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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

BLAIR WOODS and KENNETH JACKSON,
individually, on a representative basis, and on
behalf of all others similarly situated;

Plaintiff,

vs.

JUST IN TIME CARGO INC., a California
Corporation; and DOES 1 through 10,
inclusive;

Defendants.

Case No.: CIVDS 2000750
*[Assigned to Hon. Judge David Cohn, Dept
S26 for all purposes]*

**DECLARATION OF BRIAN MANKIN
IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY
APPROVAL**

Hearing

Date: November 22, 2021

Time: 10:00 a.m.

Dept.: S26

I, Brian J. Mankin, state and declare:

1. I am an attorney licensed to practice before all of the courts of the State of California. I represent Plaintiffs Blair Woods and Kenneth Jackson ("Plaintiffs") in this action and I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I submit this declaration in support of Plaintiff's Motion for Preliminary Approval of this Class Action Settlement. If called as a witness, I could and would competently testify thereto.

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1 **COUNSEL’S EXPERIENCE**

2 2. I have been a member, in good standing, of the State Bar of California since 2001.
3 I am admitted to practice in the United States District Courts for the Central and Southern
4 District of California and the Ninth Circuit Court of Appeal and have tried cases in various
5 courts in California.

6 3. I have handled approximately 400 to 500 employee vs. employer litigation
7 matters during my 20 years in practice. Over the last 15 years, my practice has almost entirely
8 consisted of representing employees, the majority of which has included class action and
9 representative action wage and hour matters. In total, I have handled over 200 class action and
10 representative action wage/hour cases, and have been appointed by the court as class counsel and
11 have received final court approval and judgment in over half of those actions to date, and
12 anticipate receiving final approval in many more of those in the future.

13 4. As part of these settlements and judgments, I have recovered in excess of \$250
14 million in damages for my clients and the class members (who often work as nurses, ambulance
15 drivers, technicians, warehouse workers, truck drivers, sales, professional occupations and
16 countless other trades). My team and I once held the record for the largest known PAGA-only
17 case in California’s history as of the end of 2018 - a \$12.5 million-dollar court approved
18 settlement, which followed extensive litigation, summary adjudication and writs to the CA
19 Supreme Court against a Fortune 50 company (*Garcia v. Macy’s*, San Bernardino Superior
20 Court).

21 5. I have tried two major class and PAGA cases against Fortune 100 companies. In
22 2018, I was lead counsel in a PAGA case that my firm tried to the bench in the Orange County
23 Superior Court and received a \$425,000 judgment. In 2019, I was co-counsel in a class action
24 case against Walmart that we tried to the jury in District Court, wherein the jury awarded
25 Plaintiff over \$6 million. Both cases were appealed.

26 6. Over the last few years, I have been consecutively selected by my peers as a
27 “Super Lawyer” in Employment Litigation.

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8. Under the terms of the Settlement Agreement, Defendants will not oppose Class Counsel's application for a reasonable award of attorneys' fees not to exceed one-third of the Settlement Amount, Class Counsel's litigation expenses not to exceed \$20,000, settlement administrator costs not to exceed \$10,000, PAGA penalties of \$20,000 (of which 75% will be paid to the LWDA and the remaining 25% will be paid pro-rata to the Aggrieved Employees), and a Service Payment of \$10,000 for each Plaintiff. After subtracting the agreed-upon deductions from the Gross Settlement Amount, it is estimated that \$230,000 will be available to pay the Individual Settlement Amounts of approximately 450 Class Members who do not opt-out of the settlement, as follows:

	Total Amount
<i>Gross Settlement Amount</i>	\$ 450,000.00
Attorneys' Fees (1/3)	\$ 150,000.00
Litigation Costs	\$ 20,000.00
Administrator Costs	\$ 10,000.00
PAGA Penalties	\$ 20,000.00
Class Representatives Service Awards (combined)	\$ 20,000.00
<i>Net Settlement Amount</i>	\$ 230,000.00

1 9. Assuming a class size of approximately 450 Class Members, the average payment
2 to each class member will be approximately \$511 each (\$230,000 / 450). Of course, the actual
3 payment will be calculated on a pro-rata basis according to the number of Workweeks Worked
4 by each Class Member. Assuming an estimated 10,000 weeks worked, each Workweek will
5 have a value of approximately \$23 on average. In addition, Aggrieved Employees (*i.e.*, Class
6 Members that worked during the PAGA Period) will receive a pro rata share of the \$5,000
7 PAGA Penalties (accounting for 25% of the total \$10,000 allocation).

8 10. Each Class Member will receive the Class Notice, explaining the nature of the
9 case, and the process for participating, objecting and opting-out, and advising of his/her
10 estimated settlement payment and the number of Work Weeks he/she is credited with working
11 during the Class and PAGA Periods (attached hereto as **Exhibit B**).

12 **PROCEDURAL BACKGROUND**

13 11. My office has performed considerable work and diligently investigated and
14 prosecuted this case to a successful conclusion. Our work has resulted in the creation of a
15 significant settlement fund for the benefit of the Class. We efficiently communicated and
16 exchanged information informally with Defense counsel which enabled the parties to
17 successfully settle the case at mediation. Because of the risks involved in litigating the case and
18 the contested legal and factual issues, Plaintiff's Counsel believe this settlement to be fair,
19 reasonable, and adequate.

