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9 and Proposed Class Counsel

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SAN JOAQUIN**
12

13 BYRON HIGUERA, on behalf of himself
14 and a class of similarly situated employees,

15 Plaintiffs,

16 v.

17 INTERNATIONAL BONDED
COURIERS, INC., a Florida corporation,
18 and DOES 1 through 10, inclusive,

19 Defendants.
20
21
22
23
24

CASE NO: STK-CV-UOE-2020-8988

*Assigned to the Honorable George J. Abdallah,
Dept. 10A*

CLASS ACTION

**DECLARATION OF DANIEL F. GAINES IN
SUPPORT OF UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

**DATE: December 29, 2020;
December 30, 2020;
December 31, 2020;
January 5, 2021; or
January 7, 2021**

**TIME: 9:00 a.m.
DEPT.: 10A**

Action Filed: October 23, 2020

25
26 I, DANIEL F. GAINES, hereby declare and state as follows:
27
28

1 1. I am an attorney duly admitted to the practice of law in the State of California. I
2 am a shareholder of Gaines & Gaines, APLC, counsel for Plaintiff Byron Higuera (“Higuera” or
3 “Plaintiff”) and proposed Class Counsel in this action. I have personal knowledge of the facts
4 set forth herein and if called as a witness to testify to them, I could and would do so competently.

5 **Education and Experience:**

6 2. I obtained my BS degree from the University California at Berkeley in 2003. I
7 majored in Business Administration at the Haas School of Business.

8 3. Thereafter, I attended the University of Virginia School of Law. At Virginia, I
9 was a member of the editorial board of the Virginia Tax Review. I was also the recipient of the
10 Lacy Armour Scholarship, awarded to recognize academic excellence. At Virginia, I focused
11 my studies on tax and real estate. I earned my JD and became a member of the California Bar in
12 2007.

13 4. Since becoming a member of the Bar, I have practiced law with my partner/father,
14 Kenneth, at Gaines & Gaines, APLC. My father has practiced law in California for over 40
15 years, emphasizing litigation for the vast majority of his career. Our current practice specializes
16 in litigation, with an emphasis in business, real estate, and employment disputes like this one.
17 Over 85% of our practice is devoted to complex employment litigation.

18 5. My firm has represented employees in complex employment matters such as this
19 one, with an emphasis in wage and hour issues. I have participated in and have been certified as
20 class counsel in dozens of class action matters since my admission to the Bar, including several
21 before this Court. A list of the cases in which I have been appointed as class counsel is attached
22 hereto as **Exhibit A**.

23 **Factual and Procedural Background:**

24 6. On January 27, 2020 Plaintiff exhausted the pre-filing requirements of the Labor
25 Code Private Attorneys General Act of 2004, Labor Code sections 2698 *et seq.* (“PAGA”).

26 7. Plaintiff’s claims were thereafter tolled based on the Judicial Council’s emergency
27 rule 9 regarding the statutes of limitations for filing civil cases during the COVID-19 pandemic.
28

1 8. On October 23, 2020, following extensive informal discovery and settlement
2 negotiations, Plaintiff initiated the Action by filing a Complaint as a class and representative
3 action, pursuant to California Code of Civil Code section 382 and PAGA, on behalf of himself
4 and all other non-exempt California employees. The Action asserts class and representative
5 action claims against Defendant for (1) failure to pay all wages due, including minimum wage
6 and overtime wages (Labor Code §§ 510, 1174, 1194, 1197, 1197.1, 1198 and 1198.5) (2) failure
7 to provide rest periods or compensation in lieu thereof (Labor Code § 226.7); (3) failure to
8 provide meal periods or compensation in lieu thereof (Labor Code §§ 226.7, and 512); (4)
9 knowing and intentional failure to comply with itemized employee wage statement provisions
10 (Labor Code §§ 226); (5) failure to timely pay wages due at separation of employment (Labor
11 Code §§ 201, 202, 203); (6) failure to reimburse employee business expenses (Labor Code §
12 2802); (7) violation of Business and Professions Code § 17200, et seq.; and (8) penalties
13 pursuant to Labor Code § 2698, et seq. for violations of Labor Code §§ 201-203, 226(a), 226.3,
14 226.7, 510, 512, 1174, 1194, 1197, 1197.1, 1198, 1198.5 and 2802 (the “Complaint”).

15 9. Defendant denies any liability or wrongdoing of any kind associated with the
16 claims alleged in the Action, and further denies that the Action is appropriate for class treatment
17 for any purpose other than this settlement. Defendant contends that it has complied at all times
18 with the California Labor Code. It is Defendant’s position that, if this case were to be litigated,
19 class certification would be inappropriate because Plaintiff is not an adequate class
20 representative, Plaintiff’s claims are not typical of putative class members, and individual issues
21 predominate over class issues. The Action, the negotiation and execution of this Settlement
22 Agreement, and all acts performed or documents executed pursuant to or in furtherance of the
23 Settlement Agreement (i) shall not be used as an admission or evidence of wrongdoing on behalf
24 of Defendant; (ii) shall not be an admission or evidence of fault on behalf of Defendant in any
25 action before a civil, criminal, or administrative agency; and (iii) shall not be deemed to be, and
26 may not be used as, an admission or evidence of the appropriateness of these or similar claims
27 for class certification in the Action or with respect to any other proceeding.
28

10. The Class Representative contends that Defendant violated the California Labor Code and that this case is appropriate for class certification.

Investigation and Settlement Discussions

11. My colleagues and I conducted a thorough investigation into the facts and law during the prosecution of this class action case, including the exchange of extensive informal discovery and the review and verification of statistical data and other facts and information provided by Defendant. My colleagues and I investigated the applicable law as applied to the facts discovered regarding the alleged claims of Plaintiff and potential defenses thereto, and the damages claimed by Plaintiff.

12. Based on our independent investigation and evaluation, my colleagues and I are of the opinion that settlement for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the Settlement Class in light of all known facts and circumstances, including the risk of significant delay, the risk the Settlement Class will not be certified by the Court, and the defenses asserted by Defendant. Defendant and its counsel also agree that this settlement is fair and in the best interest of the Settlement Class.

13. The Parties agree that the Settlement Class described herein may be certified for settlement purposes only and that this motion for approval seeking, *inter alia*, certification of the Settlement Class is for purposes of the settlement only. If for any reason the Settlement is not approved, including but not limited to the Court denying final approval and/or failing to enter a final judgment, the certification will have no force or effect and will immediately be revoked. The Parties further agree that certification for purposes of the Settlement is in no way an admission that class certification is proper under the more stringent standard applied for litigation and that evidence of this limited stipulation for settlement purposes only will not be admissible for any purpose in this or any other proceeding. The parties further agree that if the Settlement is not approved for any reason, Defendant retains all rights previously available to it, and any provisional certification of any class, or the adoption of any procedure herein, shall be undone and the Parties restored to their pre-settlement status as if no settlement had been reached

1 and no decisions were made pursuant to it. In that event, nothing in this Settlement Agreement
2 or other papers or proceedings related to the Settlement shall be used as evidence or argument by
3 any party, including any Class Members who opt out, concerning whether or not the claims
4 advanced in the Complaint may properly be maintained as a class action, whether the purported
5 class is ascertainable, or whether my office or the Plaintiff can adequately represent the members
6 of the class under applicable law.

7 14. The parties jointly prepared the Joint Stipulation of Settlement and Release
8 (“Settlement Agreement” or “Settlement”). A true and correct copy of the Settlement is attached
9 hereto as Exhibit B.

10 15. Prior to settlement, my office created a comprehensive damage analysis using
11 sampling information obtained through informal discovery. This damage analysis reveals that
12 the negotiated settlement falls within a realistic range of recovery on class members’ claims.

13 16. Plaintiff alleges Defendant failed to pay all overtime wages due during the course
14 of employment, in violation of Labor Code §§ 510, 1174, 1194, 1197, 1197.1, 1198 and 1198.5.
15 He contends that Defendant failed to pay all minimum and overtime wages earned during the
16 course of employment, in violation of Labor Code §§ 510, 1174, 1194, 1197, 1197.1, 1198 and
17 1198.5, when it rounded down the hours reflected on our client’s and other Class Members’ time
18 records to pay fewer hours than were actually worked. On a weekly basis, this rounding deprived
19 our client and Class Members of significant hours worked. These failures to pay all minimum
20 and overtime wages due constitute violations of Labor Code §§ 510, 1174, 1194, 1197, 1197.1,
21 1198 and 1198.5. The maximum value of this claim is \$131,662.50, and perhaps far less based
22 on the defenses asserted by Defendant.

23 17. Plaintiff also argues that Defendant failed to provide all legally required rest
24 periods due to its allegedly improper practices. Plaintiff contends that Defendant failed to pay
25 premium wages to him and Class Members who were denied rest periods, in violation of Labor
26 Code § 226.7 and IWC Wage Order No. 9-2001. Class Members were routinely unable to take a
27 10-minute rest period for every four (4) hours of work or major fraction thereof, but were not
28 paid premium wages of one hour’s pay for each missed rest period. Class Members were simply

1 not authorized and unable to take off-duty rest periods during their employment as their rest
2 periods were routinely interrupted, they were required to work or otherwise be under
3 Defendant's control during their rest periods, or they were not offered rest periods. This violates
4 Labor Code § 226.7 and IWC Wage Order No. 9-2001. The potential value of this claim is
5 approximately \$263,325.00, but it was subject to multiple defenses. These defenses to class
6 certification and the merits required a discount for settlement purposes.

7 18. Plaintiff further contends that Defendant maintained illegal meal period practices.
8 Plaintiff contends that Defendant failed to pay premium wages to Class Members who were
9 denied proper meal periods, in violation of Labor Code §§ 226.7 and 512 and IWC Wage Order
10 9-2001. Class Members were routinely denied, and not authorized to take, a proper, timely,
11 uninterrupted, 30-minute meal period for every shift worked that exceeded five hours, or a
12 second proper, timely, uninterrupted, 30-minute meal period for every shift worked that
13 exceeded ten hours, but were not paid premium wages of one hour's pay for each missed first or
14 second meal period. When Class Members did receive a meal period, it would be later he would
15 be required to clock out for his meal period and continue working, or it would be interrupted,
16 requiring him to perform work duties while he was on his meal period in violation of Labor
17 Code §§ 226.7, 510, 512 and 1194. Plaintiff alleges that Defendant never paid such premiums;
18 as a result, the potential value of this claim is approximately \$189,594.00. Defendant asserts
19 numerous defenses to this claim based on both the class certification front and on the merits, thru
20 requiring a discount for settlement purposes.

21 19. Plaintiff further alleges that Defendant failed to reimburse all business-related
22 expenses incurred by Class Members, in violation of Labor Code § 2802. Plaintiff asserts that
23 Class Members were required to use their personal cellular phones to perform their work tasks
24 for Defendant, but were not fully reimbursed by Defendant for these expenses. This practice
25 violates Labor Code § 2802. The potential value of this claim is approximately \$15,000.00.
26 Defendant has asserted numerous defenses to this claim as regards both class certification and
27 the merits, thus requiring a discount for settlement purposes.
28

1 20. Plaintiff further alleges that Defendant failed to issue accurately itemized wage
2 statements, in violation of Labor Code § 226(a), and seeks penalties as follows: statutory
3 penalties of \$100 per wage statement pursuant to Labor Code § 226(e) and civil penalties of
4 \$100 per wage statement pursuant to PAGA. Although Plaintiff could theoretically recover up to
5 \$200 per allegedly defective wage statement (one civil penalty and one statutory penalty),
6 Plaintiff believed it highly unlikely that the Court would permit a double penalty recovery based
7 on the technical violation alleged, and believed that a significant discount on the maximum value
8 of his PAGA claims was warranted based on the Court's discretionary power to reduce penalties
9 under PAGA.

10 21. Indeed, one United States District Court reduced PAGA penalties by 83% for a
11 similar wage statement related PAGA claim after a bench trial on the merits. As to Plaintiff's
12 derivative wage statement claims, it is possible that the Court would find that Defendant
13 substantially complied with the requirements of Labor Code section 226(a) such that no penalties
14 would be awarded. It is also possible that the Court would agree with Defendant's position that
15 its policies and practices complied with the requirements of California law. In such a case, the
16 value of most of Plaintiff's derivative wage statement claims would be zero. The potential value
17 of this claim is approximately \$92,750.00

18 22. Plaintiff also sought statutory penalties for waiting time (valued at \$295,200.00).
19 It is possible that, because Plaintiff would likely be required to prevail on his underlying claims
20 for unpaid wages in order to establish a waiting time claim, Plaintiff would not recover on these
21 penalties at all. As a result, Plaintiff gave them little more than nominal value for settlement
22 purposes.

23 23. The PAGA claims alleged by Plaintiff could be valued at over \$238,000.00.
24 However, any recovery on these claims is not certain either. PAGA claims are discretionary,
25 such that the Court could decline to award their full value. They are also derivative, so Plaintiff
26 must prevail on his underlying Labor Code claims to prevail on these claims. Finally, the Court
27 may award far less than the maximum value on these penalty claims, particularly if they
28 approach or exceed the value of the underlying wage claims.

1 24. A discount on the maximum value of Class members' claims was required (and
2 warranted) to resolve the matter at this stage of the litigation. Class certification is a substantial
3 risk in any class action case. Here, while Plaintiff maintains that the requirements of class
4 certification are met, Defendant proffers various arguments why class treatment is not
5 appropriate here, including but not limited to that individualized inquiries among class members
6 predominate over common ones. If Defendant was to defeat Plaintiff's class certification
7 motion, there would be no class wide relief whatsoever, and most class members would likely
8 not file individual claims.

9 25. Defendant strongly contends that its policies and practices do not violate any laws.
10 It contends that it provided all required wages in a timely manner.

11 26. When the costs and risks of non-certification and loss on the merits are considered,
12 my colleagues and I are of the opinion that the settlement reached is clearly a favorable one.

13 27. The settlement for each participating Class Member is fair, reasonable and
14 adequate, given the inherent risk of litigation, the risk relative to class certification and the costs
15 of pursuing such litigation. The settlement shall finally resolve all claims of the Class Members
16 as alleged in the Action.

17 **Class Certification Requirements:**

18 28. To date, no class has been certified. The Stipulation of Settlement contains a
19 provision pursuant to which we stipulate to the Court's provisional certification of the
20 approximately 140-member Settlement Class but do so for purposes of this settlement only.

21 29. Plaintiff contends that class certification is appropriate here. In this case, the Class
22 Members are identifiable from Defendant's records. Further, the settlement class is sufficiently
23 numerous to warrant certification. According to Defendant's records, the Class is comprised of
24 approximately 140 members.

