

## REVISED SETTLEMENT AGREEMENT

Through this Settlement Agreement (“Agreement”), which is subject to Court approval, Plaintiff Gabriel Turcios (“Named Plaintiff”), on his own behalf and on behalf of all members of the Settlement Class and PAGA Group, as defined below, on the one hand, and Defendants RPM Harbor Services, Inc., and Shawn Duke (collectively the “Defendants”), on the other hand (collectively the “Parties”), by and through their respective counsel, hereby stipulate and agree as follows:

This Agreement resolves all claims that were asserted or could have been asserted against Defendants, based on or arising from the facts alleged, in the action *Gabriel Turcios v. RPM Harbor Services, Inc., Shawn Duke*, Superior Court of the State of California for the County of Los Angeles, Case No. 20STCV15139, which was filed on April 17, 2020, including any and all amended complaints. This Agreement also resolves the Bankruptcy Case: *In re RPM Harbor Services, Inc.*, United States Bankruptcy Court for the Central District of California, Case No. 2:17-bk-14484-WB.

On or about March 15, 2022 and March 16, 2022 the Parties stipulated and agreed to amend the Settlement Agreement executed on September 16, 2021 pursuant to Paragraph XI.H (based on the Parties inability to obtain approval of the Settlement Agreement in Bankruptcy Court because that Court declined jurisdiction regarding the Plaintiff’s post-confirmation claims in the Action), by replacing certain paragraphs in the Settlement Agreement with amended versions of those paragraphs. The remainder of the Settlement Agreement executed on September 16, 2021, and now this Revised Settlement Agreement remain unaltered and fully effective as originally agreed. The Parties agree that the specific subparagraphs (identified by Section Number and Letter) in the amendment will continue to replace the existing subparagraphs in this Revised Settlement Agreement. The Amendment is attached hereto as Exhibit 2.

### **I. DEFINITIONS**

**A. Administrative Costs.** The term “Administrative Costs” means all administrative costs of settlement, including cost of notice to the Settlement Class, claims administration, and any

fees and costs incurred or charged by the Settlement Administrator in connection with the execution of its duties under this Settlement Agreement.

**B. Class Member.** The term “Class Member” means all individuals who (1) signed a Hauling Agreement Contract, Motor Carrier Agreement, Broker Motor Carrier Agreement, or any similar agreement, with RPM Harbor Services, Inc., or (2) performed trucking services for RPM Harbor Services, Inc. during the Class Period.

**C. Class Counsel.** The term “Class Counsel” means Daniel Srourian and Patrick White of the Srourian Law Firm, P.C., who are counsel for and acting on behalf of Named Plaintiff, the Settlement Class, and the PAGA Group. The term Class Counsel will be used synonymously with the term Plaintiff’s Counsel.

**D. Class Notice.** The term “Class Notice” means the Notice of Class Action and PAGA Settlement in a form to be mutually agreed by the Parties.

**E. Class Period.** The term “Class Period” means the period from April 17, 2016 through the date of Preliminary Approval.

**F. Court.** The term “Court” means the United States Bankruptcy Court for the Central District of California.

**G. Date of Final Approval.** The terms “Date of Final Approval” or “Date of Final Judgment” mean the date when the Court enters the Order and Judgment Granting Final Approval of the Settlement Agreement.

**H. Defendants.** The term “Defendants” means RPM Harbor Services, Inc. and Shawn Duke.

**I. Defense Counsel.** The term “Defense Counsel” means Todd L. Nunn, Michael Lubic and Spencer Hamer of K&L GATES, LLP.

**J. Motor Carrier Work Weeks.** The term “Motor Carrier Work Weeks” means any workweeks occurring during the Class Settlement Period during which a member of the Settlement Class worked.

**K. Motor Carrier PAGA Pay Periods.** The term “Motor Carrier PAGA Pay Periods”

means any pay periods occurring during the PAGA Period during which a PAGA Group Member worked.

**L. Final Approval and Judgment.** The term “Final Approval and Judgment” means the Court’s order and judgment granting final approval of the Settlement Agreement requesting that the Court enter judgment and retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Settlement Agreement.

**M. Final or Effective Date.** The terms “Final” and “Effective Date” means the date by which Defendants fund the Settlement following the Court’s granting of Final Approval. For purposes of this paragraph, the Final Approval and Judgment “becomes final” when the Court signs the Final Approval and Judgment. If there are objectors or Plaintiff-in-interventions, upon the latter of (1) expiration of the time for filing an appeal of the Final Approval and Judgment or otherwise seeking appellate review; or (2) if an appeal is timely filed or other appellate review sought, the date that the Final Approval and Judgment is finally affirmed and all means of appellate review have been exhausted or have expired.

**N. Gross Settlement Amount.** The term “Gross Settlement Amount” or “GSA” means the full, complete, and maximum sum of Two Hundred Thirteen Thousand One Hundred Eighty Dollars (\$213,180.00) to be paid by Defendants pursuant to this Settlement. The Gross Settlement Amount shall include Defendants’ share of taxes on the wage claim portion of the Individual Settlement Payments, which will be paid out of the Gross Settlement Amount.

**O. Individual Settlement Payment.** The term “Individual Settlement Payment” means the amount payable from the Net Settlement Amount to each Settlement Class Member.

**P. Litigation.** The terms “Litigation” and “Action” mean *Gabriel Turcios v. RPM Harbor Services, Inc., Shawn Duke*, Superior Court of the State of California for the County of Los Angeles, Case No. 20STCV15139. The term “Bankruptcy Case” means *In re RPM Harbor Services, Inc.*, United States Bankruptcy Court for the Central District of California, Case No. 2:17-bk-14484-WB.

**Q. Named Plaintiff.** The term “Named Plaintiff” means Gabriel Turcios.

**R. Net Settlement Amount.** The term “Net Settlement Amount” or “NSA” means the Gross Settlement Amount minus any Court-approved attorneys’ fees and litigation costs, settlement administration costs, enhancement payment to Named Plaintiff, payment to California’s Labor Workforce and Development Agency (“LWDA”), and taxes due and owing as a result of the Settlement. The NSA includes two components: the Class Settlement Amount, and the PAGA Settlement Amount.

**S. PAGA.** The term “PAGA” means the Private Attorneys General Act of 2004, California Labor Code §§ 2698.

**T. PAGA Group.** The term “PAGA Group” and “PAGA Group Members” means all Class Members who provided services to Defendants during the PAGA Period. There is no right to opt out of the PAGA Settlement and all Class Members who provided services during the PAGA Period will be PAGA Group Members regardless of whether they exclude themselves from the Class Action Settlement.

**U. PAGA Penalties.** The term “PAGA Penalties” means the amount of \$20,000 allocated from the GSA to resolve penalty claims under PAGA, 75% of which will be distributed to the LWDA and 25% of which will be distributed to the PAGA Group.