20 12. After being retained by Plaintiff Woods, we submitted a letter to the California
21 Labor Workforce Development Agency (the "LWDA") for civil penalties under the Private
22 Attorney General Act of 2004 (the "PAGA") (all relevant LWDA letters are attached hereto as
23 **Exhibit C**) and simultaneously sent a letter to Defendants requesting the production of his
24 personnel and timekeeping records to further evaluate the wage and hour claims.

25 13. Then, on January 10, 2020, we filed a putative class action complaint, alleging
26 claims arising out of Defendant's alleged: (1) failure to pay minimum wages, (2) failure to pay
27 for rest and recovery periods and other nonproductive time under Labor Code § 226.2, (3) failure
28 to provide rest breaks, (4) failure to provide meal periods, (5) failure to reimburse business

1 expenses, (6) failure to timely pay final wages, (7) failure to provide accurate itemized wage
2 statements, and (8) unfair and unlawful competition.

3 14. Thereafter, on March 10, 2020, Plaintiff Woods filed a First Amended Complaint
4 adding claims under PAGA after the requisite 65-day exhaustion period elapsed without the
5 LWDA asserting jurisdiction.

6 15. As the case progressed, Plaintiff Jackson was added to the action via an amended
7 LWDA letter on July 20, 2020 (attached hereto as part of **Exhibit C**) and via a Second Amended
8 Complaint filed on September 3, 2020.

9 16. JITC fully denied the allegations. However, before incurring significant costs and
10 expenses in protracted discovery and litigation, the parties agreed to explore an early resolution
11 through mediation. In preparation for the mediation, the Parties informally exchanged
12 documents and information that allowed both sides to calculate the potential damages and
13 evaluate potential risk, including extensive policies and procedures pertaining to each claim
14 alleged, and statistics relating to the number of current and former drivers, number of trips
15 driven, number of weeks worked, among other metrics. JITC also provided a sampling of
16 documents for the putative class members, which enabled both parties to take a deep dive into
17 the claims. During this process, we evaluated the potential claims, risks, and defenses as to all
18 similarly situated employees.

19 17. On October 28, 2020, the Parties participated in a full-day mediation with Mariam
20 Zadeh, an experienced wage-and-hour class action mediator. However, the mediation was
21 unsuccessful, and no settlement was reached. For that reason, Plaintiffs propounded (and
22 Defendants responded to) written discovery including special interrogatories, requests for
23 admissions, requests for production of documents, and form interrogatories. Concurrently with
24 this formal discovery, the Parties continued to engage in settlement talks, and a class and PAGA
25 settlement was ultimately reached. The Parties memorialized the terms of the settlement in a
26 long-form settlement agreement and now seek the Court's preliminary approval of the
27 Settlement.

28 / / /

1 **THE WAGE AND HOUR CLAIMS AND CLASS COUNSEL’S INVESTIGATION**

2 18. The putative Class in this case consists of approximately 450 similarly situated
3 individuals. Plaintiffs alleged numerous wage and hour violations on behalf of the Class
4 Members. However, Defendants vigorously contested and denied each of the material
5 allegations on the merits and as to the propriety of a class action or PAGA representative action.

6 19. Plaintiffs’ primary claim was based on Defendants’ alleged misclassification of
7 the drivers as independent contractors rather than as employees. The entire case was contingent
8 on Plaintiffs’ misclassification claim (since the other Labor Code claims do not exist unless the
9 drivers were employees), and, for this reason, JITC vigorously defended against and attacked this
10 claim. Notably, Defendants claimed that the new ABC Test did not apply to these claims and
11 that, instead, Plaintiffs’ misclassification claims would be analyzed under the multi-factor test set
12 forth in *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341.
13 In this regard, Defendants argued that Plaintiffs would be unable to show the requisite “control”
14 under *Borello* where Defendants did not retain or exercise control as to the means, methods, or
15 modes by which the Class Members performed their tasks. Additionally, Defendants argued that
16 each Class Member signed an Independent Contractor Agreement confirming this lack of control
17 and, further, that the workers were not prohibited from performing services for other companies
18 and were not managed or supervised by Defendants.

19 20. Plaintiffs also alleged a variety of claims that were dependent on the
20 misclassification claim (*i.e.*, no other claims could proceed if the Class was properly classified),
21 such as the failure to pay all required minimum wages under JITC’s “per-trip” pay policy,
22 unlawful deductions from the drivers’ wages, the failure to reimburse business expenses, the
23 failure to timely pay all wages upon separation of employment, and failure to provide compliant
24 wage statements. However, Defendants argued that these claims were without merit and, further,
25 that many claims were preempted under the federal Truth In Lending Act or due to guidance
26 from the Federal Motor Carrier Safety Administration.

27 21. Despite that each of the claims were disputed, the Parties concluded that further
28 litigation of the Action would be protracted and expensive, and that it is desirable that the Action

1 be fully and finally settled in order to limit further risk, expense and protracted litigation.

2 **THE SETTLEMENT IS FAIR, JUST, AND REASONABLE**

3 22. The settlement was the product of extensive arm's length negotiations, facilitated
4 by an experienced mediator. Though cordial and professional, the settlement negotiations were
5 adversarial and non-collusive in nature. The settlement reached is the product of substantial
6 effort by the parties and their counsel. Although we believed that there was a possibility of
7 certifying the claims, we recognized the potential risk, expense, and complexity posed by
8 litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or
9 on the damages awarded, and/or on an appeal that can take several more years to litigate.