25 30. The Class Members' claims all stem from a common source: all Class Members
26 allege that Defendant violated the same Labor Code and Wage Order provisions in connection
27 with their work for Defendant. The same Labor Code and Wage Order violations are alleged on
28 behalf of all persons encompassed in the settlement class, including claims for: (1) Failure to Pay

1 All Wages Due (Labor Code §§ 510, 1174, 1194, 1197, 1197.1, 1198 and 1198.5); (2) Failure to
2 Provide Rest Periods Or Compensation In Lieu Thereof (Labor Code § 226.7; IWC Wage Order
3 9-2001); (3) Failure to Provide Meal Periods or Compensation In Lieu Thereof (Labor Code §§
4 226.7 and 512; IWC Wage Order 9-2001); (4) Knowing and Intentional Failure to Comply With
5 Itemized Employee Wage Statement Provisions (Labor Code § 226(a), (e), (h)); (5) Failure to
6 Pay Wages Due at Separation of Employment (Labor Code §§ 201-203); (6) Failure to
7 Reimburse Expenses (Labor Code § 2802); (7) Violation of Business and Professions Code §
8 17200; and (8) Penalties Pursuant to Labor Code § 2699(f) for Violations of Labor Code §§ 201-
9 202, 226(a), 226.7, 510, 512, 1174, 1194, 1197, 1197.1, 1198, and 2802 and Pursuant to Labor
10 Code § 2699(a) for Violations of Labor Code §§ 226.3 and 1198.5. All members of the
11 Settlement Class seek the same legal remedies under the same state laws, all related to their
12 employment under uniform policies and practices. Under these circumstances, the commonality
13 requirement is satisfied for purposes of certifying the settlement class for settlement.

14 31. In this case, the named Plaintiff and proposed Class Representative Byron Higuera
15 is a former non-exempt California employee. Plaintiff alleges the same claims as those that the
16 members of the Settlement Class would reasonably be expected to bring based on the course of
17 conduct alleged herein.

18 32. Plaintiff has also demonstrated that he will aggressively and competently assert the
19 interests of the proposed Settlement Class; he has taken an active role in this litigation and has
20 no apparent conflicts with other class members.

21 **Settlement of Claims Pursuant to Labor Code § 2699 et seq. (PAGA)**

22 33. Concurrently with the filing of this Motion, my office is transmitting the
23 Settlement Agreement and these approval documents to the LWDA, in compliance with Labor
24 Code § 2699(l)(2).

25 I declare, under penalty of perjury, under the laws of the State of California, that the
26 foregoing is true and correct. Executed this 20th day of November 2020 at Calabasas, California.

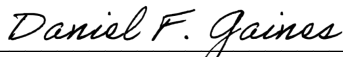
27 
28 DANIEL F. GAINES

EXHIBIT A

Adams v. Newell Rubbermaid, USDC – Central District of California (Los Angeles), Case No. EDCV 08-1499 JTM (CTx)

Adams v. Sam's West, Inc., San Bernardino County Superior Court, Case No. CIVDS1403987

Agredano v. GS Brothers, Inc., Los Angeles County Superior Court, Case No. BC445561

Allen v. Toms Sierra Company, Nevada County Superior Court, Case No. CU18-082823

Allen v. Valley Inventory Service, Inc., Solano County Superior Court, Case No. FCS034682

Alvarez v. Pilot Travel Centers, LLC, San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-4605

Alonzo v. Camblin Steel Service, Inc., Placer County Superior Court, Case No. SCV0034165

Amenhotep v. Google, Inc., Santa Clara County Superior Court, Case No. 17CV311528

Anaya v. Progressive Logistics Services, LLC, Riverside County Superior Court, Case No. RIC1308270

Andre v. Newell Rubbermaid, Inc., San Bernardino County Superior Court, Case No. CIVVS1200282

Anduha v. ABC Phones of North Carolina, Inc., Stanislaus County Superior Court, Case No. 2022729

Anslow v. Wellington Energy, Inc., USDC – Northern District of California (San Francisco), Case No. CV11-1596-JCS

Aranda, et al. v. Universal Lumpers of California, Inc., San Joaquin County Superior Court, Case No. STK-UOE-2017-7826

Armendariz v. Integrated Pain Management Medical Group, Inc., Kern County Superior Court, Case No. BCV-19-100267-SDS

Barrow, et al. v. Desmond Foods, L.P., Sacramento County Superior Court, Case No. 34-2015-00187227

Batmanghelich v. Sirius XM Radio Inc., USDC – Central District of California (Los Angeles), Case No. CV 09-9190 VBF (JCx)

Bosser v. Hooked on Solar, Yolo County Superior Court, Case No. CVCV-2016-876

Bourland v. Horizon Personnel Services, Inc., Sacramento County Superior Court, Case No. 34-2014-00161365-CU-OE-GDS

Bowen v. IMI Material Handling Logistics, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-0000192

Branson v. Mladen Buntich Construction, San Bernardino County Superior Court, Case No. CIVDS1609129

Brandt v. Sacramento Auto Insurance Center, Inc., San Joaquin County Superior Court, Case No. 39-2009-00202938-CU-OE-STK

Brown v. 22nd District Agricultural Association, United States District Court, Southern District of California, Case No. 15-cv-2578-DHB

Brown v. Sierra Central Credit Union, Sutter County Superior Court, Case No. CVCS18-0002161

Burgess v. Blue Cross and Blue Shield of South Carolina, San Joaquin County Superior Court, Case No. 39-2012-00277449-CU-BT-STK

Burgess v. Strategic Retail Solutions, LLC, Los Angeles County Superior Court, Case No. BC413791

Calhoun v. Celadon Trucking Services, Inc., USDC – Central District of California (Los Angeles), Case No. 5:16-cv-01351-PSG-FFM

Caporicci v. Owens & Minor Distribution, Inc., San Joaquin County Superior Court, Case No. 39-2013-00295662-CU-OE-STK

Carl v. Advanced Call Center Technologies, LLC, Sacramento County Superior Court, Case No. 34-2013-00148310

Carlisle, et al. v. Professional Technical Security Services, Inc., Case No. CGC18569791

Carrete v. Gamestop, Inc., Imperial County Superior Court, Case No. ECU08501

Carrillo v. Bimbo Bakeries, Inc., San Bernardino County Superior Court, Case No. CIVDS1606813

Caudillo v. Aegis Treatment Centers, LLC, Merced County Superior Court, Case No. 18CV-0744

Cerami v. Metlife, Inc., USDC – Central District of California (Orange County), Case No. 11-CV-00681-CJC (MLGx)

Charles v. Aaron's Inc., Los Angeles County Superior Court, Case No. BC431468

Charles v. Nursefinders, LLC, Imperial County Superior Court, Case No. ECU07422

Cheifer v. JetBlue Airways Corporation, Los Angeles County Superior Court, Case No. BC451887

Cheifer, et al. v. WHGM, Inc., Los Angeles County Superior Court, Case No. LC104900

Chong, et al. v. Crescent Northwoods Inn, Inc., Del Norte County Superior Court, Case No. CVUJ-2018-1133

Church v. GameStop, Inc., et. al., USDC – Central District of California (Los Angeles), Case No. 11-CV-00132-VAP-RZ

Clothier v. Spar Marketing Services, Inc., Alameda County Superior Court, Case No: RG12-639317

Coleman v. Wireless Lifestyle, Inc., USDC – Western District of Missouri, Case No. 4:12-cv-00855-ODS

Colombo-Beyeler, et al. v. Viking River Cruises, Inc., San Bernardino County Superior Court, Case No. CIVDS1611608

Conlee v. Clark Pacific Corporation, Yolo County Superior Court, Case No. CV14-1409

Contreras v. Osmose Utilities Services, Inc., San Bernardino County Superior Court, Case No. CIVDS1513998

Contreras v. West American Service Corporation, Kings County Superior Court, Case No. 14C0280

Corona v. Yosemite Meat & Locker Service, Inc., Stanislaus County Superior Court, Case No. 2006828

Cortellessa v. Dotnext, Inc., Alameda County Superior Court, Case No. RG09429971

County v. Ingram Mirco, Inc., San Bernardino Superior Court, Case No. CIVRS 1304445

Covarrubias, et al. v. Petersendean Builder Group, Inc., Kern County Superior Court, Case No. BCV-16-101122

Cowen, et al. v. Evergreen Alliance Golf Limited, L.P., d/b/a Arcis Golf, San Bernardino County Superior Court, Case No. CIVDS1719283

Cruz-Garcia v. Lemonade Restaurant Group, LLC, Los Angeles County Superior Court, Case No. BC478205

Cunningham v. Performance Contracting, Inc., Contra Costa County Superior Court, Case No. C16-02157

Dabney v. Coneybeare, LLC, et al., Orange County Superior Court, Case No. 30-2018-00999989-CU-OE-CXC

Dabney, et al. v. Panera, LLC., San Bernardino County Superior Court, Case No. CIVDS1516030

Diaz, et al. v. Seaworld Entertainment, Inc., Imperial County Superior Court, Case No. ECU10046

Diggs v. Western Waterproofing Company, Inc., San Francisco County Superior Court, Case No. CGC-14-539281

Dismuke v. Rhodes Retail Services, Inc., Sacramento County Superior Court, Case No. 34-2011-00105001

Dorsette v. TA Operating, LLC, USDC – Central District of California (Los Angeles), Case No. EDCV 09-1350 PA (RZx)

Duran v. The Image of California, Inc., Kern County Superior Court, Case No. S-1500-CV-284056 DRL

Edwards v. Trans World Entertainment Corp., San Diego County Superior Court, Case No. 37-2010-00095123-CU-OE CTL

Esakhani v. Central Valley Gaming, Stanislaus County Superior Court, Case No. 2020667

Escobar v. SMSSI of California, Inc., San Francisco Superior Court, JCCP No. 4776

Espinosa v. Taltech Construction, et al., Los Angeles County Superior Court, Case No. BC590176

Espinosa v. Bodycote Thermal Processing, Inc., Los Angeles County Superior Court, Case No. BC501617

Espinoza v. Pabco Building Products, LLC, Los Angeles County Superior Court, Case No. VC065660

Estrada v. Net Source Communications, Inc., Los Angeles County Superior Court, Case No. BC431169

Estrada v. OS Restaurant Services, LLC, Santa Clara County Superior Court, Case No. 16CV293249

Estupinan v. Global Development Strategies, Inc., Santa Clara County Superior Court, Case No. 110CV178898

Fadhl. v. Siemens Healthcare Diagnostics Inc., Sacramento County Superior Court, Case No. 34-2017-00209518

Fernandez v. The Regents of the University of California, Los Angeles County Superior Court, Case No. BC656256

Ferrer v. Dish Network Corporation, Los Angeles County Superior Court, Case No. BC441354

Findora v. Barry Callebaut USA LLC, Napa County Superior Court, Case No. 19CV000219

Flores v. Cintas Corporation, Los Angeles County Superior Court, Case No. BC400422

Friel v. Midwest Construction Services, Inc., San Joaquin County Superior Court, Case No. 39-2015-00329204-CU-OE-STK

Gagnon v. Banc of California, Contra Costa County Superior Court, Case No. C 15-00196

Galarza v. Bayou Well Services, LLC, Kern County Superior Court, Case No. S-1500-CV-279372 DRL

Galarza v. C & H Testing Service LLC, Kern County Superior Court, Case No. BCV-15-100008 SPC

Garcia v. Old Dominion Freight Line, Inc., San Bernardino County Superior Court, Case No. CIVDS1404636

Geer v. Applied Aerospace Structures Corp., San Joaquin County Superior Court, Case No. 39-2014-00313702-CU-OE-STK

Getz v. California Cinema Investments, Inc., Ventura County Superior Court, Case No. 56-2013-00437706-CU-MC-VTA

Gibbs v. M. Lehmann Enterprises, Orange County Superior Court, Case No. 30-2013-00678538-CU-OE-CXC

Gilles v. Schaefer Ambulance Service Inc., Imperial County Superior Court, Case No. ECU07970

Goldman, et al. v. Defender's, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-0009973

Gomez v. Low Desert Empire Pizza, Inc., San Bernardino County Superior Court, Case No. CIVVS900392

Gomez v. Pizza Hut of Southeast Kansas, Inc., San Bernardino County Superior Court, Case No. CIVVS900679

Gonzalez v. Harris Farms, Inc., USDC – Eastern District of California (Fresno), Case No. 1:14-cv-00038-LJO-SAB

Guerrero v. Main Electric Supply Company LLC, Ventura County Superior Court, Case No. 56-2019-00525427-CU-OE-VTA

Gutierrez v. Asset Management Specialists, Inc., Fresno County Superior Court, Case No. 12CECG03577

Gutierrez v. Linkus Enterprises, Inc., Madera County Superior Court, Case No. MCV065774

Gutierrez v. Shiekh, LLC, San Bernardino County Superior Court, Case Nos. CIVRS1206525, CIVRS1303408

Hairston v. Stanislaus Surgical Hospital, Stanislaus County Superior Court, Case No. CV-19-000651

Hindman v. Service Quick, Inc., San Bernardino County Superior Court, Case No. CIVDS1724229

Hogan v. iMobile of CA LLC, San Bernardino County Superior Court, Case No. CIVDS1409263

Hogan v. Wireless Evolution Inc., Riverside County Superior Court, Case No. MCC1300669

Hogan v. Wireless That's It! LLC, Riverside County Superior Court, Case No. RIC1201997

Holmes v. Bottling Group, LLC, Stanislaus County Superior Court, Case No. 2022584

Hooper, et al. v. URS Midwest, Inc., et al., San Bernardino Superior Court, Case No. CIVDS1607489

Humphrey v. Freedomroads, LLC, Shasta County Superior Court, Case No. 178228

Hurtado v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC427672

Hyde v. Dent Wizard International Corporation, Sacramento County Superior Court, Case No. 34-2015-00173882

Ibrihim v. Imperfect Foods, Inc., San Joaquin County Superior Court, Case No. STK-VI-UOE-2019-0000846

Id-deen v. Educational Services of America, Solano County Superior Court, Case No. FCS040803

Isherwood v. Mason Dixon Intermodal, Inc., San Joaquin County Superior Court, Case No. 39-2012-00279891-CU-OC-STK

Jahanbin v. Pacific Mercantile Bank, Orange County Superior Court, Case No. 30-2011-00480705CU-OE-CXC

Jenkins v. Sedgwick Claims Management Services, Inc., Los Angeles Superior Court, Case No. LC101648

Job v. California Security Services, Yuba County Superior Court, Case No. 14-0000820

Johnson v. The Goodyear Tire & Rubber Company, USDC – Northern District of California (San Francisco), Case No. 3:13-cv-01069-MMC

Jolin v. Bay Cities Recovery, Inc., El Dorado County Superior Court, Case No. PC20100458

Jordan v. Sutter Memorial Hospital, Stanislaus County Superior Court, Case No. 2023344

Keebaugh v. Mike Thompson Recreational Vehicles, San Bernardino County Superior Court, Case No. CIV-DS-1500718

Kelly v. Robin's Enviro Vac, Inc., Kern County Superior Court, Case No. S-1500-CV-282277
DRL