**V. PAGA Period.** The term “PAGA Period” means the period from January 10, 2019 through the date of Preliminary Approval.

**W. Parties.** The term “Parties” means the Named Plaintiff, Settlement Class, PAGA Group, and Defendants.

**X. Released Parties.** “Released Parties” or a “Released Party” means Defendants, their respective current and former parents, subsidiaries, affiliates, predecessors or successors in interest, including but not limited to the officers, directors, shareholders, employees, attorneys, agents, assigns, insurers, and re-insurers of any of them.

**Y. Settlement Administrator.** The term “Settlement Administrator” means Phoenix Settlement Administration, which will be responsible for the administration of the Settlement and distribution of the Gross Settlement Amount, as defined herein, and all related settlement matters.

**Z. Settlement Agreement.** The terms “Settlement Agreement” and “Agreement” are used synonymously to mean this settlement and agreement between the Parties.

**AA. Settlement Class and Settlement Class Member.** The terms “Settlement Class” and “Settlement Class Member” mean all Class Members who do not submit a timely and valid Request for Exclusion and who will be bound by the terms of the Settlement Agreement, including the Release of Claims and any Final Judgment entered in the Action.

## **II. BACKGROUND**

A. Named Plaintiff served a PAGA notice letter on LWDA and Defendants on January 10, 2020 (“PAGA Letter”). Named Plaintiff filed a class action complaint in Los Angeles Superior Court on April 17, 2020 (“Litigation”).

B. In the Litigation, Named Plaintiff alleges, *inter alia*, on behalf of himself and all others similarly situated, that Defendants violated California Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512(a), 1174, 1182.12, 1194, 1197, 1197.1, 1198, and 2802; California Code of Regulations, Title 8, section 11010 *et seq.* and any other applicable Industrial Welfare Commission (“IWC”) Wage Orders or provisions therein; the California *Business and Professions Code* section 17200 *et seq.*; and PAGA, as a result of Defendants’ California wage and hour policies and practices. Specifically, Named Plaintiff alleges that Defendants failed to pay lawful wages, including failing to pay for all hours worked, minimum wages, bonuses, and overtime correctly; failed to provide legally compliant meal and rest breaks (*i.e.*, the proper number of properly scheduled, full-length, uninterrupted periods required by section 226.7 and section 11010 *et seq.*); failed to provide complete and accurate wage statements; failed to pay timely wages during employment and/or upon termination and/or resignation; and failed to reimburse for necessary business expenses. Defendants removed the case to bankruptcy court and thereby initiated the Bankruptcy Case.

C. Class Counsel conducted discovery that yielded information and documentation concerning the claims set forth in the Litigation, such as Defendants’ policies and procedures regarding the payment of wages; the provision of rest and meal breaks; time keeping policies,

including recording of all hours worked; issuance of wage statements; and providing all wages owed at separation; as well as information regarding the number of putative class members and the mix of current versus former Motor Carriers, the average number of hours worked, the pay rates in effect, and the duration of providing services. More specifically, Class Counsel collected and analyzed the following: (1) relevant policies; (2) a random sample of payroll data; (3) time records for a sample of Motor Carriers; and (4) workweek data.

D. Named Plaintiff and Class Counsel have engaged in good faith, arms-length negotiations with Defendants concerning possible resolution of the claims asserted in the Litigation. On July 15, 2021, the Parties participated in a mediation with Judge Jeff Winikow and Judge Catherine Bauer. The mediation was successful. During the mediation the mediators made a mediator's proposal, the parties accepted the proposal and were able to reach a tentative settlement of the Litigation and the Bankruptcy Case, subject to the approval of the Court. On July 15, the parties entered into a Binding Term Sheet, attached as **Exhibit 1**.

E. Class Counsel have conducted an investigation of the law and facts relating to the claims asserted in the Litigation and have concluded, taking into account the sharply contested issues involved, the defenses asserted by Defendants, the expense and time necessary to pursue the Litigation through trial and any appeals, the risks and costs of further prosecution of the Litigation, the risk of an adverse outcome, the uncertainties of complex litigation, the risks in the Bankruptcy Case, and the substantial benefits to be received by the Named Plaintiff, the Settlement Class, PAGA Group, and the State pursuant to this Agreement, that a settlement with Defendants on the terms and conditions set forth in this Agreement is fair, reasonable, adequate, and in the best interests of the Settlement Class, PAGA Group, and the State. Named Plaintiff, on his own behalf and on behalf of the Settlement Class, PAGA Group, and the State, has agreed to settle the Litigation and the Bankruptcy Case with Defendants on the terms set forth herein.

F. Defendants have concluded that, because of the substantial expense of defending against the Litigation, the length of time necessary to resolve the issues presented herein, the inconvenience involved, and the concomitant disruption to its business operations, it is in

Defendants' best interests to accept the terms of this Agreement. Defendants deny each of the allegations and claims asserted against them in the Litigation. However, Defendants nevertheless desire to settle the Litigation in order to avoid the burden, expense, and uncertainty of continuing litigation and to resolve fully and finally all claims that were asserted or could have been asserted against Defendants based on or arising from the facts alleged in the Litigation.

G. This Agreement is intended to and does effectuate the full, final, and complete resolution of all allegations and claims that were asserted, or could have been asserted, in the Litigation by Named Plaintiff and members of the Settlement Class as outlined in Section V. The Agreement is also intended to fully resolve the Bankruptcy Case.

### **III. JURISDICTION**

The Court has jurisdiction over the Parties and the subject matter of this Litigation. The Litigation includes claims that, while Defendants deny them in their entirety, would, if proven, authorize the Court to grant relief pursuant to the applicable statutes. After the Court has granted Final Judgment approving the Settlement Agreement, the Court will retain jurisdiction of this action solely for the purpose of interpreting, implementing, and enforcing this Settlement Agreement consistent with the terms set forth herein.

### **IV. STATEMENT OF NO ADMISSION**

A. Defendants deny liability to Named Plaintiff, the Settlement Class, PAGA Group, and the State on any and all claims, theories, and/or causes of action asserted or that could have been asserted. This Agreement does not constitute, and is not intended to constitute, an admission by Defendants as to the merits, validity, or accuracy of any of the allegations or claims made against them in the Litigation.

B. Nothing in this Agreement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of the negotiations leading to this Agreement is intended by the Parties to constitute, nor will any of the foregoing constitute, be introduced, be used or be admissible in any

way in this case or any other judicial, arbitral, administrative, investigative or other forum or proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. The Parties themselves agree not to introduce, use, or admit this Agreement, directly or indirectly, in this case or any other judicial, arbitral, administrative, investigative or other forum or proceeding, as purported evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity, or for any other purpose. Notwithstanding the foregoing, this Agreement may be used in any proceeding for the purpose of interpreting, implementing, or enforcing its terms or any orders or judgments of the Court entered in connection with the Agreement. The Parties may also submit the Motion for Preliminary Approval and the Settlement Agreement to the LWDA for the purpose of securing approval of the settlement.