10 23. The settlement will result in a fair payment to each class member based on the
11 number of Weeks Worked by each Class Member. As set forth hereinabove, Plaintiffs and their
12 counsel have diligently investigated the claims and defenses on behalf of the class members and
13 worked to achieve a resolution of the claims to maximize the recovery by avoiding further
14 expenditure of attorneys' fees and costs. After evaluating the significant risks attendant with
15 further litigation described above and weighing them against the benefits of a known
16 compromise and settlement as set forth in the Settlement Agreement, settlement on the terms
17 agreed to is believed to be in the best interest of Plaintiffs and the Class, and is a fair and
18 reasonable resolution of the claims alleged.

19 24. Plaintiff's counsel brought to bear a great deal of experience in negotiating the
20 settlement of this case, especially in a situation where our client settled directly with Defendants
21 behind our backs. Despite this fact, we applied the correct pressure on the company and
22 thereafter engaged in the necessary discovery and investigation, making it possible to exercise
23 informed judgment throughout the settlement process, including significant document review
24 (e.g. documents pertaining to Defendants' policies and procedures, personnel documents, among
25 others), and conducted an extensive analysis of the detailed class-wide data provided by
26 Defendants.

27 25. Based on my experience in other cases, including wage and hour matters, I
28 believe I am qualified to evaluate the class claims and viability of defenses in this class action. In

1 this case, the recovery for each class member is reasonable, fair, and adequate, and a settlement
2 at this time is in the best interests of the class. The settlement provides each class member with
3 compensation for the alleged violations when viewed in relation to the costs and risks inherent in
4 obtaining class certification and proceeding to trial.

5 26. Plaintiffs' counsel, as well as Defendants' counsel, fully endorse the terms and
6 conditions of the settlement as set forth in the abovementioned Settlement Agreement.

7 27. Of course, the settlement amount represents a compromise figure, taking into
8 account the various risks surrounding class certification and the merits of Defendants' asserted
9 defense. Nevertheless, the settlement provides for fair and adequate payments to the class
10 members, with no reversion to Defendants.

11 **PLAINTIFF'S REQUESTED ENHANCEMENT PAYMENTS**

12 28. We seek enhancement payments of \$10,000 for each Plaintiff for service to the
13 Class, and I believe these requested amounts are fair and appropriate. Each Plaintiff came
14 forward and brought this class action at great risk to themselves and, in doing so, put the interests
15 of the Class ahead of their own. They each assumed significant risk in bringing this litigation—
16 namely, had they lost, they would have been ordered to pay Defendants' costs.

17 29. Plaintiffs provided invaluable assistance to my office and the Class in this case,
18 including providing factual background for the Class Complaint; reviewing the litigation
19 documents; providing information and documents about Defendants' policies and practices;
20 participating in phone calls to discuss litigation and settlement strategy; making themselves
21 available throughout the litigation to assist with analyzing the claims and defenses; helping Class
22 Counsel prepare for the mediation; and reviewing the settlement documents. Plaintiffs agreed to
23 participate in this case with no guarantee of personal benefit.

24 30. Moreover, the requested service awards are also reasonable and appropriate given
25 that each Plaintiff agreed to a general release as part of this settlement (whereas the Class will
26 only release the claims alleged) and, in doing so, each Plaintiff will waive other valuable claims

27 31. At final approval, each Plaintiff will submit a comprehensive declaration setting
28 forth all of the reasons why he believes that the service award should be approved.

1 **ADEQUACY OF COUNSEL AND THE PROVISIONAL REASONABLENESS OF THE**
2 **REQUESTED FEES AND COSTS**

3 32. As set forth above, I have handled over 200 class and representative actions, have
4 been appointed as class counsel and have successfully resolved over half of those class actions,
5 and many others remain pending and will successfully resolve in the future.

6 33. When this case was taken on a contingency fee basis, with my firm agreeing to
7 assume responsibility for all litigation costs, the ultimate result was far from certain. In the
8 course of this litigation, my firm paid all costs including filing fees, court costs, research fees,
9 and mediation costs. There was never a guarantee that my firm would recoup those expenditures.

10 34. It is my experience that attorney fee awards of one-third of a common fund
11 settlement is the standard in California. In this case, Plaintiff's counsel agreed to seek one-third
12 of the Settlement Amount for attorneys' fees. Defendants do not oppose this fee request. The fee
13 is further warranted because it is within the range of reasonableness typically awarded in class
14 actions. My firm's costs are reasonably capped at \$10,000 and will be based on the actual
15 amount of costs incurred at the time of final approval.

16 **SETTLEMENT ADMINISTRATOR**

17 35. The parties request that the Court appoint Simpluris to serve as the Settlement
18 Administrator. Simpluris is experienced in administering class action settlements and has
19 provided a flat-fee proposal to administer this settlement for \$8,500.

20 **SUBMISSION TO THE LWDA**

21 36. Plaintiffs have concurrently submitted the settlement to the LWDA in accordance
22 with Labor Code § 2699(1)(2). The proof of submission is attached hereto as **Exhibit E**.