King v. Levy Premium Foodservice Limited Partnership, Alameda County Superior Court, Case No. HG15786353

Kunsman v. Punch Bowl Sacramento, LLC, et al., Sacramento County Superior Court, Case No. 34-2018-00243175

LaFear v. Encore Education Corporation, San Bernardino County Superior Court, Case No. CIVDS1802251

Lanzarin v. AWI Management Corporation, Solano County Superior Court, Case No. FCS041809

Lee, et al. v. Foster Dairy Farms, Stanislaus County Superior Court, Case Nos. 2006542, 2015679

Lemus, et al. v. Eastridge Workforce Technology, Inc., San Bernardino County Superior Court, Case No. CIV-DS-1611470

Lewis v. American Casino & Entertainment Properties LLC, San Bernardino County Superior Court, Case No. CIVDS1719094

Lemus v. On Assignment Staffing Services, San Bernardino County Superior Court, Case No. CIV-DS-1600497

Leon v. Piercey West Inc., Los Angeles County Superior Court, Case No. BC656874

Lopez v. Creative Communication Technologies, Inc., Imperial County Superior Court, Case No. ECU07851

Lopez v. Go Green Auto Spa Franchise, Inc., et al., Los Angeles County Superior Court, Case No. BC 562212

Lopez v. Truck Accessories Group, LLC, Yolo County Superior Court, Case No. CV13798

Ludlow v. Prince Telecom, LLC, Stanislaus County Superior Court, Case No. 684239

Luna v. Express Locations, LLC, Imperial County Superior Court, Case No. ECU09779

Macias v. American Tire Distributors, Inc., Kern County Superior Court, Case No. BCV-18-101586

Maldonado v. Hardwood Flooring Liquidators, Inc., Los Angeles County Superior Court, Case No. BC642170

Mansfield v. Cambridge Real Estate Services, Inc., Butte County Superior Court, Case No. 160175

Martinez v. DPI Specialty Foods West, San Joaquin County Superior Court, Case No. 39-2015-00327311-CU-OE-STK

Martinez v. Styles For Less, Inc., San Bernardino County Superior Court, Case No. CIVVS1203057

Mayne v. John Muir Behavioral Health, Contra Costa County Superior Court, Case No. C17-00998

Maze v. Bulldog Freightway, Inc., Imperial County Superior Court, Case No. ECU08716

McCormick v. G & O Body Shop, Inc., El Dorado Superior Court, Case No. PC20130291

McCrary v. Campbell Soup Supply Company, San Joaquin County Superior Court, Case No. 39-2013-00297698-CU-OE-STK

McDaniel v. Vancary, Inc., Tulare County Superior Court, Case No. 268036

Melgar-Farela v. Guardian Compliance, Inc., Los Angeles County Superior Court, Case No. BC481865

Mendiola v. Tyco Electronics Corporation, Riverside County Superior Court, Case No. RIC1400721

Mettler v. Les Schwab Tire Centers of California, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-476

Miller v. California Subshine, Inc., Los Angeles County Superior Court, Case No. BC637754

Miller v. Southwest Airlines Co., USDC – Northern District of California (San Francisco), Case No. 3:12-cv-05978-CRB

Mitchell v. Crossmark, Inc., USDC – Central District of California (Los Angeles), Case No. CV 11-2818-JAK (FMOx)

Moghrabi v. Vitaligent, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-1650

Molina v. Berkshire Hathaway Energy Company, et al., Imperial County Superior Court, Case No. ECU000522

Moore v. Horizon Solar Power, Inc., San Bernardino County Superior Court, Case No. CIVDS1410001

Murray v. Select Media Services, LLC, Los Angeles County Superior Court, Case No. BC424506

Myles v. Central Transport LLC, San Bernardino County Superior Court, Case No. CIVDS1401434

Navarro v. Mariana Packing Co., Inc., Solano County Superior Court, Case No. FCS045935

Nehrlich, et al. v. RPM Mortgage, Inc., Orange County Superior Court, Case No. 30-2013-00666783-CU-OE-CXC

Overton v. Hat World, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:11-CV-01645-LKK-KJN

Perez v. Alcatel-Lucent USA Inc., Imperial County Superior Court, Case No. ECU07977

Perez v. Major Gloves and Safety, Inc., San Bernardino County Superior Court, Case No. CIVDS1710445

Perry v. Cardinal Health 200, LLC, Solano County Superior Court, Case No. FCS035303

Phraxayavong-Briones v. RSM, Inc., Sacramento County Superior Court, Case No. 34-2012-00117524

Pugh v. Wi Spa, LLC, Imperial County Superior Court, Case No. ECU07932

Quist v. Knight Transportation, Inc., San Bernardino Superior Court, Case No. CIVDS 1615414

Quitco v. Aviation Fuel Systems Repair, Inc., San Bernardino Superior Court, Case No. CIVRS1302311

Rambeau v. C.C.M. Corporation, et al., Sacramento County Court, Case No. 34-2018-00244842

Rankins v. Roman Empire Living Skills, Inc., Los Angeles County Superior Court, Case No. BC713399

Rees v. Advantel, Incorporated, Santa Clara County Superior Court, Case No. 16-CV-292219

Renfrow v. Janra Enterprises, Inc., Sacramento County Superior Court, Case No. 3402010-00080471

Reynolds v. Diamond Pet Food Processors of Ripon, San Joaquin County Superior Court, Case No. 39-2014-00310818

Richard v. A-Para Transit Corp., Alameda County Superior Court, Case No. HG17870373

Richardson v. TEC Equipment, Inc., et al., Los Angeles County Superior Court, Case No. VC065536

Robles v. North County Health Project Incorporated, San Diego Superior Court, Case No. 37-2014-00001751-CU-OE-NC

Rodas v. Monetary Management of California, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:14 cv 01389 TLN AC

Rodriguez v. 20/20 Plumbing & Heating, Inc., San Bernardino County Superior Court, Case No. CIVDS1705362

Rodriguez v. Commerce Distribution Company, Los Angeles County Superior Court, Case No. BC656259

Rodriguez v. Valley Oak, San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-7980

Roden v. Service Champions, San Bernardino County Superior Court, Case No. CIVDS1613183

Russell v. Bradshaw International, Imperial County Superior Court, Case No. ECU00853

Rutledge, et al. v. Healthport Technologies, LLC, Alameda County Superior Court, Case No. RG16835813

Sabala v. Econtactlive, Inc., Stanislaus County Superior Court, Case No. 684981

Sabatier v. Picture Perfect Installation, Inc., Riverside County Superior Court, Case No. RIC10004953

Salameh v. Sonomaidence OPCO, LLC, Sonoma County Superior Court, Case No. SVC264228

Salazar v. Tag-3 Medical Investment Group, LLC, Los Angeles County Superior Court, Case No. BC527698

Salbeck v. Ingredion Incorporated, San Joaquin County Superior Court, Case No. STK-UOE-2017-0012622

Sampson v. Healthnet of California Inc., Sacramento County Superior Court, Case No. 34-2015-00183785-CU-OE-GDS

Sanchez v. Don Roberto Jewelers, Inc., Imperial County Superior Court, Case No. ECU06819

Sanders v. Lionakis, Sacramento County Superior Court, Case No. 34-2017-00223601

Santana v. United Staffing Associates, LLC, Tulare County Superior Court, Case No. 249338

Schrader v. Adidas Promotional Retail Operations, Inc., Los Angeles County Superior Court, Case No. BC414168

Sebrell v. Pomeroy IT Solutions, San Bernardino County Superior Court, Case No. CIVDS1721560

Seymour v. Quest Service Group, LLC, Sacramento County Superior Court, Case No. 34-2017-00206917

Silva v. Trical, San Benito County Superior Court, Case No. CU-16-00218

Simler v. Polly's Inc., Riverside County Superior Court, Case No. RIC 1117862

Sipin, Scott v. Salesforce.com, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2019-0004629

Skuro v. BMW of North America, LLC, USDC – Central District of California (Los Angeles), Case No.: CV 10-8672-GW (FFMx)

Smith v. Steelcase, Inc., San Bernardino County Superior Court, Case No. CIVDS1725850

Sohal v. Foster Poultry Farms, Stanislaus County Superior Court, Case No. 2026605

Solomon v. City of Los Angeles, Los Angeles County Superior Court, Case No. BC570345

Solano v. Vozzcom, Inc., Imperial County Superior Court, Case No. ECU09519

Smith, et al. v. Sente Development, Inc., Sacramento County Superior Court, Case No. 34-2016-00196614

Solorzano v. FDS Manufacturing Corporation, Los Angeles County Superior Court, Case No. BC542532

Solowitz v. BakeMark USA LLC, Los Angeles County Superior Court, Case No. BC467838

Spampinato v. Wind & Sea Restaurants, Inc., San Bernardino County Superior Court, Case No. CIVVS1205154

Spitzer, et al. v. FRHI Hotels & Resorts (Canada) Inc., San Bernardino County Superior Court, Case No. C IVDS1712220

Stephens v. C.S., Inc., Riverside County Superior Court, Case No. PSC1301224

Stevenson v. Harvest Management Sub LLC, Ventura County Superior Court, Case No. 56-2011-00397420-CU-OE-SIM

Thompson v. Continental Labor Resources, Inc. d/b/a Continental Labor & Staffing Resources, Kern County Superior Court, Case No. S-1500-CV-278751-DRL

Thompson v. Sidhu Truck Line, Inc., Kern County Superior Court, Case No. BCV-15-101308-DRL

Tigas v. Ajilon Communications, Los Angeles County Superior Court, Case No. BC409737

Torres v. Coastal Employment Inc., Los Angeles County Superior Court, Case No. BC529207

Tran v. CSP Fiber Services, San Bernardino County Superior Court, Case No. CIVDS172758

Tripp v. California Guest Services, Inc., Plumas County Superior Court, Case No. CV16-00036

Valdez v. Diamond Landscaping, Inc., Los Angeles County Superior Court, Case No. BC497097

Valencia v. American Team Managers, Inc., Orange County Superior Court, Case No. 30-2016-00857365-CU-CR-CXC

Van Son v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC494747

Vasquez v. Schurman Fine Papers, San Joaquin County Superior Court, Case No. STK-CV-LMC-2015-10035

Velasquez v. Modesto Ventures, LLC, Sacramento County Superior Court, Case No. 32-2012-00126159

Victoria v. Bali Limousines Inc., San Mateo County Superior Court, Case No. CIV507774

Victorian v. Vision X, Inc., Los Angeles County Superior Court, Case No. BC400333

Wade v. Frito Lay, Kern County Superior Court, Case No. BCV-17-102014

Walls v. E. & J. Gallo, Stanislaus County Superior Court, Case No. 2015874

Warner v. Waterdrops Express Car Wash, LLC, Tulare County Superior Court, Case No. 265708

Waybright v. EAH, Inc., Stanislaus County Superior Court, Case No. 2011677

Weiss v. C.A.R. Enterprises, Inc., Riverside County Superior Court, Case No. RIC1113165

White v. Sally Beauty Supply, LLC, Imperial County Superior Court, Case No. ECU08177

Williams v. Dennis Dillon RV, LLC, San Bernardino County Superior Court, Case No. CIVDS 16006879

Williams v. Closet World, Inc., Los Angeles County Superior Court, Case No. BC400178

Williams v. Progress Rail Services Corporation, Kern County Superior Court, Case No. S-1500-CV-280236 DRL

Wing v. Three Group, Inc., Los Angeles County Superior Court, Case No. BC643883

Wilson v. ALSCO, Inc., Imperial County Superior Court, Case No. ECU07406

Wilson v. Michael C. Stead, Inc., Contra Costa Superior Court, Case No. C1400135

Winningham v. Storer Transportation Service, San Joaquin County Superior Court, Case No. 39-2015-00324708-CU-STK

Woody v. WBN Home Design, San Bernardino County Superior Court, Case No. CIVDS1613367

Woods, et al. v. F&B Innovations, LLC, San Bernardino County Superior Court, Case No. CIVDS1717765

Woodyard v. Bellus ALC Acquisition, LLC, USDC – Central District of California (Los Angeles), Case No. 2:13-cv-05285 SJO AGRx

Wright v. Social Vocational Services, Inc., Kern County Superior Court, Case No. BCV-15-101264

Ybarra v. New Legend, Inc., Sutter County Superior Court, Case No. CVCS-16-2097

Zaragoza v. Center Automotive, Inc., Los Angeles Superior Court, Case No. BC505194

EXHIBIT B

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14
15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **FOR THE COUNTY OF SAN JOAQUIN**

17 BYRON HIGUERA, on behalf of himself
and a class of similarly situated employees,

18 Plaintiffs,

19 v.

20 INTERNATIONAL BONDED
21 COURIERS, INC., a Florida corporation,
and DOES 1 through 10, inclusive,

22 Defendants.
23

CASE NO: STK-CV-UOE-2020-8988

*Assigned to the Honorable George J. Abdallah,
Dept. 10A*

CLASS ACTION

**SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

1 **SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

2 This Settlement Agreement and Release of Claims (“Settlement Agreement”) is made and
3 entered into by and between Plaintiff Byron Higuera (“Higuera” or “Plaintiff” or “Class
4 Representative”), individually and on behalf of all others similarly situated, and Defendant
5 International Bonded Couriers, Inc. (“Defendant”), subject to the terms and conditions herein and
6 the Court’s approval (the “Settlement”).

7 **A. Definitions.**

8 1. Plaintiff and the Settlement Class (as defined below) and Defendant are collectively
9 referred to herein as “the Parties.”

10 2. Daniel F. Gaines and Alex P. Katofsky of Gaines & Gaines, APLC are counsel of
11 record for Plaintiff. For purposes of this settlement only, the firm of Gaines & Gaines, APLC shall
12 be designated as “Class Counsel.”

13 3. The “Action” means the case entitled *Byron Higuera, et al., Plaintiffs, v.*
14 *International Bonded Couriers, Inc., And Does 1 Through 10, Inclusive, Defendants,* Case No.
15 STK-CV-UOE-2020-8988, pending before the Superior Court of the State of California for the
16 County of San Joaquin.

17 4. The “Settlement Class” shall be defined as “all current and former non-exempt
18 California employees of Defendant International Bonded Couriers, Inc. employed from January 27,
19 2016 through October 31, 2020, who have not signed class action waivers” (the “Class Period”).
20 Defendant represents that this Class contains no more than 140 members.

21 5. Members of the Settlement Class shall collectively be referred to as a “Class
22 Member” or “Class Members.” If such person is incompetent or deceased, “Class” or “Class
23 Member” or “Class Members” means the person’s legal guardian, executor, heir, or successor in
24 interest. Any Class Member who files a timely request for exclusion, as detailed below, will be
25 excluded from the final Settlement Class.

26 **B. General.**

27 1. On January 27, 2020 Plaintiff exhausted the pre-filing requirements of the Labor
28 Code Private Attorneys General Act of 2004, Labor Code sections 2698 *et seq.* (“PAGA”).

