, April 5, 2023**

Result: 84 days

It is 84 days from the start date to the end date, end date included.

Or 2 months, 25 days including the end date.

This calculator ignores [DST](#) clock changes. To include them, use our [World Time and Date Calculator](#) and enter your location as the start and end location.

Alternative time units

84 days can be converted to one of these units:

- 7,257,600 seconds
- 120,960 minutes
- 2016 hours
- 84 days
- 12 weeks
- 23.01% of 2023

January 2023						
20 days included						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

February 2023						
28 days included						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28				

March 2023						
31 days included						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

April 2023						
5 days included						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

= First day included (Jan 12, 2023) = Last day included (Apr 5, 2023)

Make a New Calculation

- [Make adjustment and calculate again](#)
- [Start again with a new calculation between two other dates](#)
- [New calculation, with both date and time included](#)



Time & Date Calculator App for iOS

See how long remains before a deadline or exactly when those 30 days are up.

EXHIBIT 2

Days Calculator: Days Between Two Dates

How many days, months, and years are there between two dates?

Count Days

Add Days

Workdays

Add Workdays

Weekday

Week No

From and including: **Monday, August 26, 2019**

To and including: **Wednesday, April 5, 2023**

Result: 1319 days

It is 1319 days from the start date to the end date, end date included.

Or 3 years, 7 months, 11 days including the end date.

Or 43 months, 11 days including the end date.

Alternative time units

1319 days can be converted to one of these units:

- 113,961,600 seconds
- 1,899,360 minutes
- 31,656 hours
- 1319 days
- 188 weeks and 3 days
- 361.37% of a [common year](#) (365 days)

August 2019						
6 days included						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

September 2019						
30 days included						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

October 2019–March 2023	
October 2019–December 2019: 92 days included	
Year 2020: 366 days included	
Year 2021: 365 days included	
Year 2022: 365 days included	
January 2023–March 2023: 90 days included	

April 2023						
5 days included						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

= First day included (Aug 26, 2019) = Last day included (Apr 5, 2023)

Make a New Calculation

- [Make adjustment and calculate again](#)
- [Start again with a new calculation between two other dates](#)
- [New calculation, with both date and time included](#)



Time & Date Calculator App
for iOS

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

BILL WOOD, an individual, on behalf
of himself, other current and former
aggrieved employees, and the State of
California, as a private attorneys
general,

Plaintiff,

vs.

BELTMANN GROUP
INCORPORATED d/b/a BELTMANN
RELOCATION GROUP, a Minnesota
corporation; NORTH AMERICAN
VAN LINES, INC., a Delaware
corporation; CRST SPECIALIZED
TRANSPORTATION, INC., an
Indiana corporation; and DOES 1
through 10, Inclusive,

Defendants.

) Case No.: 8:20-cv-02092-JLS (ADS)

) **Honorable Josephine L. Staton**

)

) **[REVISED PROPOSED] ORDER
GRANTING SETTLEMENT OF THE
PAGA AND ENTRY OF RULE 68
JUDGMENT**

)

) Hearing:

) Date: August 11, 2023

) Time: 10:30 a.m.

) Courtroom: 8A

)

) *[Filed concurrently with Plaintiff's Reply
to Defendant's Response; Declaration of
J.B. Twomey]*

)

)

)

)

)

)

IT IS HEREBY ORDERED, ADJUGED AND DECREED that:

The Court, having read and considered the papers of Plaintiff Bill Wood's ("Plaintiff") Motion for Approval of the PAGA Settlement and Entry of Rule 68 Judgment, all documents filed in response by Beltmann Group Incorporated d/b/a Beltmann Relocation Group ("Defendant"), Plaintiff's reply to Defendant's response, the arguments of Counsel if any, and good cause appearing hereby

ORDERS AS FOLLOWS:

1. The Court ENTERS final Judgment in favor of Plaintiff in the amount of FOUR HUNDRED FIFTY THOUSAND DOLLARS AND ZERO CENTS (\$450,000.00), inclusive of attorneys' fees and costs, and interest, as full and complete satisfaction of all claims, causes of action, damages, penalties, or losses that Plaintiff claims to possess against Defendant which arise out of the allegations set forth in Plaintiff's operative Third Amended Complaint in this lawsuit ("Final Judgment");
2. The Court Orders that pursuant to Final Judgment, each party shall bear his, her or their own attorney's/s' fees and costs, and upon disbursing the funds as ordered below, Defendant shall be entitled to dismissal of the entire lawsuit, with prejudice. Defendant made no admission of liability.
3. The Court finds the Private Attorney's General Act ("PAGA") allocation to be fair, adequate, and reasonable. Accordingly, the Court GRANTS the Motion and ORDERS Judgment as follows:
 - a. The Court GRANTS final approval of the PAGA Payment in the amount of \$125,000.00 "Gross PAGA Fund";
 - b. The Court GRANTS approval of ILYM Group, Inc. to administrator the applicable PAGA provisions in this Order and Judgment, including but not limited to, payment of the Gross and Net PAGA Funds ordered herein, and for all required tax reporting and withholding, and for

1 communicating any information regarding status of the payments to the
2 Parties' counsel.