23 **EXHIBITS AND CONCLUSION**

24 37. A true and correct copy of the Settlement Agreement is attached hereto as **Exhibit**
25 **A**.

26 38. The proposed Class Notice is attached as **Exhibit B**.

27 39. A true and correct copy of the notice letters we submitted to the LWDA on
28 January 3, 2020, and on July 20, 2020, are attached as **Exhibit C**.

40. Simpluris' proposal to administer the Settlement is attached hereto as **Exhibit D**.

41. The LWDA's confirmation of receipt of this Motion and Declaration is attached hereto as **Exhibit E**.

42. For the foregoing reasons, it is respectfully requested that the Court grant preliminary approval of the settlement as being fair, reasonable, and in the best interests of the class, as well as preliminarily approve the requested attorneys' fees, costs, and enhancement payment to the Class Representatives.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 28, 2021, at Riverside, California.

By: Brian J. Mankin
Brian J. Mankin, Esq.

Exhibit A

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Attorneys for Defendants Just In Time Cargo, Inc. and Tache Gabriel Georgescu

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

BLAIR WOODS and KENNETH JACKSON,
individually, on a representative basis, and on
behalf of all others similarly situated;

Plaintiffs,

vs.

JUST IN TIME CARGO INC., a California
Corporation; and DOES 1 through 10,
inclusive;

Defendants.

Case No.: CIVDS 2000750
*[Assigned to Hon. Judge David Cohn, Dept
S26 for all purposes]*

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

1 This Class Action Settlement Agreement and Release of Claims is entered into by and
2 between Plaintiffs Blair Woods and Kenneth Jackson, individually and on behalf of all others
3 similarly situated, and Defendants Just In Time Cargo and Tache Gabriel Georgescu, and is
4 approved by their respective counsel of record, subject to the terms and conditions hereof and the
5 Court's approval.

6 **A. Definitions**

7 1. "Action" or "Lawsuit" means and refers to the case entitled *Blair Woods, et al. v.*
8 *Just In Time Cargo Inc., et al.* San Bernardino County Superior Court, Case No. CIVDS
9 2000750.

10 2. "Agreement" or "Settlement Agreement" shall mean this Class Action Settlement
11 Agreement and Release of Claims, including any attached Exhibits.

12 3. "Aggrieved Employees" means all current and former truck drivers who
13 performed services for Defendant Just In Time Cargo Inc. in the State of California and who
14 were classified by Defendants as independent contractors during the PAGA Period.

15 4. "Class Counsel" refers to Brian Mankin and Peter Carlson of Lauby Mankin
16 Lauby LLP.

17 5. "Class Data" means a complete list that Defendant will diligently and in good
18 faith compile from its records and provide to the Settlement Administrator on one spreadsheet
19 and which shall include, for each Settlement Class Member, the individual's full name, last
20 known address, telephone number, Social Security Number, total Weeks Worked during the
21 Class Period, and total Weeks Worked during the PAGA Period (if any).

22 6. "Class Period" is deemed to be any time during the period of January 10, 2016,
23 through the Preliminary Approval Date.

24 7. "Class Representatives" or "Plaintiffs" means and refers to Blair Woods and
25 Kenneth Jackson.

26 8. "Complaint" refers to the operative second amended complaint alleging class
27 action and representative PAGA action claims, which was originally filed in the San Bernardino
28 County Superior Court on January 10, 2020, and which was amended via first amended

complaint on March 10, 2020, and via second amended complaint on September 3, 2020, with
doe amendments filed to the same on November 17, 2020.

9. “Court” (or “Judge”) means the California Superior Court, County of San Bernardino.

10. “Defendants” means and refers to Just In Time Cargo Inc. and Tache Gabriel Georgescu.

11. “Defendants’ Counsel” or “Defense Counsel” means and refers to Marie Burke Kenny and Brook T. Barnes of Procopio Cory Hargreaves & Savitch LLP.

12. “Effective Date” means the latest of the following dates: (i) if no Class Member objects, timely and properly intervenes, or files a motion to vacate the judgment approving the Settlement Agreement under Code of Civil Procedure § 663, then the date of that the Order regarding Final Approval of the Settlement is entered; (ii) if a Class Member objects, intervenes, or files a motion to vacate the judgment approving the Settlement Agreement, then sixty-one (61) calendar days following the date the Court enters an order granting Final Approval, assuming no appeal is filed; or (iii) if a timely appeal is filed, the date of final resolution of that appeal (including any requests for rehearing and/or petitions for *certiorari*), resulting in final judicial approval of the Settlement.

13. “Final Approval” refers to the order of the Court granting final approval of this Settlement Agreement and entering a judgment approving this Agreement on substantially the terms provided herein or as the same may be modified by subsequent agreement of the Parties.

14. “Final Settlement Class” means, collectively, all Settlement Class Members who have not opted out of the Settlement Class by submitting timely Requests for Exclusion.

15. “Gross Settlement Amount” shall have the meaning ascribed to it in Paragraph 47(a) below.

16. “Individual Settlement Payment” shall have the meaning ascribed to it in Paragraph 47(c) below.

17. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 47(b) below.

1 18. “Notice” means the notice of settlement of class action that will be sent to the
2 Settlement Class Members.

3 19. “Notice Response Deadline” is 30 calendar days from the date the Notice is
4 mailed to the Settlement Class Members.