C. None of the documents produced or created by Named Plaintiff or the Settlement Class in connection with the claims procedures or claims resolution procedures constitute, and they are not intended to constitute, an admission by Defendants of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity.

D. The Parties agree that class certification pursuant to Federal Rule of Civil Procedure 23 under the terms of this Agreement is for settlement purposes only. Nothing in this Agreement will be construed as an admission or acknowledgement of any kind that any class should be certified or given collective treatment in the Litigation or in any other action or proceeding. Further, neither this Agreement nor the Court's actions with regards to this Agreement will be admissible in any court or other tribunal regarding the propriety of class certification or collective treatment. In the event that this Agreement is not approved by the Court or any appellate court, is terminated, or otherwise fails to be enforceable, Named Plaintiff will not be deemed to have waived, limited or affected in any way any claims, rights or remedies in the Litigation, and Defendants will not be deemed to have waived, limited, or affected in any way any of their

objections or defenses in the Litigation.

**V. RELEASE OF CLAIMS**

**A. Release as to All Settlement Class Members.**

Upon and through the Effective Date, Named Plaintiff and all members of the Settlement Class waive, release, discharge, and promise never to assert in any forum any and all claims against Defendants and Released Parties that were alleged in the Litigation or that could have been alleged in the Litigation based on or arising from the facts asserted in the Litigation (*i.e.*, all wage-related claims), including but not limited to claims for (1) violation of California Labor Code §§ 1182.12, 1194, 1197 and 1198, *et seq.* (unpaid minimum wages); (2) violation of California Labor Code § 1198 (failure to compensate for all hours worked); (3) violation of California Labor Code §§ 510 and 1198 (unpaid overtime); (4) violation of California Labor Code §§ 226.7 and 512(a) (unpaid meal period premiums); (5) violation of California Labor Code § 226.7 (unpaid rest period premiums); (6) violation of California Labor Code § 226(a) (non-compliant wage statements); (7) violation of California Labor Code §§ 201, 202, 203 and 204 (wages not timely paid); (8) violation of California Labor Code §§ 2800 & 2802 (unreimbursed business expenses); (9) violation of California Business and Professions Code §§ 17200, *et seq.*; and (10) violation of any and all other applicable provisions of state or federal law, including the applicable IWC wage orders, based on or arising from the facts alleged in the Litigation (“Released Claims”).

**B. Settlement and Release of PAGA Claims.**

Upon and through the Effective Date, Named Plaintiff, the LWDA, and the PAGA Group release, discharge, and are forever barred from pursuing against Defendants and Released Parties any and all claims for civil penalties under PAGA, California Labor Code §2698 *et seq.*, for any and all claims or violations that were alleged in the Litigation or that could have been alleged in the Litigation based on or arising from the facts asserted in the Litigation or PAGA Letter, including but not limited to the Released Claims and related violations during the PAGA Period.

**C. General Release by Named Plaintiff Only.**

In addition to the foregoing releases, Named Plaintiff makes the following general release

of all claims, known or unknown, as of and through the Effective Date: Named Plaintiff releases Defendants and Released Parties, from all claims, demands, rights, liabilities, and causes of action of every nature and description whatsoever, known or unknown, asserted or that might have been asserted prior to the Effective Date, whether in tort, contract, or for violation of any local, state or federal statute, rule or regulation arising out of, relating to, or in connection with any act or omission by or on the part of any and all Defendants or Released Parties.

With respect to the General Release, Named Plaintiff stipulates and agrees that, upon the Effective Date, Named Plaintiff will be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which provides:

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

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

## **VI. SETTLEMENT AMOUNT, COMPUTATION, AND DISTRIBUTION OF PAYMENTS**

### **A. Settlement Amount.**

Defendants agree to pay in full and final settlement of the Litigation and the claims of the Settlement Class and PAGA Group as set forth in this Agreement the Gross Settlement Amount of Two Hundred Thirteen Thousand One Hundred Eighty Dollars (\$213,180.00). The Gross Settlement Amount is inclusive of all Attorneys' Fees/Cost Awards; Incentive Awards; Administrative Costs; LWDA payments; taxes associated with the payments to the Settlement Class (including employer-side payroll taxes); and any other fees or costs associated with

settlement of the Litigation. Defendants will not be responsible for making any other payment of any kind to the Named Plaintiff, the Settlement Class, PAGA Group, Class Counsel, LWDA, or otherwise in connection with this matter.

**B. Class Settlement Amount Payments.**

Settlement Class Members will receive a lump sum payment as good and valuable consideration for their release of claims, in an amount determined by the Settlement Administrator in accordance with the provisions of this Agreement. Each Class Member's pro-rata payment from the Class Settlement Amount will be calculated as follows:

- The Class Settlement Amount will be calculated by subtracting from the Gross Settlement Amount the court-approved amounts for the enhancement to the Named Plaintiff, the attorneys' fees and litigation costs awarded to Class Counsel, Administrative Costs, and PAGA Penalties;
- The Class Settlement Amount will be divided by the Motor Carrier Work Weeks to determine a pro-rata amount for each work week; and
- The pro-rata amount for each work week will be multiplied by each Settlement Class Member's workweek count (*i.e.*, the number of work weeks in the Class Period during which that Class Member worked).

Each Settlement Class Member's workweek count and estimated share of the Class Settlement Amount will be listed in the Class Notice or available from the Settlement Administrator.

**C. PAGA Penalties and PAGA Settlement Amount Payments.**

The amount of \$20,000.00 shall be allocated from the GSA for the release of claims for civil penalties under PAGA. The Settlement Administrator will pay 75% (\$15,000.00) of this amount to the LWDA and will distribute the remaining 25% (\$5,000.00) or "PAGA Settlement Amount" on a pro-rata basis to PAGA Group. Each PAGA Group Member's pro-rata payment from the PAGA Settlement Amount will be calculated as follow:

- The PAGA Settlement Amount will be divided by the Motor Carrier PAGA Pay Periods to determine a pro-rata amount for each pay period; and

- The pro-rata amount for each pay period will be multiplied by each PAGA Group Member's pay period count (*i.e.*, the number of pay periods in the PAGA Period during which that PAGA Group Member worked).

Each PAGA Group Member's pay period count and estimated share of the PAGA Settlement Amount will be listed in the Class Notice or available from the Settlement Administrator.