3 c. Within thirty (30) days of entry of this Order and Judgment, Defendant
4 shall remit to ILYM Group, Inc. the Gross PAGA Fund.

5 d. The Court GRANTS approval of the \$3,465.00 costs to ILYM Group,
6 Inc. to administer this Order and Judgment, and that it be deducted from
7 the Gross PAGA Fund for payment to ILYM Group, Inc. for the same;

8 e. From the "Net PAGA Fund" of \$121,535.00, ILYM Group, Inc. as the
9 administrator will pay the following:

10 i. \$91,151.25 (75% of \$121,535.00) to State of California through
11 the Labor and Workforce Development Agency ("LWDA"); and

12 ii. \$30,383.75 (25% of \$121,535.00) to the Final Mile Delivery
13 Driver who performed services for Defendant at any point during
14 the period August 26, 2019 through date of this judgment
15 ("FMDD" or "FMDD Releasee") by a pro rata portion of the
16 \$30,383.75 based on the number of workweeks each FMDD
17 worked during the PAGA Period.
18

19 iii. Herein, the period August 26, 2019 through date of this judgment
20 is referred to as "PAGA Period."

21 f. Within thirty (30) days after entry of this Order and Judgment,
22 Defendant shall provide to ILYM Group, Inc. a list of each FMDD that
23 includes: (1) the names, last known addresses, last known personal
24 telephone numbers (if known), and social security numbers of each
25 FMDD Releasee; (2) the total number of weekly workweeks worked by
26 each FMDD Releasee; and (3) such other information that the ILYM
27 Group, Inc. requires to identify FMDD Releasees. Defendant shall
28 provide the list in an electronic format reasonably acceptable to the

1 ILYM Group, Inc. ILYM Group, Inc. will keep the list confidential,
2 use it only for the purposes described herein, and return it to Defendant
3 upon completion of the Judgment administration process.

4 g. Based on the information in the FMDD Releasee list and the formula
5 set forth in Paragraph d.ii. above, ILYM Group, Inc. shall promptly
6 calculate the share of PAGA Payment to every FMDD Releasee.

7 h. Payment to the FMDD Releasees of their portion of the Net PAGA
8 Fund shall be paid to each of them by way of a single check ("PAGA
9 Payment Check"). The PAGA Payment Check represents the portion
10 of the civil penalties awarded directly under the PAGA.

11 i. ILYM Group, Inc. shall promptly re-mail any PAGA Payment Check
12 returned by the Post Office with a forwarding address. It shall be
13 conclusively presumed that those FMDD Releasees whose re-mailed
14 PAGA Payment Checks are not returned to ILYM Group, Inc. as
15 undeliverable within thirty (30) days after re-mailing has received the
16 PAGA Payment Check.

17 j. The Settlement Administrator shall conduct one additional address
18 search/check via an appropriate skip tracing search for any PAGA
19 Payment Check returned by the Post Office as "undeliverable." If an
20 updated address is found, ILYM Group, Inc. shall promptly re-mail the
21 PAGA Payment Check to that address one time.

22 k. Any PAGA Payment Check that are not claimed or not negotiated
23 within 90 days after distribution by ILYM Group, Inc. shall be void.
24 Any funds not distributed after the expiration of the settlement checks
25 shall escheat to the State of California Controller's Office to be held in
26 the name of the FMDD Releasee who is the payee of the check. No
27 portion of the PAGA Payment shall revert to Defendant.
28

- 1 1. The PAGA Payment distributed to each FMDD Releasee will be treated
- 2 entirely as civil penalties, and will be reported as such to each PAGA
- 3 Releasee on an IRS Form 1099 misc. to be issued by ILYM Group, Inc.
- 4 4. The Court GRANTS final approval of payment to Plaintiff in the amount of
- 5 \$325,000.00 as and for resolution of his individual claims, and Defendant
- 6 shall remit payment to “Twomey Law, P.C. Client Trust Account” within
- 7 thirty (30) days of entry of this Final Judgment.
- 8 5. The Court shall reserve exclusive and continuing jurisdiction over this matter
- 9 until the final payment is made and all obligations in this Final Judgment are
- 10 satisfied, but solely for purposes of addressing Final Judgment administration
- 11 matters, and such other matters as may be appropriate under court rules or as
- 12 set forth in this Final Judgment.
- 13
- 14
- 15

16 **FINAL JUDGMENT IS SO ORDERED.**

17
18
19 DATE: _____

20 HON. JOSEPHINE L. STATON

21 UNITED STATES DISTRICT JUDGE