5 20. “Objecting Settlement Class Member” means a Settlement Class Member, other
6 than Plaintiffs, who submits a valid and timely objection to the terms of this Agreement,
7 pursuant to Paragraph 65(c) below.

8 21. “PAGA Penalties” means the amount that the Parties have agreed to pay to the
9 Labor and Workforce Development Agency (“LWDA”) in connection with the California Labor
10 Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”), as well
11 as the individual PAGA payment allocated to each Aggrieved Employee.

12 22. “PAGA Period” is deemed to be any time during the period of January 10, 2019,
13 through the Preliminary Approval Date.

14 23. “PAGA Released Claims” by the Aggrieved Employees upon Final Approval of
15 the Settlement means any and all claims for civil penalties under the Private Attorneys General
16 Act, Labor Code § 2698 *et seq.*, that Plaintiffs alleged against the Released Parties, on behalf of
17 Aggrieved Employees and State of California, based on the facts stated in Plaintiffs’ operative
18 Complaint and in Plaintiffs’ LWDA notice letters, including all PAGA claims seeking civil
19 penalties for (1) willful misclassification, (2) failure to pay minimum wages, (3) failure to pay
20 for rest and recovery periods and other nonproductive time under Labor Code § 226.2, (4) failure
21 to provide rest breaks, (5) failure to provide meal periods, (6) failure to reimburse business
22 expenses, (7) failure to timely pay wages each period and upon separation of employment, and
23 (8) failure to provide accurate itemized wage statements. The time period governing the PAGA
24 Released Claims shall be any time during the PAGA Period. The PAGA Released Claims do not
25 release any potential claims for wages or statutory penalties.

26 24. “Participating Class Member” means any and all Settlement Class Members who
27 are deemed to participate and receive an Individual Settlement Payment and do not opt-out by
28 submitting a timely valid Request for Exclusion.

25. “Parties” or “Settling Parties” mean Plaintiffs, the Settlement Class, and Defendants, collectively.

26. “Preliminary Approval Date” means the date the Court approves the Settlement Agreement, and the exhibits thereto, and enters the Preliminary Approval Order.

27. “Preliminary Approval Order” means the judicial Order to be entered by the Court, upon the application or motion of the Plaintiffs, preliminarily approving this Settlement and providing for the issuance of the Notice to the Settlement Class, an opportunity to opt out of the Settlement, an opportunity to submit timely objections to the Settlement, and setting a hearing on the fairness of the terms of Settlement, including approval of attorneys’ fees and costs. Defendants will not object to Plaintiffs’ motion for preliminary approval but will be provided with an opportunity to review and comment upon the motion at least five days before it is filed.

28. “QSF” means the Qualified Settlement Fund set up by the Settlement Administrator for the benefit of the Final Settlement Class, and from which the settlement payments shall be made, and which is intended to be a fund that qualifies under Internal Revenue Code Sec. 468.

29. “Released Claims” by the Participating Class Members upon Final Approval of the Settlement will include any and all claims stated in the operative Complaint and those that could have been made based solely upon the facts alleged, including: (1) willful misclassification, (2) failure to pay minimum wages, (3) failure to pay for rest and recovery periods and other nonproductive time under Labor Code § 226.2, (4) failure to provide rest breaks, (5) failure to provide meal periods, (6) failure to reimburse business expenses, (7) failure to timely pay wages each period and upon separation of employment, (8) failure to provide accurate itemized wage statements, (9) unfair and unlawful competition, and (10) all other claims for statutory penalties based on the facts or claims alleged in the Complaint.

30. “Released Parties” means Defendant Just In Time Cargo, along with its officers, directors, members, managers, employees, agents and representatives, including but not limited to Defendant Tache Gabriel Georgescu as well as Natalia Georgescu.

1 31. “Release Period” shall be the time period governing the Released Claims which
2 shall be the same as the Class Period.

3 32. “Release” shall mean the release and discharge of the Released Claims by
4 Plaintiffs and all of the Participating Class Members and Aggrieved Employees. The *res*
5 *judicata* effect of the Judgment will be the same as that of the Release.

6 33. “Request for Exclusion” means and refers to a valid and timely request for
7 exclusion from the Settlement, which may be submitted by any Settlement Class Member, other
8 than Plaintiffs, pursuant to Paragraph 65(a) below.

9 34. “Service Payments” or “Service Awards” means the amount approved by the
10 Court to be paid to the Class Representatives, Blair Woods and Kenneth Jackson, in addition to
11 their Individual Settlement Payments as Participating Class Members and individual PAGA
12 payment as an Aggrieved Employee.

13 35. “Settlement Administrator” means and refers to Simpluris, the third-party class
14 action settlement administrator agreed to by the Parties, that will provide the Notice to the Class
15 Members and distribute the settlement amounts as described in this Agreement.

16 36. “Settlement Administration Costs” means the costs payable from the Gross
17 Settlement Amount to the Settlement Administrator for administering this Settlement, including,
18 but not limited to, printing, distributing, and tracking documents for this Settlement, tax
19 reporting, unclaimed property due diligence, reporting and remittance obligations, distributing
20 the Gross Settlement Amount, and providing necessary reports and declarations, as requested by
21 the Parties. The Settlement Administration Costs shall be paid from the Settlement Amount,
22 including, if necessary, any such costs in excess of the amount represented by the Settlement
23 Administrator as being the maximum costs necessary to administer the Settlement.