1 2. Plaintiff's claims were thereafter tolled based on the Judicial Council's emergency
2 rule 9 regarding the statutes of limitations for filing civil cases during the COVID-19 pandemic.

3 3. On October 23, 2020, following extensive informal discovery and settlement
4 negotiations, Plaintiff initiated the Action by filing a Complaint as a class and representative action,
5 pursuant to California Code of Civil Code section 382 and PAGA, on behalf of himself and all
6 other non-exempt California employees. The Action asserts class and representative action claims
7 against Defendant for (1) failure to pay all wages due, including minimum wage and overtime
8 wages (Labor Code §§ 510, 1174, 1194, 1197, 1197.1, 1198 and 1198.5) (2) failure to provide rest
9 periods or compensation in lieu thereof (Labor Code § 226.7); (3) failure to provide meal periods
10 or compensation in lieu thereof (Labor Code §§ 226.7, and 512); (4) knowing and intentional failure
11 to comply with itemized employee wage statement provisions (Labor Code §§ 226); (5) failure to
12 timely pay wages due at separation of employment (Labor Code §§ 201, 202, 203); (6) failure to
13 reimburse employee business expenses (Labor Code § 2802); (7) violation of Business and
14 Professions Code § 17200, et seq.; and (8) penalties pursuant to Labor Code § 2698, et seq. for
15 violations of Labor Code §§ 201-203, 226(a), 226.3, 226.7, 510, 512, 1174, 1194, 1197, 1197.1,
16 1198, 1198.5 and 2802 (the "Complaint").

17 4. Defendant denies any liability or wrongdoing of any kind associated with the claims
18 alleged in the Action, and further denies that the Action is appropriate for class treatment for any
19 purpose other than this settlement. Defendant contends that it has complied at all times with the
20 California Labor Code. It is Defendant's position that, if this case were to be litigated, class
21 certification would be inappropriate because Plaintiff is not an adequate class representative,
22 Plaintiff's claims are not typical of putative class members, and individual issues predominate over
23 class issues. The Action, the negotiation and execution of this Settlement Agreement, and all acts
24 performed or documents executed pursuant to or in furtherance of the Settlement Agreement (i)
25 shall not be used as an admission or evidence of wrongdoing on behalf of Defendant; (ii) shall not
26 be an admission or evidence of fault on behalf of Defendant in any action before a civil, criminal,
27 or administrative agency; and (iii) shall not be deemed to be, and may not be used as, an admission
28

1 or evidence of the appropriateness of these or similar claims for class certification in the Action or
2 with respect to any other proceeding.

3 5. The Class Representative contends that Defendant violated the California Labor
4 Code and that this case is appropriate for class certification.

5 6. Class Counsel represent that they have conducted a thorough investigation into the
6 facts and law during the prosecution of this class action case, including the exchange of extensive
7 informal discovery and the review and verification of statistical data and other facts and information
8 provided by Defendant. Counsel for the Parties also represent that they have investigated the
9 applicable law as applied to the facts discovered regarding the alleged claims of Plaintiff and
10 potential defenses thereto, and the damages claimed by Plaintiff.

11 7. Based on their own independent investigation and evaluation, Class Counsel are of
12 the opinion (and will so represent to the Court) that settlement for the consideration and on the
13 terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best
14 interest of the Settlement Class in light of all known facts and circumstances, including the risk of
15 significant delay, the risk the Settlement Class will not be certified by the Court, and the defenses
16 asserted by Defendant. Defendant and its counsel also agree (and will so represent to the Court)
17 that this settlement is fair and in the best interest of the Settlement Class.

18 The Parties agree that the Settlement Class described herein may be certified for settlement
19 purposes only and that any motion for approval seeking, *inter alia*, certification of the Settlement
20 Class is for purposes of the settlement only. If for any reason the Settlement is not approved,
21 including but not limited to the Court denying final approval and/or failing to enter a final judgment,
22 the certification will have no force or effect and will immediately be revoked. The Parties further
23 agree that certification for purposes of the Settlement is in no way an admission that class
24 certification is proper under the more stringent standard applied for litigation and that evidence of
25 this limited stipulation for settlement purposes only will not be admissible for any purpose in this
26 or any other proceeding. The parties further agree that if the Settlement is not approved for any
27 reason, Defendant retains all rights previously available to it, and any provisional certification of
28 any class, or the adoption of any procedure herein, shall be undone and the Parties restored to their

pre-settlement status as if no settlement had been reached and no decisions were made pursuant to it. In that event, nothing in this Settlement Agreement or other papers or proceedings related to the Settlement shall be used as evidence or argument by any party, including any Class Members who opt out, concerning whether or not the claims advanced in the Complaint may properly be maintained as a class action, whether the purported class is ascertainable, or whether Class Counsel or the Plaintiff can adequately represent the members of the class under applicable law.

C. Terms of Settlement.

1. Financial Terms of Settlement

This shall be an all-in Settlement without a reversion to Defendant. Class Members do not need to submit anything to receive their settlement share. The financial terms of the Settlement are as follows:

(a) **Maximum Settlement Amount:** The Parties agree to settle this Action for a Maximum Settlement Amount of One Hundred Ninety Thousand U.S. Dollars (\$190,000.00) (“the Maximum Settlement Amount”), non-reversionary in exchange for the full and final settlement and release of any and all claims that were made, or that could have been made based on the facts alleged in the Complaint in this Action, and subject to the terms and conditions outlined in this Settlement Agreement (as defined herein). The Maximum Settlement Amount will constitute adequate consideration for this Settlement and will be made in full and final settlement of: (i) the Released Claims (defined below); (ii) Class Counsel’s claim for attorneys’ fees, litigation costs and expenses (which includes, without limitation, all such fees and costs incurred to date, as well as such fees and costs to be incurred in documenting the settlement, providing any notices required as part of the settlement, securing Court approval of the settlement, and obtaining judgment in the Action); (iii) the service payment to the Class Representative, as approved by the Court; (iv) the payment to the LWDA pursuant to the PAGA claims in the Action; (v) all costs of administration, including, without limitation, settlement administration fees and expenses, and all employer payroll tax obligations due on wage payments made from the Net Settlement Proceeds; and (vi) any other obligation of the Parties under this Settlement Agreement.

The Maximum Settlement Amount shall increase by \$1,357.00 for each additional Class

1 Member in excess of 140. For example, if the final number of Class Members is 145, the Maximum
2 Settlement Amount shall increase to \$196,785 (5 x \$1,357 + \$190,000).

3 (b) **Net Settlement Proceeds:** “Net Settlement Proceeds” is defined as the
4 Maximum Settlement Amount less the amounts approved and awarded by the Court for: attorneys’
5 fees and documented litigation costs and expenses incurred or advanced by Class Counsel, the
6 service payment to the Class Representative, the payment to the LWDA pursuant to PAGA, the
7 costs of administering the settlement, and employer payroll taxes due on wage payments made
8 pursuant to this Settlement Agreement.

9 (c) **Calculation of the Individual Payment Amounts:** “Individual Payment
10 Amount” means the portion of the Net Settlement Proceeds distributable to each Class Member
11 who participates in the Settlement (i.e., who does not submit a valid request for exclusion form).
12 The Individual Payment Amounts will be calculated by dividing the Net Settlement Proceeds by
13 the total weeks worked by all participating Class Members in California during the Class Period,
14 which will yield the applicable weekly rate. The weekly rate shall be multiplied by the number of
15 weeks each individual participating Class Member worked for Defendant in California during the
16 Class Period to yield their Individual Payment Amount. Each Participating Settlement Class
17 Member who does not opt out will receive an Individual Payment Amount equal to their individual
18 weeks worked during the Class Period multiplied by the workweek value. For purposes of clarity,
19 Plaintiff will be eligible to receive an Individual Payment Amount subject to the terms and
20 condition of this Settlement Agreement.

21 i. For tax purposes, each Individual Payment Amount will be
22 apportioned (a) 20% as wages (reported on an IRS Form W-2 and subject to applicable
23 withholdings); and (b) 80% as penalties and interest (reported on an IRS Form 1099, if required).
24 All Individual Payment Amounts paid to Class Members will be subject to any applicable wage
25 garnishments, liens, or other legally mandated treatment as required by law.

26 (d) **PAGA Payments:** The Parties agree that Ten Thousand Dollars
27 (\$10,000.00) shall be allocated to settle Plaintiff’s claims brought pursuant to PAGA. Of this
28 amount, Seventy-Five Percent (75%), or Seven Thousand Five Hundred Dollars (\$7,500.00) shall

1 be paid to the LWDA, and Twenty-Five Percent (25%), or Two Thousand Five Hundred Dollars
2 (\$2,500.00) shall be paid to Class Members who have not submitted a valid and timely Request for
3 Exclusion Form (defined below) as part of the Net Settlement Proceeds.

4 (e) **Service Payment to Class Representative:** The amount awarded to the
5 Class Representative as a service payment will be set by the Court in its discretion, not to exceed
6 Seven Thousand Five Hundred Dollars (\$7,500.00) (the "Enhancement Payment"). This amount
7 will be deducted from the Maximum Settlement Amount and will also compensate Mr. Higuera for
8 his general release of all claims. Plaintiff will receive an IRS Form 1099 for his individual
9 Enhancement Payment, and will be responsible for correctly characterizing this additional
10 compensation for tax purposes and for payment of any taxes owing on said amount. In the event
11 of an audit of Defendant by any state or federal government agency, or if any tax authority should
12 dispute the characterization of this compensation, Defendant reserves all rights to indemnification
13 permitted by law. Defendant agrees not to dispute or otherwise object to the Enhancement Payment
14 if Plaintiff requests \$7,500 or less. Should the Court approve an award of an Enhancement Payment
15 in an amount less than is set forth herein, the unapproved portion or portions shall revert to the Net
16 Settlement Proceeds. The Court's ruling on the request for an Enhancement Payment shall not
17 affect the enforceability of this Settlement Agreement or the terms contained herein. The Claims
18 Administrator (defined below) will be responsible for distributing the Enhancement Payment out
19 of the Maximum Settlement Amount.

20 (f) **Attorneys' Fees:** An award to Class Counsel of attorneys' fees will be
21 deducted from the Maximum Settlement Amount in an amount to be set by the Court taking into
22 account the settlement award that has been made available for the Settlement Class by the efforts
23 of Class Counsel (the "Class Counsel Fees"). The amount awarded shall not exceed 40% of the
24 Maximum Settlement Amount (estimated at \$76,000.00 based on a Maximum Settlement Amount
25 of \$190,000). An IRS Form 1099 will be issued to Class Counsel with respect to its award of
26 attorneys' fees. Defendant agrees not to dispute or otherwise object to the attorneys' fee award
27 requested by Class Counsel so long as the request does not exceed 40% of the Maximum Settlement
28 Amount. Should the Court approve an award of Class Counsel Fees in an amount less than is set

1 forth herein, the unapproved portion or portions shall revert to the Net Settlement Proceeds. The
2 Court's ruling on the request for Class Counsel Fees shall not affect the enforceability of this
3 Settlement Agreement or the terms contained herein.

4 (g) **Attorneys' Costs and Expenses:** Class Counsel will be reimbursed from
5 the Maximum Settlement Amount in an amount to be set by the Court for documented out-of-
6 pocket litigation costs and expenses, not to exceed Five Thousand Dollars (\$5,000.00) (the "Class
7 Counsel Costs"). An IRS Form 1099 will be issued to Class Counsel with respect to its award of
8 costs and expenses. Defendant agrees not to dispute or otherwise object to the attorneys' cost award
9 requested by Class Counsel so long as the request does not exceed \$5,000. Should the Court
10 approve an award of Class Counsel Costs in an amount less than is set forth herein, the unapproved
11 portion or portions shall revert to the Net Settlement Proceeds. The Court's ruling on the request
12 for Class Counsel Costs shall not affect the enforceability of this Settlement Agreement or the terms
13 contained herein.

14 (h) **Settlement Administration Costs:** The fees and other charges of the
15 Settlement Administrator to administer the Settlement are expected to total no more than Six
16 Thousand Dollars (\$6,000.00), and will be paid from the Maximum Settlement Amount. These
17 fees shall include any costs associated with the required tax reporting on any Individual Payment
18 Amounts, and the issuing of any and all W-2 and 1099 forms.

19 Except as provided in this Settlement Agreement, Defendant shall not be required
20 to pay any other expenses, costs, damages or fees incurred by the Plaintiff, by any Class Member,
21 or by any of their attorneys, experts, advisors, agents or representatives relating to this Action. Any
22 award of attorneys' fees, costs, expenses and damages payable hereunder to Class Counsel shall be
23 in complete satisfaction of any and all claims for such attorneys' fees, costs, expenses and damages,
24 under state or federal law, which the Plaintiff, the Class, Class Counsel, or any other counsel have
25 or may have against Defendant arising out of or in connection with the Action and its settlement,
26 including, but not limited to, any claims for attorneys' fees, costs and expenses involved in litigating
27 the Action and in negotiating and implementing this Settlement Agreement, including attorneys'
28 fees, costs and expenses incurred through and after the final disposition and termination of the

1 Action. Defendant shall not be responsible for distributing or apportioning any award of attorneys'
2 fees and expenses among Class Counsel, and Class Counsel shall defend, hold harmless, and
3 indemnify Defendant and their counsel, or any of them, from and against any claims, damages,
4 litigation, causes of action, and expenses, including reasonable attorneys' fees, resulting from any
5 action, proceeding, or claim initiated by Class Counsel, involving the apportionment of the award
6 of attorneys' fees, costs, or expenses among the Plaintiff, the Class, and Class Counsel

7 (i) **Discharge of Obligations**, Defendant shall fully discharge its obligations to
8 those Class Members to whom they pay a Individual Payment Amount through the Settlement
9 Administrator, regardless of whether such payments are actually received and/or negotiated by
10 those Class Members.

11 (j) **Taxes**. The Settlement Administrator shall be responsible for ensuring that
12 all taxes associated with the Settlement Agreement are timely paid to the appropriate tax authorities.
13 The Settlement Administrator's responsibilities include the following: (i) filing all federal, state,
14 and local tax deductions, (ii) timely and proper filing of all required federal, state, and local forms
15 (e.g., 1099s, W-2s, etc.) with the appropriate taxing authorities, and (iii) completing any other steps
16 necessary for compliance with any tax obligations of the Settlement under federal, state, and/or
17 local law, as applicable. To verify the Settlement Administrator's compliance with the foregoing
18 withholding and reporting requirements, as soon as administratively practicable, the Settlement
19 Administrator shall furnish Class Counsel and counsel for Defendant with copies of all forms
20 detailing the payment of taxes (including all 1099 forms and returns) sufficient to prove that such
21 payments were properly remitted. The Settlement Administrator shall provide a final accounting
22 declaration adequate to demonstrate full compliance with all duties set forth in this Settlement
23 Agreement, including but not limited to tax withholding, payment, and reporting obligations. All
24 of the employer's share of payroll taxes on any portion of the Settlement where payroll taxes are
25 required are to be paid out of the Maximum Settlement Amount. The Settlement Administrator
26 shall also mail the class members who did not exclude themselves a "Notice of Final Approval and
27 Entry of Judgment" pursuant to California Rule of Court 3.771 within (sixty) 60 days of the
28 Effective Date which states: "This notice is being mailed to all Class Members who did not opt out

1 of the *Higuera v. International Bonded Couriers, Inc., et al.*, class action settlement (San Joaquin
2 County Superior Court, Case No. STK-CV-UOE-2020-8988), including you, pursuant to California
3 Rule of Court 3.771. This notice is to advise you that that the Court has approved the settlement of
4 this matter and entered judgment accordingly."