**D. Funding of Settlement.**

Within fifteen (15) calendar days following the Court's granting of Final Approval, Defendants will provide the Gross Settlement Amount to the Settlement Administrator by wire or check. At no time prior to the Court's granting of Final Approval will Defendants be required to escrow any part of the Gross Settlement Amount.

**E. Time for Distribution.**

The Settlement Administrator will cause the Individual Settlement Payments, any Court-approved attorney's fees, litigation costs, enhancement to Named Plaintiff, and LWDA's PAGA payment to be mailed within thirty (30) calendar days following the Effective Date.

The settlement checks issued to each Class Member or PAGA Group Member will remain valid for one hundred and eighty (180) days. Any settlement checks remaining uncashed after one hundred and eighty (180) days will cause that Member's payment to be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code section 1500 et seq., for the benefit of that Member. The Parties agree that this disposition results in no "unpaid residue" under California Civil Procedure Code section 384, as the entire Net Settlement Amount will be paid out to the Settlement Class. Therefore, Defendants will not be required to pay any interest on said amount. In the event that a Settlement Class Member's payment is distributed to the Controller of the State of California, the terms of the Final Judgment and the release of claims will nevertheless be binding upon that Settlement Class Member.

If a check is returned to the Settlement Administrator as undeliverable, the Settlement Administrator will promptly perform a skip trace search and use other contact information, if any, in an attempt to obtain a valid mailing address. If another address is identified, the Settlement

Administrator will mail the check to the newly identified address. If the Settlement Administrator is unable to obtain a valid mailing address through this process, the monies represented by the check will be turned over to the Controller according to the above procedures.

#### **VII. PUBLICITY**

Named Plaintiff and Class Counsel agree that they will not publish or publicize information regarding the Litigation or Settlement Agreement. However, Class Members are entitled to speak with one another regarding the Settlement. Class Counsel will not report the Litigation or the Settlement Agreement in any medium or in any publication, will not post or report anything regarding the claims of Named Plaintiff or the Settlement Class or the Settlement Agreement on their website, and will not contact any reporters or media regarding the Settlement Agreement. Despite this provision, Class Counsel can discuss the Settlement Agreement with the court, Class Members, and LWDA for purposes of obtaining Preliminary and Final Approval.

#### **VIII. STIPULATION FOR CLASS CERTIFICATION**

The Parties stipulate to the certification of this Settlement Class for purposes of the Settlement Agreement only. This Stipulation is contingent upon the Preliminary and Final Approval and certification of the Settlement Class only for purposes of the Settlement Agreement. Should the Settlement Agreement not become final, for whatever reason, the fact that the Parties were willing to stipulate provisionally to class certification as part of the Settlement Agreement will have no bearing on, and will not be admissible in connection with, the issue of whether a class should be certified in a non-settlement context in the Litigation. Defendants expressly reserve the right to oppose class certification and/or proactively move to deny certification if the court denies Preliminary or Final Approval, this Settlement Agreement is modified or reversed on appeal, or the Settlement Agreement otherwise does not become final.

#### **IX. SETTLEMENT ADMINISTRATOR**

Named Plaintiff and Defendants, through their respective counsel, have selected Phoenix Class Action Administration as the Settlement Administrator to administer the Settlement Agreement, which includes but is not limited to distributing and responding to inquiries about the

settlement notice, determining the validity of any disputes and opt-outs, and calculating all amounts to be paid from the NSA. Charges and expenses of the Settlement Administrator, estimated to be \$10,000.00, will be paid from the Settlement Amount. If the actual Settlement Administrator fees are more or less than the Parties' estimation, the difference between the actual and estimated Settlement Administrator fees will be taken from the Settlement Amount or revert to the participating Settlement Class members.

**X. COURT APPROVAL**

This Agreement is contingent upon final approval by the Court and the entry of the Final Judgment. The Parties agree to take all steps reasonably necessary to secure both Preliminary and Final Approval of the Settlement Agreement to the extent not inconsistent with the terms of this Agreement, and will not take any action adverse to each other in obtaining Court approval, and, if necessary, appellate approval of the Settlement Agreement in all respects.

**XI. PROCEDURES FOR APPROVAL**

The Parties agree to the following procedures for obtaining Preliminary Approval of this Agreement, notifying the Settlement Class, submitting objections, obtaining Final Approval of this Agreement and dismissal of the Action, and making and administering the settlement payments:

**A. Preliminary Approval Hearing.**

Plaintiff will file a motion for Preliminary Approval and schedule a hearing before the Court to seek an order providing the stipulated class action certification(s) necessary to effectuate this Agreement; appointing Named Plaintiff as class representative; appointing Plaintiff's Counsel as counsel for the Settlement Class; preliminarily approving this Agreement; authorizing the Settlement Administrator to send appropriate notices of the settlement to the Settlement Class Members; and setting a date for a final settlement approval hearing. Class Counsel will take the lead in drafting necessary pleadings that will be in the form of a Plaintiffs' motion. Defendants will cooperate in this process and will stipulate to the filing of Plaintiffs' motion after having a reasonable opportunity to review and reach agreement upon the contents of such motion, and reserving its right to deny or defend itself against what it deems to be disparaging or unfair

comments in relation to the settlement.

**B. Notice to the Class.**

The Parties, through their respective counsel, will jointly prepare a Class Notice that will be provided to the Settlement Class as follows. As soon as practicable following the entry of the Preliminary Order, but no later than twenty (20) calendar days after the entry of the Preliminary Order, Defendants will provide the Settlement Administrator with a list or spreadsheet containing the following information about each Settlement Class Member (“Class List”): (1) name; (2) last known home address; and (3) social security number (if necessary for skip trace); (4) number of Motor Carrier Work Weeks; and (5) number of PAGA Pay Periods. Defendants further agree to consult with the Settlement Administrator prior to the production date to ensure that the format will be acceptable to the Settlement Administrator.

The Settlement Administrator will run all the addresses provided through the U.S. Postal Service NCOA database (which provides updated addresses for any individual who has moved in the previous four years who has notified the U.S. Postal Service of a forwarding address) to obtain current address information, and will mail the Notice to the members of the Settlement Class via first-class regular U.S. Mail using the most current mailing address information available within fifteen (15) calendar days of the receipt of the Class List from Defendants. The Notice will provide the members of the Settlement Class with notice of all applicable dates and deadlines.

The Notice will also include information regarding the nature of the Litigation; a summary of the terms of the Settlement Agreement; the definition of the Settlement Class and the PAGA Group; a statement that the Court has entered a Preliminary Order approving the Settlement Agreement; the nature and scope of the claims being released; the procedure and time period for objecting to the Settlement Agreement, except for the PAGA Penalties; the date and location of the Final Approval Hearing; and information regarding the opt-out procedure.