24 37. “Settlement Class” or consists of all current and former truck drivers who
25 performed services for Defendant Just In Time Cargo Inc. in the State of California and who
26 were classified by Defendants as independent contractors during the Class Period.

27 38. “Settlement Class Member” or “Class Member(s)” refers to individual members
28 of the Settlement Class.

39. “Work Weeks” or “Weeks Worked,” in the context of Settlement Class Members, means any calendar week during which a Settlement Class Member performed work for Defendants during the Class Period. In the context of Aggrieved Employees, “Work Weeks” or “Weeks Worked,” means any calendar week during which an Aggrieved Employee performed work for Defendants during the PAGA Period. In both instances, Work Weeks shall be calculated by rounding up to the nearest whole number (*e.g.*, one day worked in a calendar week equals one Week Worked).

B. General Terms

40. Plaintiff Blair Woods filed a class action complaint in the Court on January 10, 2020, against Defendant Just In Time Cargo Inc. and Does 1 through 20. Plaintiff Woods subsequently filed a first amended complaint on March 10, 2020, to add causes of action under the Private Attorneys General Act of 2004 (“PAGA”). Then, on September 3, 2020, Plaintiff Woods filed the operative second amended complaint to add Plaintiff Kenneth Jackson to the Action. The operative Complaint alleges class and representative claims, including: (1) willful misclassification, (2) failure to pay minimum wages, (3) failure to pay for rest and recovery periods and other nonproductive time under Labor Code § 226.2, (4) failure to provide rest breaks, (5) failure to provide meal periods, (6) failure to reimburse business expenses, (7) failure to timely pay wages each period and upon separation of employment, (8) failure to provide accurate itemized wage statements, (9) unfair and unlawful competition pursuant to Business and Professions Code § 17200, *et seq.*, and (10) related claims under PAGA. On November 17, 2020, Plaintiffs filed a Doe amendment, adding Tache Gabriel Georgescu as a Defendant.

41. Defendants deny Plaintiffs’ claims and allegations and contend that the Action is not suitable for class certification or manageable as a class or representative action.

42. The Class Representatives believe they can proceed with the representative and class claims, that the Action is meritorious, and that class certification is appropriate.

43. The Parties have conducted a thorough investigation into the facts of the Action. This includes conducting formal written discovery along an extensive exchange of informal discovery, including Defendants’ written policies and practices and the production of a sampling

1 of payroll and other records for Settlement Class Members. Class Counsel is both
2 knowledgeable about and has done extensive research with respect to the applicable law and
3 potential defenses to the claims of the Settlement Class. Class Counsel has diligently pursued an
4 investigation of the Class Members' claims against Defendants. Based on the foregoing data and
5 on their own independent investigation and evaluation, Class Counsel is of the opinion that the
6 settlement with Defendants for the consideration and on the terms set forth in this Settlement
7 Agreement is fair, reasonable, and adequate and is in the best interest of the Class Members in
8 light of all known facts and circumstances, including the risk of significant delay and uncertainty
9 associated with litigation, various defenses asserted by Defendants, and numerous potential
10 appellate issues.

11 44. On October 28, 2020, Plaintiffs and Defendant Just In Time Cargo Inc.
12 participated in mediation before Mariam Zadeh, a highly experienced wage and hour class action
13 mediator. The matter did not resolve at mediation but, after additional formal discovery and
14 continued negotiations, Plaintiffs and Defendants agreed to settle the Action pursuant to the
15 terms herein.

16 45. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts
17 to be performed or judgments to be entered pursuant to the terms of the Settlement and
18 Agreement, shall be construed as an admission by Defendants of any wrongdoing or violation of
19 any statute or law or liability on the claims or allegations in the Action.

20 46. Stipulation for Class Certification. For settlement purposes only, Defendants will
21 stipulate that the Settlement Class Members described herein who do not submit a Request for
22 Exclusion from the Settlement Class may be conditionally certified as a settlement class. This
23 stipulation to certification is in no way an admission that class action certification is proper and
24 shall not be admissible in this or in any other action except for the sole purposes of enforcing this
25 Agreement. Should, for whatever reason, the Court fail to issue Final Approval, the Parties'
26 stipulation to class certification as part of the Settlement shall become null and void *ab initio* and
27 shall have no bearing on, and shall not be admissible in connection with, the issue of whether or
28 not certification would be appropriate in a non-settlement context. Defendants expressly reserve

1 their rights and declare that they would continue to oppose class certification and the substantive
2 merits of the case should the Court decline to issue Final Approval. Plaintiffs expressly reserve
3 their rights and declare that they will continue to pursue class certification and a trial should the
4 Court decline to issue Final Approval.

5 **C. Terms of Settlement**

6 47. The financial terms of the Settlement are as follows:

7 (a) Gross Settlement Amount: The Parties agree to settle this Action for Four
8 Hundred Fifty Thousand Dollars (\$450,000) (“the Gross Settlement Amount”). The Gross
9 Settlement Amount is the maximum amount that will be paid, and includes Individual Settlement
10 Payments, Attorneys’ Fees and Costs Award, the Service Payments to the Class Representatives,
11 all Settlement Administration Costs, and PAGA Penalties.