5 (k) **Determination and Payment of Taxes.** The Settlement Administrator
6 shall determine the amount of any withholding or taxes to be withheld from each Class Member's
7 Individual Payment Amount. All such withholdings shall be remitted by the Settlement
8 Administrator to the proper governmental taxing authorities. Each Class Member shall be
9 responsible for any tax consequences of any funds paid out to each Class Member pursuant to this
10 Settlement Agreement.

11 (l) **Tax Advice.** Each party to this Settlement Agreement, including all Class
12 Members (for purposes of this section, the "Acknowledging Party"; and each party to this
13 Settlement Agreement other than the Acknowledging Party, an "Other Party") acknowledges and
14 agrees that (1) no provision of this Settlement Agreement, and no written communication or
15 disclosure between or among the Parties or their attorneys and other advisers, is or was intended to
16 be, nor shall any such communication or disclosure constitute or be construed or be relied upon as,
17 tax advice within the meaning of United States Treasury Department Circular 230 (31 CFR Part
18 10, as amended); (2) the Acknowledging Party (a) has relied exclusively upon his, her, or its own,
19 independent legal and tax advisers for advice (including tax advice) in connection with this
20 Settlement Agreement, (b) has not entered into this Settlement Agreement based upon the
21 recommendation of any other party or any attorney or advisor to any other party, and (c) is not
22 entitled to rely upon any communication or disclosure by any attorney or adviser to any other party
23 to avoid any tax penalty that may be imposed on the Acknowledging Party; and (3) no attorney or
24 adviser to any other party has imposed any limitation that protects the confidentiality of any such
25 attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon
26 disclosure by the Acknowledging Party of the tax treatment or tax structure of any transaction,
27 including any transaction contemplated by this Settlement Agreement t.
28

(m) **Benefit Plans.** Defendant contends that the amounts paid under this Settlement Agreement will not affect any previously credited hours of service under any employee benefit plan, policy or bonus program sponsored by Defendant. To the extent permitted by the terms of any such plans as such exist at the time of the payment, the amounts paid under this Settlement Agreement will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under, Defendant-sponsored (self-insured or not) employee benefit plans, policies or bonus programs. Any payments made under the terms of this Settlement Agreement shall not be applied retroactively, currently or on a going forward basis as salary, earnings, wages, or any other form of compensation for the purposes of any of Defendant employee benefit plans, policies or bonus programs. Defendant retains the right to modify the language of its employee benefit plans, policies and bonus programs to effect this intent and to make clear that any amounts paid pursuant to this Settlement Agreement are not for “hours worked,” “hours paid,” “hours of service,” or any similar measuring term as defined by applicable plans, policies and bonus programs for the purpose of eligibility, vesting, benefit accrual or any other purpose, and that additional contributions or benefits are not required by this Settlement Agreement. Neither Defendant nor Plaintiff are opining on the terms of any such plan, each of which speaks for itself.

D. Release of Claims.

1. Release

Upon the Effective Date, Plaintiff and all Settlement Class members who do not timely opt-out of this Settlement Agreement pursuant to the terms therein, and all persons purporting to act on their behalf or purporting to assert a claim under or through them, including, but not limited to, their dependents, attorneys, heirs and assigns, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, personal representatives, and successors-in-interest, whether individual, class, representative, legal, equitable, direct or indirect, or any other type or in any other capacity (collectively, the “Releasing Parties”) will be deemed to have fully released and discharged Defendant, and any of Defendant’s past, present, and future parents, affiliates, subsidiaries, divisions, predecessors, successors, and assigns, and each of their officers, directors, board members, trustees, shareholders, employees, agents, attorneys, auditors,

1 accountants, experts, contractors, stockholders, representatives, partners, insurers, reinsurers, and
2 other persons acting on their behalf (“Released Parties”) from any and all Released Claims which
3 arose during the Class Period. “Released Claims” are all claims asserted in the Action or any other
4 claims that could have been asserted in the Action based on the facts alleged, including but not
5 limited to: 1) failure to pay all wages due, including minimum wage and overtime wages (Labor
6 Code §§ 510, 1174, 1194, 1197, 1197.1, 1198 and 1198.5) (2) failure to provide rest periods or
7 compensation in lieu thereof (Labor Code § 226.7); (3) failure to provide meal periods or
8 compensation in lieu thereof (Labor Code §§ 226.7, and 512); (4) knowing and intentional failure
9 to comply with itemized employee wage statement provisions (Labor Code §§ 226); (5) failure to
10 timely pay wages due at separation of employment (Labor Code §§ 201, 202, 203); (6) failure to
11 reimburse employee business expenses (Labor Code § 2802); (7) violation of Business and
12 Professions Code § 17200, et seq.; and (8) penalties pursuant to Labor Code § 2698, et seq. for
13 violations of Labor Code §§ 201-203, 226(a), 226.3, 226.7, 510, 512, 1174, 1194, 1197, 1197.1,
14 1198, 1198.5 and 2802 2.

15 The Settlement Agreement shall be in full settlement, compromise, release and discharge
16 of the Released Claims, and the Released Parties shall have no further or other liability or obligation
17 to any member of the Settlement Class or any other Releasing Party with respect to the Released
18 Claims, except as expressly provided herein. The Parties shall agree to an injunction prohibiting
19 all Class Members from bringing or participating in any judicial, arbitral or administrative action
20 involving the Released Claims. The Plaintiff, and to the fullest extent allowed by law, all Releasing
21 Parties, are prohibited from ever asserting a Released Claim and, if applicable, and from
22 commencing, joining in, voluntarily assisting in a lawsuit or adversary proceeding against the
23 Released Parties, or any of them, based on Released Claims. Excluded from this prohibition are
24 any instances where any individual is legally compelled to testify through service of a subpoena or
25 other process.

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1 2. **Covenant Not to Sue.**

2 The Plaintiff, and to the fullest extent allowed by law, all Releasing Parties, covenant and
3 agree not to ever assert a Released Claim, or to commence, join in, or voluntarily assist in a lawsuit
4 or adversary proceeding against the Released Parties, or any of them, arising out of or regarding
5 the Released Claims.

6 3. **No Assignment of Rights.**

7 The Plaintiff warrants and represents that he has not assigned, transferred, or hypothecated,
8 or purported to assign, transfer, or hypothecate to any person or entity any of the Released Claims
9 or any rights, claims, or causes of action arising therefrom. This warranty and representation of
10 non-assignment shall survive the execution of this Settlement Agreement and the dismissal of this
11 Action. No Individual Payment Amount or Enhancement Payment shall be paid to any person or
12 entity with respect to whom the Plaintiff has assigned, transferred, or hypothecated, or purported
13 to assign, transfer, or hypothecate any of the Released Claims, or any rights, claims, or causes of
14 action arising out of the Released Claims. In addition, the Plaintiff shall defend, hold harmless,
15 and indemnify the Released Parties, or any of them, from and against any claims, damages,
16 litigation, causes of action, and expenses, including reasonable attorneys' fees, resulting from any
17 breach by the Plaintiff of this warranty and representation, or any breach the Plaintiff of his release
18 of the Released Claims

19 4. **Plaintiff's Release.**

20 In addition to the Release of Claims in Paragraph D(1), above, and in exchange for the
21 Enhancement Payment, Plaintiff Byron Higuera makes the additional following general release of
22 all claims, known or unknown. Plaintiff hereby, for himself and his respective spouse, heirs, current
23 and former agent(s), representatives, attorneys, executors, administrators, transferors, transferees,
24 successors and assigns, forever releases Defendant and the Released Parties from any and all
25 claims, demands, rights, liabilities, suits, rights, costs, losses, debts, and expenses (including back
26 wages, penalties, and attorneys' fees and costs actually incurred) of any nature whatsoever, from the
27 beginning of time through the date of his signature on this Settlement Agreement, known or unknown,
28 suspected or unsuspected, including, but not limited to, all claims arising out of, based upon, or relating

1 to his employment with Defendant or the compensation for, or termination of, such employment.
2 Without limiting the generality of the foregoing, Plaintiff expressly releases all claims or rights arising
3 out of alleged violations of any contracts, express or implied (including, but not limited to, any contract
4 of employment); any contract or covenant of good faith and fair dealing (express or implied); any tort,
5 including negligence, fraud, misrepresentation under California Labor Code 970, negligent infliction of
6 emotional distress, intentional infliction of emotional distress, and defamation; any “wrongful
7 discharge,” “constructive discharge,” and “retaliation” claims; any claims relating to any breach of
8 public policy; any legal restrictions on Defendant’s right to discharge employees; and any federal, state,
9 or other governmental statute, regulation, or ordinance, including, without limitation: (1) Title VII of
10 the Civil Rights Act of 1964 (race, color, religion, sex, and national origin discrimination or harassment,
11 including retaliation for reporting discrimination or harassment), as amended; (2) 42 U.S.C. § 1981
12 (discrimination), as amended; (3) Equal Pay Act of 1963, 29 U.S.C. § 209(d)(1) (equal pay) , as
13 amended; (4) Americans with Disabilities Act, 42 U.S.C. § 12100 *et seq.* (disability discrimination, as
14 amended); (5) Family and Medical Leave Act, 29 U.S.C. § 2601 *et seq.* (family/medical leave), as
15 amended; (6) California Fair Employment and Housing Act, Cal. Gov’t Code § 12900 *et seq.*
16 (discrimination or harassment in employment and/or housing, including discrimination or harassment
17 based on race, religious creed, color, national origin, ancestry, disability, marital status, sex (including
18 pregnancy), sexual orientation, or age, including retaliation for reporting discrimination or harassment),
19 as amended; (7) California Family Rights Act, Cal. Gov’t Code § 12945.1 *et seq.* (family/medical
20 leave), as amended; (8) California Labor Code or any Industrial Welfare Commission Wage Order, as
21 amended; (9) the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, as amended; (10) Executive Order
22 11246 (race, color, religion, sex, and national origin discrimination or harassment); (11) Executive
23 Order 11141 (age discrimination); (12) Sections 503 and 504 of the Rehabilitation Act of 1973
24 (handicap discrimination); and (13) Employee Retirement Income Security Act of 1974, 29 U.S.C. §
25 1000 *et seq.* (employee benefits). Workers’ compensation claims are excluded from the General
26 Release. (The release set forth herein shall be referred to hereinafter as the “General Release.”).

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1 **5. 1542 Waiver**

2 With respect to this General Release, Plaintiff stipulates and agrees that, upon the Effective
3 Date, Plaintiff Higuera shall be deemed to have, expressly waived and relinquished, to the fullest
4 extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil
5 Code, or any other similar provision under state law, with the exception of workers' compensation
6 claims, which provides:

7
8 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS,**
9 **THAT THE CREDITOR OR RELEASING PARTY DOES**
10 **NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**
11 **FAVOR AT THE TIME OF EXECUTING THE RELEASE,**
12 **AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE**
13 **MATERIALLY AFFECTED HIS OR HER SETTLEMENT**
14 **WITH THE DEBTOR OR RELEASED PARTY.**

15 Accordingly, if the facts relating in any manner to this Settlement are found hereafter to be
16 other than or different from the facts now believed to be true, the release of claims contained herein
17 shall be effective as to all unknown claims.

18 **E. Notice and Exclusion Process.**

19 **1. Settlement Administrator**

20 Subject to approval of the Court, the Parties have agreed that Simpluris, Inc. will serve as a
21 neutral third-party claims' administrator ("Settlement Administrator") to perform all acts related to
22 providing notice to the Settlement Class. Settlement Administrator shall be responsible for (a)
23 printing and distributing the Court-approved Notice of Class Action Settlement ("Class Notice") to
24 all Class Members; (b) administering the settlement; (c) processing exclusions and objections; (d)
25 resolving disputes, including handling inquiries about the calculation of Individual Payment
26 Amounts to Class Members pursuant to the terms contained in this Settlement Agreement; (e)
27 distributing the Maximum Settlement Amount as directed by the Court and set forth herein; (f) tax
28 reporting, including establishing the necessary bank accounts and obtaining the necessary tax
identification number to administer this settlement; (g) providing necessary weekly status reports;
(h) establishing a central address, hotline telephone number, and facsimile number to receive and
timely process Class Members' inquiries; and (h) other duties and responsibilities set forth herein.

1 The Settlement Administrator shall not disburse the settlement funds except as provided
2 herein, as ordered by the Court, or as agreed upon, in writing, by counsel for Defendant and Class
3 Counsel. Subject to further orders and/or directions as may be made by the Court, the Settlement
4 Administrator is authorized to execute such transactions on behalf of the Class Members as are
5 consistent with the terms of this Settlement Agreement.

6 The Settlement Administrator shall carbon copy counsel for Defendant on any information
7 which it provides to Class Counsel pertaining to Class Members unless those communications
8 contain attorney-client privileged information. Neither Defendant nor the Settlement Administrator
9 shall provide the name or related financial information of Class Members to the Plaintiff, Class
10 Counsel, any other member of the Class, or to any other person or entity.

11 **2. Class Member Data; Identification of Class Members**

12 Within fifteen (15) calendar days after entry of the order granting preliminary approval of
13 this Settlement, Defendant shall provide to the Settlement Administrator a list of all Class Members,
14 including their last known addresses, telephone numbers, social security numbers , and their dates
15 of employment in California during the Class Period (“Settlement Class Information”). If any party
16 or the Settlement Administrator determines, based upon further review of available data, that a
17 person previously identified as being a Class Member should not be so included or identifies a
18 person who should have been included as a Class Member but was not so included, the Settlement
19 Administrator shall promptly delete or add such person as appropriate and immediately notify Class
20 Counsel and counsel for Defendant prior to such deletions or additions (and the reasons therefore).
21 Other than the obligations set forth in this Settlement Agreement, Defendant shall have no
22 additional obligation to identify or locate any members of the Class or have any liability in
23 connection with the provision of information to the Settlement Administrator or

24 The names, addresses, telephone numbers, and Social Security numbers will only be
25 disclosed to the Settlement Administrator and not to Plaintiff’s Counsel. All information provided
26 to the Settlement Administrator will be marked CONFIDENTIAL. This information shall be kept
27 confidential and shall not be disclosed, either in writing or orally, by the Settlement Administrator.
28 The Settlement Administrator shall use due care with respect to the storage, custody, use, and/or

1 dissemination of the confidential information. Such information must be stored in a secure fashion
2 and all persons who access the data must agree to keep it confidential.