If a Notice is returned from the initial notice mailing, the Settlement Administrator will submit the applicable and available information, including name, Social Security number, and original mailing address, to a company that specializes in address skip tracing in an attempt to

locate a more current address. The Settlement Administrator may also request alternative contact information from Class Counsel and/or Defendants that may be used to contact the Settlement Class Member in an effort to obtain a new mailing address. If the Settlement Administrator is successful in locating a new address, it will re-mail the Notice to the Settlement Class Member. Further, any Notices returned to the Settlement Administrator before the Opt-Out Deadline with a forwarding address will be sent to the forwarding address affixed thereto.

**C. Procedure for Opting Out.**

Any Settlement Class Member may request exclusion from this Litigation and this settlement. The Notice will provide that individuals who wish to exclude themselves from the Settlement Class must send to the Settlement Administrator by first class regular United States mail the Request for Exclusion Form that must be postmarked on or before sixty (60) calendar days from the date Notices are initially mailed (the “Opt-Out Deadline”). The Opt-Out Deadline will be extended ten (10) calendar days for any Class Member who is re-mailed a Class Notice by the Settlement Administrator, unless the 10th day falls on a Sunday or Federal holiday, in which case the Opt-Out Deadline will be extended to the next day on which the U.S. Postal Service is open. The Opt-Out Deadline may also be extended by express agreement between Class Counsel and Defendants. Under no circumstances, however, will the Settlement Administrator have the authority to extend the deadline for Class Members to: (1) submit a Request for Exclusion; (2) dispute information on Class Notices; or (3) submit objections to the Settlement.

In order for an individual to be validly excluded from this settlement (*i.e.*, to opt out), he or she must provide all of the information requested on the Request for Exclusion form (*i.e.* individual’s name, address, last four digits of Social Security number and/or Hauler ID number, and signature.) For completed Request for Exclusion Forms delivered to the Settlement Administrator, the postmark on the return-mailing envelope will be the exclusive means used to determine whether an Opt-Out Request has been timely submitted. Individuals who are validly excluded from this settlement as provided in this Paragraph will not receive any payment under this Agreement, will have no right to object to this Agreement, and will not be bound by any release

set forth in this Agreement. Individuals who fail to submit a valid and timely Opt-Out Request on or before the Opt-Out Deadline will be deemed members of the Settlement Class and will be bound by all terms of the Agreement and any Final Judgment if the Agreement is approved by the Court and becomes Final.

**D. Procedure for Objecting to Settlement.**

Members of the Settlement Class who do not opt out and who wish to object to any aspect of this Agreement must file with the Court and serve on counsel for all parties a written statement containing their objection no later than sixty (60) calendar days after the date Notices are initially mailed (as will be specified in the Notice).

A written Objection should: (1) be signed by the Settlement Class Member; (2) state the case name and number of the Action, the name and address of the Settlement Class Member, and the last four digits of the Settlement Class Member's Social Security number and/or Hauler ID number; (3) contain the basis and/or grounds for the objection; and (4) state whether the Settlement Class Member intends to appear at the Final Approval Hearing. If they provide the Parties with notice of their intent to appear, Settlement Class Members may also appear at the Final Approval Hearing to have their objections heard by the Court.

**E. No Solicitation of Opt-Outs or Objections to Settlement.**

Neither Party, nor their respective counsel, will directly or indirectly solicit or otherwise encourage members of the Settlement Class to opt out or submit written objections to this Agreement.

**F. Settlement Administrator's Report.**

The Settlement Administrator will provide periodic updates regarding returned notices, Opt-Out Requests, and objections to counsel for the parties. Within ten (10) days after the Opt-Out Deadline, the Settlement Administrator will provide a written report to counsel for the parties (the "Settlement Administrator's Report") that will include information regarding the Settlement Administrator's Notice mailing process, the number of returned Notices, efforts to obtain new addresses in relation to returned Notices, a list of any Opt-Outs received, and a corresponding list

of all remaining Settlement Class Members who have not opted out. Within five (5) days after providing the Settlement Administrator's Report, the Settlement Administrator will provide to the Parties the exact amount of each Settlement Class Member's respective Individual Settlement Award (the "Award Amounts List"). Within ten (10) days of providing the Award Amounts List, the Settlement Administrator will provide the parties with a sworn declaration attesting to the information from the Settlement Administrator's Report and the Individual Settlement Awards as specified in the Award Amounts List. This declaration will be filed with the Court by Class Counsel in support of the Motion for Final Approval of the settlement described below.

**G. Final Settlement Approval Hearing and Entry of Final Judgment.**

Class Counsel will take the lead in drafting a Motion for Final Approval of the settlement together with a proposed order and Final Judgment approving the settlement and dismissing the Action with prejudice. A final settlement approval hearing will be conducted to determine whether the Court should grant Final Approval of the Agreement. At that hearing, the parties will present the Final Approval Order and Judgment to the Court for its approval and entry. After entry of the Final Judgment, the Court will have continuing jurisdiction over the Action solely for the purposes of addressing (i) Settlement Administration matters, and (ii) such post-Final Judgment matters as may be appropriate under court rules.

**H. Nullification of Settlement.**

This Agreement will be null and void if (i) the Court does not enter the Preliminary Order as provided above, (ii) more than ten percent (10%) of individuals who would otherwise be members of the Settlement Class choose to opt out of the Settlement Class and Defendants, in their sole and absolute discretion, elect to void this Agreement, (iii) the Court does not enter the Final Approval Order, (iv) the Court does not enter a Final Judgment that becomes Final, or (v) the settlement does not become Final for any other reason. In such a case, the Parties will be returned to their respective positions and status as of July 15, 2021, and will proceed in all respects as if this Agreement had not been executed (including, if and as applicable, that class claims will be dismissed in state court and refiled in federal court, and any settlement class conditionally certified

by stipulation of the parties in connection with this Agreement will be considered null and void). Moreover, in such case, nothing in this Agreement may be used by or against any party under California Rules of Evidence or otherwise. In the event an appeal is filed from the Court's Final Judgment, or any other appellate review is sought prior to the Effective Date, administration of this Agreement will be stayed pending final resolution of the appeal or other appellate review. Notwithstanding the above, in the event any of the circumstances identified in this Paragraph that could render this Agreement null and void occur, the Parties may mutually agree to attempt to renegotiate the settlement and/or this Agreement for purposes of reaching a further settlement.

## **XII. NO CONTRIBUTIONS TO BENEFIT PLAN**

The amounts paid under this Agreement do not represent a modification of any previously credited hours of service under any benefit plan, policy, or bonus program sponsored by Defendants. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under benefit plans (self-insured or not) sponsored by Defendants, policies, or bonus programs. Any payments made under the terms of this Settlement Agreement will 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 Defendants' benefit plans, policies, or bonus programs. Defendants retain the right to modify the language of their 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 purpose of eligibility, vesting, benefit accrual or any other purpose, and that additional contributions or benefits are not required by this Settlement Agreement.