12 (b) Net Settlement Amount: The “Net Settlement Amount” is defined as the
13 Gross Settlement Amount less the Attorneys’ Fees and Costs Award, the Service Payments to the
14 Class Representatives as awarded by the Court, the Settlement Administration Costs, and PAGA
15 Penalties. If the Court reduces the attorneys’ fees, litigation costs, Service Awards, or Settlement
16 Administrator Costs, the difference shall be placed in the Net Settlement Amount and allocated
17 to the Settlement Class.

18 (c) Individual Settlement Payments for the Settlement Class: Individual
19 Settlement Payments will be calculated and apportioned from the Net Settlement Amount based
20 on the number of Weeks Worked by each Settlement Class Member during the Class Period.
21 Specific calculations of Individual Settlement Payments will be made as follows:

- 22 • Defendant will calculate the total number of Weeks Worked by each
23 Settlement Class Member during the Class Period and the aggregate total
24 number of Weeks Worked by all Settlement Class Members during the
25 Class Period.
- 26 • To determine each Settlement Class Member’s estimated Individual
27 Settlement Payment, the Settlement Administrator will use the following
28 formula: The Net Settlement Amount will be divided by the aggregate

1 total number of Weeks Worked, resulting in the “Work Week Value.”

2 Each Settlement Class Member’s Individual Settlement Payment will be
3 calculated by multiplying his or her total number of Weeks Worked during
4 the Class Period by the Work Week Value.

- 5 • The entire Net Settlement Amount will be disbursed to all Participating
6 Class Members. If there are any valid and timely Requests for Exclusion,
7 the Settlement Administrator shall proportionally increase the Individual
8 Settlement Payment for each Participating Class Member according to the
9 number of Weeks Worked, so that the amount actually distributed to the
10 Settlement Class equals 100% of the Net Settlement Amount.

11 (d) Allocation of Individual Settlement Payments: Because the Class
12 Members performed contract services for Defendants as independent contractors, rather than as
13 employees, and because Defendants fully dispute the allegations alleged herein, the Parties agree
14 that the Individual Settlement Payments will be allocated and paid to the Participating Class
15 Members as contract compensation, interest, and penalties from which no state or federal taxes
16 will be withheld or deducted. Participating Class Members will be issued an IRS Form 1099 and
17 will assume full responsibility and liability for the payment of taxes due, if any. The Parties
18 make no representations about the tax consequences to the Individual Settlement Payments.

19 (e) Service Payments to Class Representatives: The amount, if any, awarded
20 to the Class Representatives as a Service Payment will be set by the Court in its discretion, not to
21 exceed: \$10,000 for Plaintiff Blair Woods and \$10,000 for Plaintiff Kenneth Jackson. These
22 Service Awards are in exchange for the services Plaintiffs performed on behalf of the Class
23 (including taking steps to support the Settlement) and for entering into the general and expansive
24 release discussed hereinafter. Defendants agrees not to oppose this request. The Service
25 Payments to Plaintiffs will be paid out of the Gross Settlement Amount. The Class
26 Representatives will be issued IRS Form 1099 in connection with this payment. Plaintiffs shall
27 be solely and legally responsible to pay any and all applicable taxes on this payment. The Parties
28 agree that any amount awarded as the Service Payments to Plaintiffs less than the requested

amount shall not be a basis for Class Counsel to void this Settlement Agreement. Should the Court approve a lesser amount for the Service Payments, the difference shall be added to the Net Settlement Amount to be distributed to the Participating Class Members.

(f) Attorneys' Fees and Costs Award: Defendants agree to not oppose a request by Class Counsel to the Court for an award of attorneys' fees of one-third of the Gross Settlement Amount (\$150,000), plus reasonable litigation costs not to exceed \$20,000 ("Attorney's Fees and Cost Award"). Defendant agrees not to oppose any contention by Class Counsel that attorneys' fees should be based on the common fund theory. The Attorney's Fee and Cost Award shall be paid from the Gross Settlement Amount, and except for this award, Defendants shall have no further obligation to pay any attorneys' fees, costs or expenses to Class Counsel. Should the Court approve a lesser amount than what is sought by Class Counsel, the difference shall be added to the Net Settlement Amount to be distributed to the Participating Class Members. Any Court order awarding less than the amount sought by Class Counsel shall not be grounds to rescind the Settlement Agreement or otherwise void the Settlement. The Settlement Administrator shall issue to Class Counsel an IRS Form 1099 reflecting the amount of attorneys' fees and costs awarded by the Court.

(g) Settlement Administration Costs: The fees and other charges of the Settlement Administrator will be paid from the Gross Settlement Amount, not to exceed \$10,000 unless approved by all Parties and the Court.

(h) PAGA Penalties: The Parties agree that \$20,000 is allocated to PAGA Penalties and is to be paid from the Gross Settlement Amount, subject to Court approval. Of this amount, \$15,000 (75%) shall be paid to the LWDA in satisfaction of civil penalties under the Private Attorney General Act of 2004 ("PAGA") and \$5,000 (25%) will be paid to the Aggrieved Employees on a Work Week basis, which will be treated entirely as civil penalties and shall be reported as required on an IRS form 1099. Class Counsel shall give proper notice to the LWDA of the Settlement.