3 **3. Notice of Settlement by Mail**

4 A direct-mail notice to the Class Members (after the Court preliminarily approves the terms
5 contained in the Settlement Agreement), informing them of the material terms of the Settlement
6 Agreement, why they are receiving the notice and what their options are to receive their portion of
7 the Settlement, make an objection, or be excluded from the Settlement, (“Class Notice”)
8 substantially in the form attached hereto as Exhibit 1, and as approved by the Court, shall be sent
9 by the Settlement Administrator to the Class Members, by first class mail, within fourteen (14)
10 calendar days after Defendant provides the Settlement Administrator with the Settlement Class
11 Information. Attached to the Class Notice will be a request for exclusion form (“Request for
12 Exclusion Form”) substantially in the form attached hereto as Exhibit 2.

13 The Settlement Administrator will make reasonable efforts to ensure that the Class Notice
14 and Request for Exclusion Form are sent to all Class Members. It will conclusively be presumed
15 that if an envelope has not been returned within thirty (30) days of the mailing that the Class
16 Member received the Class Notice. In the event of returned or non-deliverable notices, the
17 Settlement Administrator will make reasonable efforts to locate Class Members and re-send the
18 notices.

19 Each Class Member will be fully advised of the Settlement, the ability to object to the
20 Settlement, and the ability to submit a Request for Exclusion Form. The Class Notice will inform
21 the Class Members of the Court-established deadlines for filing objections and a Request for
22 Exclusion Form.

23 Each Class Notice will contain personalized information setting forth the number of weeks
24 each Class Member worked for Defendant in California during the Class Period and their estimated
25 Individual Payment Amount, as determined by the Claims Administrator from the information
26 provided by Defendant pursuant to this Settlement Agreement. The Class Notice will also set forth
27 IRS W-9 information if required.
28

1 All Class Members who do not submit a Request for Exclusion Form will be eligible to
2 receive an Individual Payment Amount, which shall be mailed to them if and when the Effective
3 Date occurs.

4 **4. Opt-Outs/Requests for Exclusion from the Settlement**

5 In order to elect not to participate in the Settlement, a Class Member must submit a Request
6 for Exclusion Form, and mail it to the Settlement Administrator no later than forty-five (45)
7 calendar days after the initial mailing of the Class Notice and Request for Exclusion Form to Class
8 Members, unless the Court requires a longer period, in which case the Court ordered exclusion
9 period will apply. The date of the postmark shall be deemed the date of submission. The timeliness
10 of submitted Request for Exclusion Forms will be determined by valid postmark. If the 45th day
11 falls on a Sunday or federal holiday, the time to request exclusion will be extended to the next day
12 on which the U.S. Postal Service is open. Any Class Member who submits a valid and timely
13 request to be excluded from the Settlement shall no longer be a Class Member, shall be barred from
14 participating in this Settlement, shall be barred from objecting to this Settlement, and shall receive
15 no benefit whatsoever from this Settlement.

16 The deadline for submission of Exclusion Forms shall be extended once by 30 days for
17 those Class Members whose Class Notice and Exclusion Form are returned as “undeliverable.” If
18 the 30th day falls on a Sunday or federal holiday, this deadline will be extended to the next day on
19 which the U.S. Postal Service is open.

20 The Settlement Administrator will search for additional addresses on returned mail and will
21 re-mail the Class Notice and Exclusion Form to an updated address (if any) within 15 days of
22 receipt of the returned mail. The 30-day extended time limit will run from the date of the second
23 mailing for those Class Members. To the extent a Class Notice from the initial mailing is not
24 returned within 30 days, it shall be deemed to have been sent to a valid address even if it is thereafter
25 returned. It is the intent of the Parties that reasonable, but not extraordinary, efforts be used to
26 locate Class Members. If the initial Class Notice and Request for Exclusion Form is returned, the
27 Settlement Administrator will search using the social security number for a more current address.
28 If no address is found within 10 days, no further action is required.

1 The Settlement Administrator will notify the Parties of the total number of valid Request
2 for Exclusion Forms within ten (10) calendar days after the deadline for receipt of the Request for
3 Exclusion Forms (fifty-five (55) days following the initial mailing of the Class Notice and Request
4 for Exclusion Forms to Class Members).

5 5. **Objection to Settlement**

6 In order to object to the settlement, a Class Member must mail his or her objection to the
7 Settlement Administrator (referred to as an “Objection to Class Settlement”) no later than forty-
8 five (45) calendar days after the mailing of the Class Notice and Request for Exclusion Form to
9 Class Members, unless the Court requires a longer period, in which case the Court ordered objection
10 period will apply. If the 45th day falls on a Sunday or federal holiday, the time to object to the
11 settlement will be extended to the next day on which the U.S. Postal Service is open. Under no
12 circumstances shall the objection deadline be extended for any reason. Class Members are forever
13 barred from objecting to the Settlement if they do not file and serve written objections by the
14 response deadline.

15 The Objection to Class Settlement will not be valid if it is not timely submitted, and/or if it
16 does not meet all five of the requirements listed below. The date of the postmark on the return
17 mailing envelope or fax stamp on the Objection to Settlement shall be the exclusive means used to
18 determine whether the Objection to Class Settlement was timely submitted.

19 The Objection to Class Settlement must be signed by the Class Member and state: (1) the
20 full name of the Class Member; (2) the dates of employment of the Class Member; (3) the last four
21 digits of the Class Member’s Social Security number and/or the Employee ID number; (4) the basis
22 for the objection; and (5) if the Class Member intends to appear at the final approval hearing. Class
23 Members who fail to make objections in the manner specified above shall be deemed to have
24 waived any objections and shall be foreclosed from making any objections (whether by appeal or
25 otherwise) to the Settlement. Class Members who submit a timely Objection to Class Settlement
26 will have a right to appear at the final approval hearing in order to have their objections heard by
27 the Court. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage
28 Class Members to file or serve written objections to the Settlement or appeal from the order and

1 final judgment. Class Counsel shall not represent any Class Members with respect to any such
2 objections.

3 **6. Persons Objecting to the Settlement or Requesting Exclusion in this Action**

4 Defendant shall not be responsible to Plaintiff or those Class Members who submit an
5 Objection to Class Settlement or who submit a Request for Exclusion Form from the Settlement,
6 for attorneys' fees, costs, or expenses of any kind.

7 **7. Resolution of Disputes Relating to Class Members**

8 In order to dispute any information on a Class Notice, a Class Member must mail his or her
9 dispute to the Settlement Administrator no later than forty-five (45) calendar days after the mailing
10 of the Class Notice and Request for Exclusion Form to Class Members, unless the Court requires a
11 longer period, in which case the Court ordered objection period will apply. If the 45th day falls on
12 a Sunday or federal holiday, the time to object to the settlement will be extended to the next day on
13 which the U.S. Postal Service is open. Under no circumstances shall the objection deadline be
14 extended for any reason. If a Class Member timely disputes any information in his or her Class
15 Notice, the Parties' counsel will make a good faith effort to resolve the dispute informally. The
16 Class Member must provide any supporting information and/or documentation to establish the
17 accuracy of the Class Member's contention, and provide all information requested. If counsel for
18 the Parties cannot agree, the Defendant shall also provide its records to the Settlement
19 Administrator. Disputes shall be resolved by the Settlement Administrator, based on a review of
20 the records of the Defendant and the Class Member's records submitted. The Settlement
21 Administrator shall either verify the initial calculation on the Class Notice or provide a corrected
22 calculation. The decision of the Settlement Administrator with regard to the amount of the
23 Individual Payment Amount, if any, that the Class Member is entitled to receive shall be final, non-
24 appealable, and binding on the Class Member and Defendant. Defendant's records shall control
25 unless Defendant expressly agrees otherwise in an individual case. In any event, the Settlement
26 Administrator will make every effort to resolve any such disputes prior to final approval of this
27 Settlement Agreement.
28

1 **8. Declaration of Compliance**

2 The Settlement Administrator shall provide to the Parties, at least twelve (12) calendar days
3 prior to the final approval hearing, or as otherwise ordered by the Court, a declaration of due
4 diligence and proof of mailing with regard to the mailing of the Class Notice and Request for
5 Exclusion Forms. The Settlement Administrator will also provide to the Parties, at least twelve (12)
6 calendar days prior to the final approval hearing, or as otherwise ordered by the Court, a report
7 listing the amount of all payments to be made to each Class Member without names or personal
8 identifying information.

9 **9. Effective Date**

10 Defendant shall deposit the Maximum Settlement Amount with the Settlement
11 Administrator no later than ten (10) calendar days after the Effective Date. The effective date of
12 this Settlement Agreement (“Effective Date”) is the date the Court signs an order granting final
13 approval of the settlement and entering judgment thereon. If objections to the settlement are filed,
14 the Effective Date of the settlement is the sixty-fifth (65th) day after notice of the final approval
15 order is mailed, unless an appeal is filed, in which case the Effective Date is the day after (1) the
16 settlement is upheld by the Court of Appeals, or (2) all appeals are dismissed or withdrawn. For
17 purposes of determining the Effective Date, the Parties agree that only California Courts have
18 jurisdiction over any such appeals, except for any appellate procedure over which the United States
19 Supreme Court may exercise jurisdiction.

20 **10. Disbursement of Funds**

21 The Settlement Administrator shall not disburse the settlement funds except as provided
22 herein, as ordered by the Court, or as agreed upon, in writing, by counsel for Defendant and Class
23 Counsel. Subject to further orders and/or directions as may be made by the Court, the Settlement
24 Administrator is authorized to execute such transactions on behalf of the Class Members as are
25 consistent with the terms of this Settlement Agreement.

26 The Settlement Administrator shall disburse the Maximum Settlement Amount within
27 fifteen (15) calendar days after its receipt thereof. Class Members must cash each of their
28 Individual Payment Amount checks within one hundred eighty (180) calendar days after they are

1 mailed by the Settlement Administrator. The value of any checks uncashed more than one hundred
2 eighty (180) days after mailing shall be paid to the State of California State Controller's Office, to
3 be held in the name of the respective Class Member.

4 **11. Compliance**

5 Compliance with the procedures described in this Section shall constitute due and sufficient
6 notice to Class Members of this Settlement and the final approval hearing. Compliance with these
7 procedures shall also satisfy the requirements of due process, and nothing else shall be required of
8 the Plaintiff, Class Counsel, Defendant, counsel for Defendant, or the Settlement Administrator to
9 provide additional notice of the Settlement and the final approval hearing, unless expressly ordered
10 by the Court.

11 **12. Nullification of Settlement**

12 Notwithstanding any other provision of this Settlement Agreement, Defendant shall retain
13 the right, in the exercise of their sole discretion, to nullify the Settlement within thirty (30) calendar
14 days after expiration of the Class Members' deadline to respond, if more than fifteen percent (15%)
15 of Class Members choose to opt out of this Settlement. Class Counsel and Defendant shall not
16 solicit opt-outs, directly or indirectly, through any means. As a result of any such withdrawal, this
17 Settlement Agreement and the Settlement and any action taken or to be taken in connection
18 therewith shall be terminated and shall become void and have no further force and effect, except
19 for the obligation of Defendant to pay for expenses incurred by the Settlement Administrator in
20 connection with the notice and administration of the Settlement on or before the date on which
21 Defendant withdraw from the Settlement.

22 **F. Duties of the Parties Prior to Court Approval.**

23 Promptly after execution of this Settlement Agreement, Plaintiff shall move the Court for
24 preliminary approval of this settlement. Such submission will include such pleadings and evidence
25 as may be required for the Court to determine that this Settlement Agreement is fair, adequate, and
26 reasonable. Such submission will also include a draft Notice of Class Settlement and Exlcusion
27 Form along with any necessary pleadings. Plaintiff shall move for an entry of an order
28 accomplishing the following:

- 1 (a) scheduling a fairness hearing on the question of whether the proposed
2 settlement should be finally approved as fair, reasonable and adequate as to
3 the Class Members;
4 (b) approving as to form and content the proposed Class Notice;
5 (c) approving as to form and content the proposed Request for Exclusion Form;
6 (d) preliminarily certifying the Settlement Class for purposes of settlement;
7 (e) preliminarily approving the PAGA payment of \$7,500 to the LWDA;
8 (f) preliminarily setting attorneys' fees and costs payable to Class Counsel;
9 (g) preliminarily setting the Enhancement Payment to the Class Representative;
10 and
11 (h) preliminarily approving Simpluris, Inc. as the Settlement Administrator and
12 its estimated fees and costs of \$6,000
13 (i) establishing the procedures and the deadline by which Class Members may
14 assert objections to the certification of the Settlement Class and/or to the
15 Settlement;
16 (j) establishing a deadline for the Parties to submit papers/briefing in response to
17 any objections and in support of final approval of the Settlement Agreement.

18 The Parties shall submit this Settlement Agreement to the Court and the LWDA in support
19 of Plaintiff's unopposed motion for preliminary approval of the settlement.

20 **G. Duties of the Parties in Connection with and Following Final Court Approval.**

21 In connection with the hearing on final approval of the settlement provided for in this
22 Settlement Agreement, the Parties will submit a proposed final order no later than ten (10) calendar
23 days prior to the scheduled date of the hearing on final approval (unless otherwise ordered by the
24 Court):

- 25 (a) approving the settlement, adjudging the terms thereof to be fair, reasonable
26 and adequate, and directing consummation of its terms and provisions;
27
28

- 1 (b) confirming certification of the Class for settlement purposes and finding
2 that the requirements for class treatment have been met for purposes of the
3 Class settlement;
- 4 (c) finding that the dissemination of the Class Notice and Exclusion form in the
5 form and manner ordered by the Court was accomplished as directed, met
6 the requirements of due process, was the best notice practicable under the
7 circumstances, and constituted due and sufficient notice to all persons
8 entitled thereto;
- 9 (d) finding that the Plaintiff and Class Counsel herein have fairly and
10 adequately represented and protected the interests of the Settlement Class
11 at all times in the Action;
- 12 (e) approving Class Counsel's application for an award of attorneys' fees and
13 reimbursement of documented litigation costs and expenses, the
14 Enhancement Payment to the Class Representative, the payment to the
15 LWDA, and the costs of administering the settlement; and
- 16 (f) Entering judgment in this Action in accordance with this Stipulation,
17 pursuant to Cal. Rules of Court, Rule 3.769(h).

18 Class Counsel shall file an application for attorneys' fees and reimbursement of costs and
19 expenses no later than ten (10) calendar days prior to the scheduled date of the hearing on final
20 approval (unless otherwise ordered by the Court).