## **XIII. CLASS COUNSEL ATTORNEYS' FEES AND LITIGATION COSTS**

Defendants will not oppose an application by Class Counsel for, and Class Counsel will not seek or receive, an amount in excess of \$50,000 (23% of the GSA) for all past and future attorneys' fees necessary to prosecute, settle, and administer the Litigation and this Settlement Agreement. Additionally, Defendants will not oppose an application by Class Counsel for, and

Class Counsel will not seek or receive, an amount in excess of \$25,000.00, which represents all past and future costs and expenses necessary to prosecute, settle, and administer the Litigation and this Settlement Agreement. Any attorneys' fees or costs awarded to Class Counsel by the Court will be deducted from the Gross Settlement Amount for the purpose of determining the Net Settlement Amount. The "future" aspect of these amounts include, without limitation, all time and expenses expended by Class Counsel in defending the Settlement Agreement and securing Preliminary and Final Approval (including any appeals therein). There will be no additional charge of any kind to either the members of the Settlement Class or request for additional consideration from Defendants for such work. This amount will include all attorneys' fees, costs, and expenses for which Named Plaintiff and Class Counsel could claim under any legal theory whatsoever. Within thirty (30) calendar days following the Effective Date, the Settlement Administrator will disburse payment from the Gross Settlement Amount for the amount of attorneys' fees and costs approved by the Court to Class Counsel. Should the Court approve a lesser percentage or amount of fees and/or costs than the amount that Class Counsel ultimately seeks, then the unapproved portion or portions will revert into the NSA to be distributed to the participating Settlement Class Members on a pro-rata basis.

#### **XIV. ENHANCEMENT TO NAMED PLAINTIFF**

Defendants will not oppose an application by Named Plaintiff for, and he will not seek or receive, an amount in excess of \$5,000, for his participation in and assistance with the Litigation and in consideration for the General Release of all claims against Defendants. Any enhancement awarded to Named Plaintiff by the Court will be deducted from the Gross Settlement Amount for the purpose of determining the NSA, and will be reported on IRS Form 1099. If the Court approves a lesser enhancement to Named Plaintiff, then the unapproved portion will revert into the NSA to be distributed to the participating Settlement Class Members on a pro-rata basis.

#### **XV. TAXATION AND ALLOCATION**

Each Settlement Class Member's pro-rata share of the NSA will be allocated, for tax, withholding, and all other purposes, and paid as follows:

- (1) 20% for unpaid wage claims, subject to payroll taxes and withholdings at the supplemental rate;
- (2) 40% as penalties; and
- (3) 40% interest.

The Settlement Administrator will pay applicable payroll taxes and withholdings to relevant taxing authorities and distribute relevant tax forms, including IRS Forms W-2 and/or Forms 1099, at times and in the manner required by the Internal Revenue Code of 1986 (the “Code”) and California law, and consistent with this Agreement. If the Code, the regulations promulgated thereunder, or other applicable tax law changes after the date of this Agreement, the processes set forth in this section may be modified in a manner to bring Defendants into full compliance with any such changes.

Any and all payroll taxes will be paid from the Gross Settlement Amount and the amount paid to each Settlement Class Member for his or her pro-rata share of the NSA will be adjusted to account for required withholdings, deductions, or other adjustments necessary to account for all required taxes.

#### **XVI. CIRCULAR 230 DISCLAIMER**

EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX

STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

**XVII. MISCELLANEOUS PROVISIONS**

**A. Stay of Litigation and Continuance of Motions.**

The Parties agree to the stay of all activity in the Litigation, pending Final Approval of the Settlement Agreement by the Court. The Parties will agree to stipulate to continue the motions in bankruptcy court pending the approval of the settlement at which point they will be dismissed.

**B. Interpretation of the Agreement.**

This Agreement constitutes the entire agreement between the Parties. It is based upon, consistent with, and drafted pursuant to the Term Sheet executed between the parties on July 15, 2021. Except as expressly provided herein, this Agreement has not been executed in reliance upon any other written or oral representations or terms, except that and no such extrinsic oral or written representations or terms will modify, vary or contradict its terms. In entering into this Agreement, the Parties agree that this Agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and enforced under Federal Law and the laws of the State of California. Any claim arising out of or relating to the Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Bankruptcy Court, and Named Plaintiff and Defendants hereby consent to the personal jurisdiction of the Court over them solely in connection therewith. Named Plaintiff, on his own behalf and on behalf of the Settlement Class and the PAGA Group, as well as Defendants participated in the negotiation and drafting of this Agreement and had available to them the advice and assistance of independent counsel. As such, neither Named Plaintiff nor Defendants may claim that any ambiguity in this Agreement should be construed against the other.

The terms and conditions of this Agreement constitute the exclusive and final understanding and expression of all agreements between the Parties with respect to the Settlement of the Litigation. The Agreement may be modified only by a writing signed by Class Counsel and Defense Counsel with the authorization of the Parties.

**C. Further Cooperation.**

The Parties and their respective attorneys will proceed diligently to prepare and execute all documents, to seek the necessary approvals from the Court, and to do all things reasonably necessary or convenient to consummate the Agreement as expeditiously as possible.

**D. Confidentiality of Documents.**

After the expiration of any appeals period, Named Plaintiff, the Settlement Administrator, and Class Counsel will maintain the confidentiality of all documents, deposition transcripts, declarations, and other information obtained in the lawsuit, unless necessary for appeal or such documents are ordered to be disclosed by the Court or by a subpoena. After the expiration of any appeals period, Named Plaintiff, the Settlement Administrator, and Class Counsel will return or destroy all documents and other information obtained from Defendants as part of informal discovery in the lawsuit.

**E. Counterparts.**

The Agreement may be executed in one or more actual or non-original counterparts, all of which will be considered one and the same instrument and all of which will be considered duplicate originals.

**F. Authority.**

Each individual signing below warrants that he or she has the authority to execute this Agreement on behalf of the Party for whom or which that individual signs.

**G. No Third Party Beneficiaries.**

Named Plaintiff, members of the Settlement Class, and Defendants are direct beneficiaries of this Agreement, but there are no third party beneficiaries.

**H. Deadlines Falling on Weekends or Holidays.**

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

**I. Pro Rata Increase/Escalator Clause.**

This settlement is based on data provided by Defendants, which shows that, for the period of April 2016, through approximately July 15, 2021, there were 7,254 workweeks during the class

period. If it is determined that the number of workweeks through Preliminary Approval exceeds 7,254 by more than 15%, the Gross Settlement Amount will be increased by the same number of percentage points by which the actual number of workweeks exceeds 7,254. For instance, if the actual number of workweeks is determined to be 20% higher than 7,254, the Gross Settlement Amount will be correspondingly increased by 20%.