21 **H. Miscellaneous Provisions:**

22 1. **Voiding the Agreement.**

23 A failure of the Court to approve any material condition of this Settlement Agreement which
24 effects "a fundamental change of the Parties' settlement," or if the settlement is reversed or
25 materially modified on appellate review, shall render the entire Stipulation of Settlement voidable
26 and unenforceable as to all Parties herein at the option of any Party.

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1 2. **Parties' Authority.**

2 The signatories hereto represent that they are fully authorized to enter into this Settlement
3 Agreement and bind the Parties hereto to the terms and conditions hereof.

4 3. **Mutual Full Cooperation.**

5 The Parties agree to fully cooperate with each other to accomplish the terms of this
6 Stipulation of Settlement, including but not limited to, execution of such documents and such other
7 action as may reasonably be necessary to implement the terms of this Settlement Agreement.
8 Except as otherwise provided herein, neither party, nor any of their attorneys or agents, shall initiate
9 any communication with any Class Members for the purpose of encouraging or discouraging them
10 to opt-out of the Settlement Class, to participate in the settlement, or to object to the settlement
11 contained herein, unless agreed upon by the other party in writing, or if authorized by the Court.
12 The Parties to this Settlement Agreement shall use their best efforts, including all efforts
13 contemplated by this Settlement Agreement and any other efforts that may become necessary by
14 order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth
15 herein. As soon as practicable after execution of this Settlement Agreement, Class Counsel shall,
16 with the assistance and cooperation of Defendant and its counsel, take all necessary steps to secure
17 the Court's preliminary and final approval of the settlement.

18 4. **No Prior Assignments.**

19 The Parties hereto represent, covenant, and warrant that they have not directly or indirectly,
20 assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or
21 entity any portion of any liability, claim, demand, action, cause of action or rights released and
22 discharged by this Stipulation of Settlement.

23 5. **No Admission.**

24 Neither the acceptance nor the performance by Defendant of the terms contained in this Settlement
25 Agreement nor any of the related negotiations or proceedings is or shall be claimed to be, construed
26 as, or deemed a precedent or an admission by Defendant of the truth of any allegations in any
27 version of the Complaint. Defendant denies vigorously, and continue to denies vigorously, each
28 and every allegation of liability and wrongdoing that was asserted or could have been asserted by

1 the Plaintiff, and assert that they have substantial factual and legal defenses to all claims alleged by
2 the Plaintiff and that the Plaintiff's claims on behalf of himself and the Settlement Class are without
3 merit. Nevertheless, without admitting any wrongdoing or liability whatsoever, Defendant is
4 willing to agree to the terms of the proposed Settlement provided that all of the Released Claims,
5 and, where applicable, are settled and compromised, in order to fully resolve all issues relating to
6 the subject matter of the Action. Defendant also concurs that the proposed Settlement is fair,
7 reasonable, and adequate.

8 **6. Non-Evidentiary Use**

9
10 Neither this Settlement Agreement nor any of its terms, nor any statements, documents, or
11 conduct in the negotiation or drafting of it, shall be offered or used as evidence by the Plaintiff, any
12 Class Member (including any individual who requested to be excluded from the Settlement Class),
13 Defendant, or its respective counsel, in the Action or any other proceeding, except as is reasonably
14 necessary to effectuate the Settlement Agreement's purpose and terms. This Settlement Agreement
15 may be used by Defendant and/or the Released Persons to prove or defend against any claim
16 released herein by any Class Member in any judicial, quasi-judicial, administrative, or
17 governmental proceeding. Nothing in this Settlement Agreement abridges a Class Member's right
18 to file a charge or participate in any manner in an investigation, hearing, or proceeding under the
19 laws enforced by Equal Employment Opportunity Commission.

20 **7. Notices.**

21 Unless otherwise specifically provided herein, all notices, demands or other
22 communications given hereunder shall be in writing and shall be deemed to have been duly given
23 as of the fifth business day after mailing by United States registered or certified mail, return receipt
24 requested, addressed:

25 **To Plaintiff and the Settlement Class:**

26 Daniel F. Gaines, Esq.
27 Alex P. Katofsky, Esq.
28 GAINES & GAINES, APLC
27200 Agoura Road, Suite 101
Calabasas, CA 91301

1
2 **To Defendant:**

Daniel Hoffer, Esq.

3 Benjamin J. Herold, Esq.

4 VENABLE LLP

2049 Century Park East, Suite 2300

Los Angeles, CA 90067

5
6 **8. Construction.**

7 The Parties hereto agree that the terms and conditions of this Settlement Agreement are the
8 result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement
9 Agreement shall not be construed in favor of or against any Party by reason of the extent to which
10 any Party or his or its counsel participated in the drafting of this Settlement Agreement.

11 **9. Captions and Interpretations.**

12 Paragraph titles or captions contained herein are inserted as a matter of convenience and for
13 reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement
14 or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a
15 recital.

16 **10. Modification.**

17 This Settlement Agreement may not be changed, altered, or modified, except in writing and
18 signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not be
19 discharged except by performance in accordance with its terms or by a writing signed by each of
20 the Parties hereto on their attorneys.

21 **11. Integration Clause.**

22 This Settlement Agreement contains the entire agreement between the Parties relating to
23 the settlement and transactions contemplated hereby, and all prior or contemporaneous agreements,
24 understandings, representations, and statements, whether oral or written and whether by a Party or
25 such Party's legal counsel, are merged herein. No rights hereunder may be waived except in
26 writing.

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1 **12. Binding on Assigns.**

2 This Settlement Agreement shall be binding upon and inure to the benefit of the Parties
3 hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

4 **13. Severability.** The Parties agree that the provisions of the Settlement Agreement
5 regarding the application for Class Counsel Fees and Costs, the Plaintiff's Enhancement Payment,
6 Settlement Administration Costs, and the LWDA Payment are severable from the remainder of
7 the Settlement Agreement. Any denial or reduction in amount by the Court of the application for
8 Class Counsel Fees and Costs, the Enhancement Payment, Settlement Administration Costs, or
9 the LWDA Payment shall in no way affect the validity and effect of the remainder of this
10 Settlement Agreement.

11 **14. Governing Law.**

12 All terms of this Settlement Agreement and its exhibits shall be governed by and interpreted
13 according to the laws of the State of California, without giving effect to any conflict of law
14 principles or choice of law principles.

15 **15. Signatures of All Class Members Unnecessary to be Binding.**

16 It is agreed that, because the members of the Settlement Class are numerous, it is impossible
17 or impractical to have each Class Member execute this Settlement Agreement. The Class Notice,
18 attached hereto as Exhibit 1, will advise all Class Members of the binding nature of the release
19 provided herein and such shall have the same force and effect as if this Settlement Agreement was
20 executed by each Class Member.

21 **16. Counterparts.**

22 This Settlement Agreement may be executed in counterparts, and when each Party has
23 signed and delivered at least one such counterpart, each counterpart shall be deemed an original,
24 and when taken together with other signed counterparts, shall constitute one fully-signed Settlement
25 Agreement, which shall be binding upon and effective as to all Parties.

26 **17. Confidentiality**

27 Until Plaintiff files his motion for preliminary approval of the class action settlement, the
28 Parties and their Counsel agree to maintain confidentiality as to the Settlement, including the

1 amount and terms of the Settlement Agreement, except as to spouses, tax or financial advisors,
2 attorneys, taxing agencies, or as otherwise required by law.

3 **18. No Publicity**

4 Plaintiff and his Counsel will not contact the media about the settlement or respond to any
5 inquiries by the media regarding the Settlement, other than to state that the matter was amicably
6 settled, and the Court did not find Defendant liable. Plaintiff and his Counsel also will not post any
7 information about the Settlement in any advertising or marketing materials, including on social
8 media or their firms' websites.

9 **19. Extensions of Time**

10 Without further order of the Court, the Parties hereto may agree in writing to reasonable
11 extensions of time to carry out any of the provisions of the Settlement Agreement.

12 **20. Deadlines Falling on Weekends or Holidays**

13 To the extent that any deadline set forth in this Settlement Agreement falls on a Saturday,
14 Sunday, or legal holiday, that deadline shall be continued until the following business day.

15 **21. Successors**

16 This Settlement Agreement shall be binding upon and inure to the benefit of the Parties
17 hereto (including Class Members) and their respective heirs, executors, administrators, successors
18 and assigns, and upon any corporation, partnership or other entity into or with which any Settling
19 Party hereto may merge, combine or consolidate. As used in the preceding sentence and elsewhere
20 throughout this Settlement Agreement, "including" shall mean including without limitation.

21 **22. Waivers**

22 The waiver by any party of any breach of this Settlement Agreement shall not be deemed
23 or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of
24 this Settlement Agreement.

25 **23. Parties' Authority**

26 Each individual signing this Settlement Agreement warrants that he and/or she has the
27 authority and is expressly authorized to enter into this Settlement Agreement on behalf of the Party
28 for which that individual signs.

1 **24. No Rescission On Grounds Of Mistake**

2 The Parties acknowledge that they have made their own investigations of the matters
3 covered by this Settlement Agreement to the extent they have deemed it necessary to do so.
4 Therefore, the Parties agree that they shall not seek to set aside any part of the Settlement
5 Agreement on the grounds of mistake. Moreover, the Parties understand, agree, and expressly
6 assume the risk that any fact not recited, contained, or embodied in the Settlement Agreement may
7 turn out hereinafter to be other than, different from, or contrary to the facts now known to them or
8 believed by them to be true, and further agree that the Settlement Agreement shall be effective in
9 all respects notwithstanding and shall not be subject to termination, modification, or rescission by
10 reason of any such difference in facts.

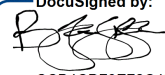
11 **25. Regulation**

12 In the event that any provision in this Settlement Agreement shall be affected by any rule,
13 regulation, ordinance, order, directive, or statute by any unit of government, whether state, federal,
14 or local, such rule, regulation, ordinance, order, directive, or statute shall supersede and take
15 precedence over any such provision of this Settlement Agreement to the contrary and in no event
16 shall Defendant be in violation of this Settlement Agreement nor shall this Settlement Agreement
17 be in any way affected should Defendant take any action or change any of its business practices
18 to comply with such state, federal, or local rules, regulations, ordinances, or statutes currently in
19 force or enacted in the future.

20 October 21, 2020

21 Dated: September _____, 2020

By:

DocuSigned by:


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BYRON HIGUERA

Plaintiff and Class Representative

23 Dated: September _____, 2020

INTERNATIONAL BONDED COURIERS,
INC.

By:

Its: _____

1 24. **No Rescission On Grounds Of Mistake**

2 The Parties acknowledge that they have made their own investigations of the matters
3 covered by this Settlement Agreement to the extent they have deemed it necessary to do so.
4 Therefore, the Parties agree that they shall not seek to set aside any part of the Settlement
5 Agreement on the grounds of mistake. Moreover, the Parties understand, agree, and expressly
6 assume the risk that any fact not recited, contained, or embodied in the Settlement Agreement may
7 turn out hereinafter to be other than, different from, or contrary to the facts now known to them or
8 believed by them to be true, and further agree that the Settlement Agreement shall be effective in
9 all respects notwithstanding and shall not be subject to termination, modification, or rescission by
10 reason of any such difference in facts.

11 25. **Regulation**

12 In the event that any provision in this Settlement Agreement shall be affected by any rule,
13 regulation, ordinance, order, directive, or statute by any unit of government, whether state, federal,
14 or local, such rule, regulation, ordinance, order, directive, or statute shall supersede and take
15 precedence over any such provision of this Settlement Agreement to the contrary and in no event
16 shall Defendant be in violation of this Settlement Agreement nor shall this Settlement Agreement
17 be in any way affected should Defendant take any action or change any of its business practices
18 to comply with such state, federal, or local rules, regulations, ordinances, or statutes currently in
19 force or enacted in the future.

20
21 Dated: September _____, 2020

By:

BYRON HIGUERA
Plaintiff and Class Representative

22
23
24 Dated: ~~September~~ 20, 2020
OCTOBER 2

INTERNATIONAL BONDED COURIERS,
INC.

By:

Its: CEO

1 **APPROVED AS TO FORM AND CONTENT:**

2 October 22, 2020
3 Dated: September _____, 2020

GAINES & GAINES, APLC

4 By: Daniel F. Gaines
5 Daniel F. Gaines, Esq.
6 Alex P. Katofsky, Esq.
7 Counsel for Plaintiff and Class
8 Representative

9 Dated: September _____, 2020

VENABLE LLP

10 By: _____
11 Benjamin J. Herold, Esq.
12 Counsel for Defendant
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APPROVED AS TO FORM AND CONTENT:

Dated: September _____, 2020

GAINES & GAINES, APLC

By: _____
Daniel F. Gaines, Esq.
Alex P. Katofsky, Esq.
Counsel for Plaintiff and Class
Representative

Dated: September _____, 2020

VENABLE LLP

DocuSigned by:
Benjamin Herold 10/20/2020
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By: _____
Benjamin J. Herold, Esq.
Counsel for Defendant

EXHIBIT 1

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN**

BYRON HIGUERA, on behalf of himself and a
class of similarly situated employees,

Plaintiffs,

v.

INTERNATIONAL BONDED COURIERS,
INC., a Florida corporation, and DOES 1
through 10, inclusive,

Defendants.

CASE NO: [REDACTED]

**NOTICE OF PENDENCY OF CLASS
ACTION SETTLEMENT AND FINAL
HEARING**

YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A SETTLEMENT

A California court authorized this notice. This is not a solicitation from a lawyer.

- A settlement has been reached in a class action lawsuit that affects your rights.
- This notice is intended to notify potential Class Members (defined below) of a proposed class settlement (the “Settlement”) in *Higuera v. International Bonded Couriers, Inc.*, Case No. [REDACTED] (the “Lawsuit”) that is now pending in the San Joaquin County Superior Court (the “Court”). The Court has approved this Notice and ordered that it be provided to all class members.
- The Court has not yet decided whether to grant final approval of this settlement. Payments will be made only after the Court approves the settlement and only after any appeals are resolved. Please be patient. Please do not contact the Court regarding this Notice.
- **Your legal rights are affected whether you act or do not act. Read this notice carefully.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing	You do not need to take any action if you wish to receive your settlement payment. If the settlement is approved by the Court, you will automatically be mailed a settlement check at the address on file with the settlement administrator, Simpluris, Inc. (the “Settlement Administrator”). If you move, you must notify the Settlement Administrator of your new address.
Exclude Yourself	Get no payment. This is the only option that allows you to ever be part of any other lawsuit against Defendant about the legal claims that were brought in this case. To elect not to participate in the Settlement, you must fully submit a valid and timely written Request for Exclusion from the Settlement to the Settlement Administrator by mail or fax, postmarked or fax stamped by [INSERT] , following the procedure described in Section 15 below.
Object	Write to the Court about why you don’t like the settlement. You may object to the Settlement in writing, postmarked or fax stamped by [INSERT] , by following the procedure described below in Section 16.
Go to a Hearing	Ask to speak in Court about the fairness of the settlement.

WHY DID YOU RECEIVE THIS NOTICE?

The employment records of International Bonded Couriers, Inc. (“IBC”) show that you were employed by IBC as a non-exempt employee from January 27, 2016 through October 31, 2020 (the “Class Period”). A settlement (the “Settlement”) has been reached in a class action lawsuit against IBC that affects your rights. You are receiving this notice because you may be a member of the Class on whose behalf this class action lawsuit has been brought.

WHAT IS THIS LAWSUIT ABOUT?

On September , 2020, Plaintiff Byron Higuera filed this lawsuit in the San Joaquin County Superior Court (the “Lawsuit”). The Lawsuit alleges violations of the California Labor Code. The Lawsuit seeks to certify a class of all current and former non-exempt California employees of IBC employed from January 27, 2016 through October 31, 2020 (the “Class Members”). The lawsuit alleges that members of the Class were not paid all wages due, were not provided all meal and rest periods or compensation in lieu thereof, were not timely issued wages upon separation of employment, were not reimbursed for all business expenses, and were not issued accurate and complete wage statements. It seeks recovery of wages, damages, interest, statutory and civil penalties, attorneys’ fees and costs.

IBC has denied and continues to deny all of the allegations in the Lawsuit. IBC contends that it has complied with the California Labor Code, the California Business & Professions Code, and all similar state laws. IBC further contends that this lawsuit could not be maintained as a class action if it were litigated rather than settled.

The Parties agree that there is a bona fide dispute as to whether any amounts are owed to Plaintiff and the Class Members and neither the Settlement Agreement And Release of Claims (the “Agreement”), nor the Settlement-related documents, nor the Settlement shall be construed as an admission of either fact or law on any issue by any Party.

The lawyers for the parties are:

Plaintiff’s Attorneys

Daniel F. Gaines, Esq.
Alex P. Katofsky, Esq.
Gaines & Gaines, APLC
27200 Agoura Road, Suite 101
Calabasas, CA 91301
Phone: (866) 550-0855

IBC’s Attorneys

Benjamin J. Herold, Esq.
VENABLE LLP
2049 Century Park East, Suite 2300
Los Angeles, CA 90067

SUMMARY OF THE SETTLEMENT

A. Why is there a Settlement?

After good-faith settlement negotiations, Plaintiff and IBC have agreed to settle this case rather than go to trial. The Court did not decide in favor of Plaintiff or IBC. Plaintiff believes he would have prevailed on his claims at a trial. IBC does not believe that Plaintiff would have won anything from a trial. But there was no trial. Instead, both sides agreed to a settlement. That way, they all avoid the costs, risks, and uncertainty of a trial, and the people affected will get compensation. Plaintiff and Plaintiff’s Attorneys think the settlement is fair, reasonable and adequate and in the best interests of all Class members.

B. Who is in the Settlement Class?

The Settlement encompasses a class composed of all current and former non-exempt California employees of IBC employed from January 27, 2016 through October 31, 2020.

C. What does the Settlement provide?

This Settlement is the result of good-faith, arms-length negotiations between Plaintiff and IBC through their respective attorneys, which included formal and informal discovery concerning the claims, defenses, and alleged damages at issue in the Lawsuit. The Settlement represents a compromise regarding disputed claims, considering the risks, expenses, and uncertainties of continued litigation. Plaintiff and Plaintiff’s counsel have determined that the Settlement is fair, reasonable, and adequate and is in the best interests of the Class Members.

IBC has agreed to make a Settlement payment to all Class Members without the Class Members having to do anything to receive the payment. In return, Class Members who do not timely request to be excluded from the Settlement will release any claims they might have against IBC that were raised in the lawsuit, or that could have been raised in the lawsuit based on the facts alleged, including 1) failure to pay all wages due, including minimum wage and overtime wages (Labor Code §§ 510, 1174, 1194, 1197, 1197.1, 1198 and 1198.5) (2) failure to provide rest periods or compensation in lieu thereof (Labor Code § 226.7); (3) failure to provide meal periods or

compensation in lieu thereof (Labor Code §§ 226.7, and 512); (4) knowing and intentional failure to comply with itemized employee wage statement provisions (Labor Code §§ 226); (5) failure to timely pay wages due at separation of employment (Labor Code §§ 201, 202, 203); (6) failure to reimburse employee business expenses (Labor Code § 2802); (7) violation of Business and Professions Code § 17200, et seq.; and (8) penalties pursuant to Labor Code § 2698, et seq. for violations of Labor Code §§ 201-203, 226(a), 226.3, 226.7, 510, 512, 1174, 1194, 1197, 1197.1, 1198, 1198.5 and 2802.2. For more information about the claims being released as part of the Settlement, see Section D below.

1. Maximum Settlement Amount.

IBC has agreed to pay \$190,000 (the “Maximum Settlement Amount”) to settle the Lawsuit. The following sums will be paid from the Maximum Settlement Amount: (1) \$7,500 to the California Labor and Workforce Development Agency; (2) Class Counsel’s attorneys’ fees in an amount set by the Court not to exceed \$76,000 and Class Counsel’s documented litigation costs in an amount set by the Court not to exceed \$5,000; (3) a service payment to the Class Representative set by the court, not to exceed \$7,500, for his service in the Action; (4) a reasonable amount set by the Court to the settlement administrator for administering the settlement, not to exceed \$6,000; and (5) all employer taxes due on wage payments made from the Settlement. The amount of the Maximum Settlement Amount remaining after these payments is the “Net Settlement Proceeds.”

2. Individual Payment Amount.

Your share of the Net Settlement Proceeds will be determined by the formula detailed in section E below.

D. What Are You Giving Up To Get A Payment Or Stay In The Class?

Upon the Effective Date, Plaintiff and all Settlement Class members who do not timely opt-out will be deemed to have fully released and discharged IBC, and any of its past, present, and future parents, affiliates, subsidiaries, divisions, predecessors, successors, and assigns, and each of their officers, directors, board members, trustees, shareholders, employees, agents, attorneys, auditors, accountants, experts, contractors, stockholders, representatives, partners, insurers, reinsurers, and other persons acting on their behalf (“Released Parties”) from any and all Released Claims which arose during the Class Period (January 27, 2016 through October 31, 2020).

“Released Claims” are all claims asserted in the Action or any other claims that could have been asserted in the Action based on the facts alleged, including but not limited to: 1) failure to pay all wages due, including minimum wage and overtime wages (Labor Code §§ 510, 1174, 1194, 1197, 1197.1, 1198 and 1198.5) (2) failure to provide rest periods or compensation in lieu thereof (Labor Code § 226.7); (3) failure to provide meal periods or compensation in lieu thereof (Labor Code §§ 226.7, and 512); (4) knowing and intentional failure to comply with itemized employee wage statement provisions (Labor Code §§ 226(a), (e), (h)); (5) failure to timely pay wages due at separation of employment (Labor Code §§ 201, 202, 203); (6) failure to reimburse employee business expenses (Labor Code § 2802); (7) violation of Business and Professions Code § 17200, et seq.; and (8) penalties pursuant to Labor Code § 2698, et seq. for violations of Labor Code §§ 201-203, 226(a), 226.3, 226.7, 510, 512, 1174, 1194, 1197, 1197.1, 1198, 1198.5 and 2802.

E. How Is My Share Of The Settlement Calculated?

Each participating claimant (those who do not opt out of the Settlement) shall receive an “Individual Payment Amount,” which is a portion of the Net Settlement Proceeds distributable to each Class Member who participates in the Settlement (i.e., who does not submit a valid request for exclusion form).

The Individual Payment Amounts will be calculated by dividing the Net Settlement Proceeds by the total weeks worked by all participating Class Members in California during the Class Period, which will yield the applicable weekly rate. The weekly rate shall be multiplied by the number of weeks each individual participating Class Member worked for IBC in California during the Class Period to yield their Individual Payment Amount. Each Participating Settlement Class Member who does not opt out will receive an Individual Payment Amount equal to their individual weeks worked during the Class Period multiplied by the workweek value.

For tax purposes, each Individual Payment Amount will be apportioned (a) 20% as wages (reported on an IRS Form W-2 and subject to applicable withholdings); and (b) 80% as penalties and interest (reported on an IRS Form 1099, if required). All Individual Payment Amounts paid to Class Members will be subject to any applicable wage garnishments, liens, or other legally mandated treatment as required by law. The Settlement Administrator will provide you with the W-2 and the IRS Form 1099 for these portions of your Settlement Payment. As to the Settlement Payment portion that shall be considered wages, all amounts required by law to be paid by the Defendants to any federal, state or local tax authority will be submitted by the Settlement Administrator. **You will be responsible for correctly characterizing this compensation for tax purposes and paying any taxes that may be due on the payment you receive.**

You should consult a tax professional for more information about your own specific situation.

According to the records of IBC, you worked [____] weeks while employed in California from January 27, 2016 through October 31, 2020. Based on these weeks worked, you are entitled to an Individual Payment Amount of approximately \$[____]. This amount is subject to change based on the final ruling of the Court.

Please be advised that the individual data above is presumed to be correct unless you submit documentation proving otherwise. If you disagree with the data, please submit an explanation and evidence in support of your position to the Settlement Administrator no later than _____, 2020. The Parties’ counsel will make a good faith effort to resolve the dispute informally. If counsel for the Parties cannot agree, IBC shall also provide its records to the Settlement Administrator. Disputes shall be resolved by the Settlement Administrator, based on a review of the records of IBC and the Class Member’s records submitted. The Settlement Administrator shall either verify the initial calculation on the Class Notice or provide a corrected calculation. The decision of the Settlement Administrator with regard to the amount of the Individual Payment Amount, if any, that the Class Member is entitled to receive shall be subject to the Court’s review. IBC’s records shall control unless IBC expressly agrees otherwise in an individual case. In any event, the Settlement Administrator will make every effort to resolve any such disputes prior to final approval of the Settlement by the Court.

THE SETTLEMENT HEARING

The Court will conduct a final fairness hearing regarding the proposed settlement (the “Final Settlement Hearing”) on [REDACTED], 2020, at [REDACTED], in the Courtroom of Judge [REDACTED] of the San Joaquin County Superior Court, located at [Courtroom address]. The Court will determine: (i) whether the lawsuit should finally be certified as a class action for settlement purposes; (ii) whether the settlement should be given the Court’s final approval as fair, reasonable, adequate and in the best interests of the Settlement Class Members; (iii) whether the Settlement Class Members should be bound by the terms of the settlement; (iv) the amount of the attorneys’ fees and costs to be awarded to Plaintiff’s Attorneys; and (v) the amount that should be awarded to Plaintiff as a service payment. At the Final Settlement Hearing, the Court will hear all properly filed objections, as well as arguments for and against the proposed settlement. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, or to enter an appearance and represent yourself.

WHAT ARE YOUR OPTIONS?

- **OPTION 1 – DO NOTHING AND PARTICIPATE IN THE SETTLEMENT**

IF YOU TAKE NO ACTION IN RESPONSE TO THIS NOTICE, YOU WILL AUTOMATICALLY RECEIVE YOUR SHARE OF THE SETTLEMENT IF IT IS APPROVED BY THE COURT. YOU ARE NEVER REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE LAWYERS IN THIS CASE. If you move, you must update your address with the Settlement Administrator. If you disagree with pre-printed data indicated in section E above, you must submit an explanation and/or documentation to the Settlement Administrator to justify your position, postmarked no later than [45 days after mailing]. The Settlement Administrator’s address is [Settlement Administrator address].

- **OPTION 2 – OBJECT TO THE SETTLEMENT**

If you wish to remain a Settlement Class Member, but you object to the proposed settlement (or any of its terms) and wish the Court to consider your objection at the Final Settlement Hearing, you may object to the proposed settlement in writing. Any objection to the proposed Settlement must be signed by the you and state: (1) your full name; (2) the dates of employment of your employment with IBC; (3) the last four digits of your Social Security number and/or the Employee ID number; (4) the basis for the objection; and (5) if you intend to appear at the final approval hearing. Class Members who fail to make objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement. If you properly object in writing, you may also appear at the Final Approval Hearing, either in person or through an attorney at your own expense. All written objections, supporting papers, and/or notices of intent must contain the information described above and clearly identify the case name and number and be mailed to the Settlement Administrator at [Settlement Administrator address]. Objections must be postmarked no later than _____ [45 days after mailing].

- **OPTION 3 – EXCLUDE YOURSELF FROM THE SETTLEMENT**

You have a right to exclude yourself (“opt out”) from the Settlement Class, but if you choose to do so, you will not receive any benefits from the proposed settlement. You will not be bound by a judgment in this case and you will have the right to file your own lawsuit against the IBC and pursue your own claims in a separate suit. You can opt out of the Class by completely filling out and mailing the enclosed Request for Exclusion Form to the Settlement Administrator at the above-stated address, such that it is postmarked no later than _____ [45 days after mailing].

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you should review the detailed “Settlement Agreement and Release of Claims” which is on file with the Clerk of the Court. The pleadings and other records in the Lawsuit may be examined at any time during regular business hours at the Office of the Clerk of the San Joaquin County Superior Court, located at [Court address].

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at [address], [telephone number] or International Bonded Couriers Class Action Settlement.

PLEASE DO NOT TELEPHONE THE COURT FOR INFORMATION ABOUT THIS SETTLEMENT OR THE CLAIMS PROCESS.

**BY ORDER OF THE SUPERIOR COURT OF
THE STATE OF CALIFORNIA**

EXHIBIT 2

REQUEST FOR EXCLUSION

ONLY COMPLETE THIS REQUEST FOR EXCLUSION FORM IF YOU WANT TO OPT OUT OF (NOT PARTICIPATE IN) THE SETTLEMENT OF THE ACTION KNOWN AS *Byron Higuera, Plaintiff, v. International Bonded Couriers, Inc., And Does 1 Through 10, Inclusive, Defendants, San Joaquin County Superior Court, Case No. [REDACTED]*. **IF YOU OPT OUT OF THE SETTLEMENT, YOU WILL NOT RECEIVE ANY PORTION OF THE SETTLEMENT AMOUNT.**

I confirm that I was employed by Defendant International Bonded Couriers, Inc. as a non-exempt employee in California during the period January 27, 2016 through October 31, 2020.

I do not wish to receive any payment under the terms of the proposed class action settlement or to otherwise participate in the proposed settlement.

Date: _____

Signature: _____

Print Name: _____

Residence Street Address: _____

City, State and Zip Code: _____

IN ORDER TO BE VALID, THIS REQUEST FOR EXCLUSION FORM MUST BE COMPLETED, SIGNED, MAILED BY FIRST CLASS MAIL, AND POSTMARKED ON OR BEFORE **[45 days after mailing of Notice]**. Send this signed request for exclusion form to the Settlement Administrator:

International Bonded Couriers Settlement Administrator
c/o Simpluris, Inc.