**J. Severability.**

In the event that any one or more of the provisions contained in this Agreement will for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will in no way effect any other provision if Defense Counsel and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

\_\_\_\_\_  
Gabriel Turcios, Plaintiff

Date \_\_\_\_\_

\_\_\_\_\_  
Daniel Srourian  
Patrick White  
Srourian Law Firm, P.C.  
Attorneys for Plaintiff

Date \_\_\_\_\_

\_\_\_\_\_  
Shawn Duke  
RPM Harbor Services, Inc.; Shawn Duke,  
Defendants

Date \_\_\_\_\_

\_\_\_\_\_  
Todd L. Nunn  
Michael Lubic  
Spencer Hamer  
K&L Gates, LLP  
Attorneys for Defendants

Date \_\_\_\_\_

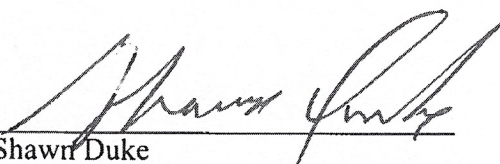
period. If it is determined that the number of workweeks through Preliminary Approval exceeds 7,254 by more than 15%, the Gross Settlement Amount will be increased by the same number of percentage points by which the actual number of workweeks exceeds 7,254. For instance, if the actual number of workweeks is determined to be 20% higher than 7,254, the Gross Settlement Amount will be correspondingly increased by 20%.

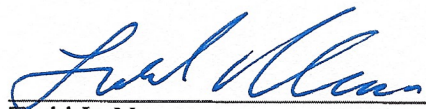
**J. Severability.**

In the event that any one or more of the provisions contained in this Agreement will for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will in no way effect any other provision if Defense Counsel and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

  
\_\_\_\_\_  
Gabriel Turcios, Plaintiff  
Date 2/6/23

  
\_\_\_\_\_  
Daniel Srourian  
Patrick White  
Srourian Law Firm, P.C.  
Attorneys for Plaintiff  
Date 2/6/23

  
\_\_\_\_\_  
Shawn Duke  
RPM Harbor Services, Inc.; Shawn Duke,  
Defendants  
Date 2/5/23

  
\_\_\_\_\_  
Todd L. Nunn  
Michael Lubic  
Spencer Hamer  
K&L Gates, LLP  
Attorneys for Defendants  
Date 2/5/23

# EXHIBIT 1

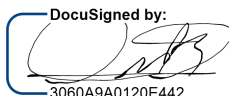
**Binding Term Sheet: Gabriel Turcios v. RPM Harbor Services, Inc., Shawn Duke, Case No. 20STCV15139.**

**This term sheet is intended to be binding between the Parties and evidences the settlement reached between the Parties at the mediation conducted by Judge Winikow and Judge Bauer on July 15, 2021**

1. The Parties agree to a total "all-in" settlement amount of Two Hundred Thirteen Thousand One Hundred Eighty dollars (\$213,180) to be paid by Defendants collectively.
2. The Parties agree the following amounts may be paid from the "all-in" settlement amount, without objection from Defendants:
  - a. Plaintiff's Attorney's Fees of up to \$50,000; and
  - b. Individual Class Representative Award of up to \$5,000 total.
3. This Binding Term Sheet to be enforceable pursuant to CCP Section 664.6.
4. The Parties will negotiate in good faith the terms of a detailed settlement agreement to be initially drafted by Defendants' counsel and presented to the Bankruptcy Court for approval.
5. The agreement will include a release of all claims of the Settlement Class against Defendants (including insiders and affiliates) relating to services performed for RPM Harbor Services, Inc., and all of the facts and claims alleged in Plaintiff's April 2020 class action Complaint.
6. Any disputes regarding the written settlement agreement will be submitted to the mediators for resolution.
7. The Parties will agree to stipulate to continue the motions in bankruptcy court pending the approval of the settlement at which point they will be dismissed.
8. Plaintiff will prepare initial drafts of all motion papers relating to approval and provide them to Defendants for their review and approval prior to filing.
9. The Settlement Class is defined as "all individuals who (1) signed a Hauling Agreement Contract, Motor Carrier Agreement, Broker Motor Carrier Agreement, or any similar agreement, with RPM Harbor Services, Inc., or (2) performed trucking services for RPM Harbor Services, Inc." The settlement class period is April 2016 through the effective date of final approval, and the PAGA period is April 2019 through the effective date of final approval.
10. Defendants have a right to terminate the agreement if more than ten percent (10%) of the class members request exclusion from the settlement. Neither Plaintiff nor Plaintiff's counsel shall solicit or encourage any individuals to opt-out.
11. **Effect of Increase in Workweeks.** This settlement is based on data provided by Defendants, which shows that, for the period of April 2016, through approximately July 15, 2021, there were 7,254 workweeks during the class period. If it is determined that the number of workweeks through Preliminary Approval exceeds 7,254 by more than 15%, the Gross Settlement Amount will be increased by the same number of percentage points by which the actual number of workweeks exceeds 7,254. For instance, if the actual number of workweeks is determined to be 20% higher than 7,254, the Gross Settlement Amount will be correspondingly increased by 20%.

**PLAINTIFF**

Dated: 7/15/2021

By:   
Gabriel Turcios

**DEFENDANT**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
RPM Harbor Services, Inc.

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Shawn Duke

**PLAINTIFFS' COUNSEL**

SROURIAN LAW FIRM, P.C.

Dated: 7/15/21

By:   
Daniel Srourian, Esq.  
Attorney for Defendants

**DEFENSE COUNSEL**

K&L GATES

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Michael Lubic, Esq.  
Todd Nunn, Esq.  
Attorney for Defendants

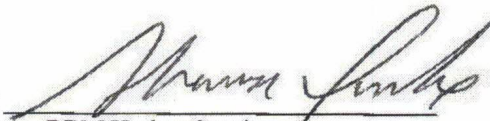
**PLAINTIFF**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Gabriel Turcios

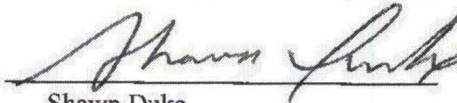
**DEFENDANT**

Dated: 7/15/21

By:   
RPM Harbor Services, Inc.

Name: Shawn Duke  
Title: President

Dated: 7/15/21

By:   
Shawn Duke

**PLAINTIFFS' COUNSEL**

SROURIAN LAW FIRM, P.C.

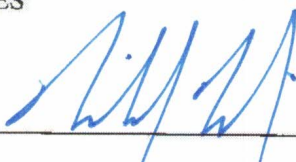
Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Daniel Srourian, Esq.  
Attorney for Defendants

**DEFENSE COUNSEL**

K&L GATES

Dated: 7/15/21

By:   
Michael Lubic, Esq.  
Todd Nunn, Esq.  
Attorney for Defendants

# EXHIBIT 2

The Parties (Plaintiff Gabriel Turcios (“Named Plaintiff”), on his own behalf and on behalf of all members of the Settlement Class and PAGA Group, on the one hand, and Defendants RPM Harbor Services, Inc., and Shawn Duke (collectively the “Defendants”), on the other hand), by and through their respective counsel, hereby stipulate and agree to amend the Settlement Agreement executed on September 16, 2021 pursuant to Paragraph XI.H (based on the Parties inability to obtain approval of the Settlement Agreement in Bankruptcy Court because that Court declined jurisdiction regarding the Plaintiff’s post-confirmation claims in the Action), by replacing certain paragraphs in the Settlement Agreement with the following amended paragraphs. The remainder of the Settlement Agreement executed on September 16, 2021 remains unaltered and fully effective as originally agreed.

The Parties agree that the following specific subparagraphs (identified by Section Number and Letter) will replace the existing subparagraphs in the Settlement Agreement:

**I. DEFINITIONS**

\*\*\*

**E. Class Period.** The term “Class Period” means the period from April 17, 2016 through September 16, 2021.

**F. Court.** The term “Court,” for purposes of Settlement Approval based on the stipulated remand of Plaintiff’s post-confirmation claims to state court, means the Superior Court of the State of California for the County of Los Angeles.

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**V. PAGA Period.** The term “PAGA Period” means the period from January 10, 2019 through September 16, 2021.

\*\*\*

**VI. SETTLEMENT AMOUNT, COMPUTATION, AND DISTRIBUTION OF PAYMENTS**

**A. Settlement Amount.**

Defendants agree to pay in full and final settlement of the Litigation and the claims of the

Settlement Class and PAGA Group as set forth in this Agreement the Gross Settlement Amount of Two Hundred Thirteen Thousand One Hundred Eighty Dollars (\$213,180.00). The Gross Settlement Amount is inclusive of all Attorneys' Fees/Cost Awards; Incentive Awards; Administrative Costs; LWDA payments; taxes associated with the payments to the Settlement Class (but not employer-side payroll taxes); and any other fees or costs associated with settlement of the Litigation. Defendants will not be responsible for making any other payment of any kind to the Named Plaintiff, the Settlement Class, PAGA Group, Class Counsel, LWDA, or otherwise in connection with this matter. Defendants will provide the Gross Settlement Amount to the Settlement Administrator by wire or check within fifteen (15) calendar days following the Effective Date.

\*\*\*

#### **XV. TAXATION AND ALLOCATION**

Each Settlement Class Member's pro-rata share of the NSA will be allocated, for tax, withholding, and all other purposes, and paid as follows:

- (1) 20% for unpaid wage claims, subject to payroll taxes and withholdings at the supplemental rate;
- (2) 40% as penalties; and
- (3) 40% interest.

The Settlement Administrator will pay applicable payroll taxes and withholdings to relevant taxing authorities and distribute relevant tax forms, including IRS Forms W-2 and/or Forms 1099, at times and in the manner required by the Internal Revenue Code of 1986 (the "Code") and California law, and consistent with this Agreement. If the Code, the regulations promulgated thereunder, or other applicable tax law changes after the date of this Agreement, the processes set forth in this section may be modified in a manner to bring Defendants into full compliance with any such changes.

Defendants will be responsible for payment of the employer's share of payroll taxes due on the portion allocated to wages in addition to the gross settlement fund.

\*\*\*

## **XVII. MISCELLANEOUS PROVISIONS**

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### **I. Pro Rata Increase/Escalator Clause.**

This settlement is based on data provided by Defendants, which shows that, for the period of April 2016, through approximately July 15, 2021, there were 7,254 workweeks during the class period. If it is determined that the number of workweeks through September 16, 2021 exceeds 7,254 by more than 15%, the Gross Settlement Amount will be increased by the same number of percentage points by which the actual number of workweeks exceeds 7,254. For instance, if the actual number of workweeks is determined to be 20% higher than 7,254, the Gross Settlement Amount will be correspondingly increased by 20%.

\_\_\_\_\_  
Gabriel Turcios, Plaintiff

Date \_\_\_\_\_

\_\_\_\_\_  
Daniel Srourian  
Patrick White  
Srourian Law Firm, P.C.  
Attorneys for Plaintiff

Date \_\_\_\_\_

\_\_\_\_\_  
Shawn Duke  
RPM Harbor Services, Inc.; Shawn Duke,  
Defendants

Date \_\_\_\_\_

\_\_\_\_\_  
Todd L. Nunn  
Michael Lubic  
Spencer Hamer  
K&L Gates, LLP  
Attorneys for Defendants

Date \_\_\_\_\_

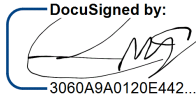
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**XVII. MISCELLANEOUS PROVISIONS**

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**I. Pro Rata Increase/Escalator Clause.**

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Gabriel Turcios, Plaintiff  
3/16/2022

Date \_\_\_\_\_



Daniel Srourian  
Patrick White  
Srourian Law Firm, P.C.  
Attorneys for Plaintiff

Date 3/16/22

Shawn Duke  
RPM Harbor Services, Inc.; Shawn Duke,  
Defendants

Date \_\_\_\_\_

Todd L. Nunn  
Michael Lubic  
Spencer Hamer  
K&L Gates, LLP  
Attorneys for Defendants

Date \_\_\_\_\_

\*\*\*

**XVII. MISCELLANEOUS PROVISIONS**

\*\*\*

**I. Pro Rata Increase/Escalator Clause.**

This settlement is based on data provided by Defendants, which shows that, for the period of April 2016, through approximately July 15, 2021, there were 7,254 workweeks during the class period. If it is determined that the number of workweeks through September 16, 2021 exceeds 7,254 by more than 15%, the Gross Settlement Amount will be increased by the same number of percentage points by which the actual number of workweeks exceeds 7,254. For instance, if the actual number of workweeks is determined to be 20% higher than 7,254, the Gross Settlement Amount will be correspondingly increased by 20%.

\_\_\_\_\_  
Gabriel Turcios, Plaintiff

Date \_\_\_\_\_

\_\_\_\_\_  
Daniel Srourian  
Patrick White  
Srourian Law Firm, P.C.  
Attorneys for Plaintiff

Date \_\_\_\_\_

\_\_\_\_\_  
Shawn Duke  
RPM Harbor Services, Inc.; Shawn Duke,  
Defendants

Date 3/15/22

\_\_\_\_\_  
Todd L. Nunn  
Michael Lubic  
Spencer Hamer  
K&L Gates, LLP  
Attorneys for Defendants

Date 3/15/22