(i) Tax Liability: Class Counsel and Defendants make no representations as to the tax treatment or legal effect of settlement amounts called for hereunder, and Plaintiffs and

1 the Settlement Class Members are not relying on any statement or representation by Class
2 Counsel or Defendants in this regard. Plaintiffs and Participating Class Members understand and
3 agree that they will be solely responsible for the payment of any taxes and penalties assessed on
4 their respective Settlement Amounts described herein. IRS Forms 1099 will be distributed at
5 times and in the manner required by the Internal Revenue Code of 1986 (the “Code”) and
6 consistent with this Agreement. If the Code, the regulations promulgated thereunder, or other
7 applicable tax law, is changed after the date of this Agreement, the processes set forth in this
8 Section may be modified in a manner to bring Defendants into compliance with any such
9 changes. Plaintiffs and Participating Class Members understand and agree that they will be
10 solely responsible for the payment of any taxes and penalties assessed on their respective
11 payments described herein and will hold Defendant harmless from and against any claims
12 resulting from treatment of such payments as non-taxable damages.

13 (j) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS
14 AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY”
15 AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING
16 PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO
17 PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR
18 DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND
19 OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
20 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
21 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
22 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
23 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS
24 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
25 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
26 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY
27 OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT
28 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY

1 ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY
2 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
3 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
4 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR
5 ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS
6 LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF
7 THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING
8 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

9 48. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
10 Participating Class Members under this Agreement, as well as any other payments made
11 pursuant to this Agreement, shall not be utilized to calculate any additional benefits under any
12 benefit plans to which any Settlement Class Members may be eligible, including, but not limited
13 to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase or other types of equity plans,
14 vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties'
15 intention that this Settlement will not affect any rights, contributions, or amounts to which any
16 Settlement Class Members may be entitled under any benefit plans. The Parties agree that the
17 amounts paid pursuant to this Settlement are not for days or hours worked, and are not included
18 toward any regular rate of pay calculation, or any benefit vesting or accrual purpose.

19 49. "Non-Reversionary" Settlement. This is a "non-reversionary" settlement. Under
20 no circumstances will any portion of the Gross Settlement Amount revert to Defendants.
21 Participating Class Members will not have to make a claim in order to receive an Individual
22 Settlement Payment. Distributions, in the form of Individual Settlement Payments and the
23 portion of the PAGA Penalties payable to the Aggrieved Employees, will be made directly to
24 each Participating Class Member and Aggrieved Employee. The Settlement Administrator shall
25 be responsible for accurately and timely reporting and remittance obligations with respect to
26 unclaimed funds as a result of a Participating Class Member and/or Aggrieved Employee not
27 cashing any checks delivered pursuant to the Settlement by the check cashing deadline, as set
28 forth herein.

1 50. Class Counsel and Plaintiffs believe that the Settlement is fair and reasonable, and
2 adequate, and will so represent same to the Court.

3 **D. Release by Plaintiffs, the Aggrieved Employees, and the Settlement Class**

4 51. Upon entry of the Final Approval Order and Defendants funding of the Gross
5 Settlement Amount, and except as to such rights or claims as may be created by this Settlement
6 Agreement, the Participating Class Members will forever completely release and discharge the
7 Released Parties from the Released Claims for the Release Period.

8 52. Upon entry of the Final Approval Order and Defendants funding of the Settlement
9 Amount, the State of California and Aggrieved Employees shall completely release and
10 discharge the Released Parties from the PAGA Released Claims for the PAGA Period.

11 53. Each Settlement Class Member will be deemed to have made the foregoing
12 Release as if by manually signing it.

13 54. Plaintiffs and Defendants intend that the Settlement described in this Agreement
14 will release and preclude any further claim, whether by lawsuit, administrative claim or action,
15 arbitration, demand, or other action of any kind, by each and all of the Participating Class
16 Members to obtain a recovery based on, arising out of, and/or related to any and all of the
17 Released Claims. The Class Members shall be so notified in the Notice. This paragraph does not
18 apply to any Class Member who timely and validly opts out of the Settlement. But regardless of
19 submitting a valid Request for Exclusion, no Class Member shall have the right to opt-out or
20 otherwise exclude themselves from releasing the PAGA Released Claims.

21 55. Class Representatives, on behalf of themselves and the Settlement Class,
22 acknowledge and agree that the claims for unpaid wages and unreimbursed expenses in the
23 Action, and untimely payment of wages in the Action, are disputed, and that the payments set
24 forth herein constitute payment of all sums allegedly due to them. Class Representatives, on
25 behalf of themselves and the Settlement Class, acknowledge and agree that California Labor
26 Code Section 206.5 are not applicable to the Parties hereto. Section 206.5 provides in pertinent
27 part as follows:
28

1 An employer shall not require the execution of any release of any claim or
2 right on account of wages due, or to become due, or made as an advance on
3 wages to be earned, unless payment of those wages has been made.

4 56. The Parties agree that nothing in this Agreement shall impact Plaintiff Woods' or
5 Defendants' rights or obligations in relation to any bills and/or outstanding invoices from the
6 Cucamonga Valley Water District for the incident that occurred on or around November 19,
7 2019.

8 **E. Interim Stay of Proceedings**

9 57. Pending completion of all of the prerequisites necessary to effectuate this
10 Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the Action
11 except such as are necessary to effectuate the Settlement.

12 **F. Notice Process**

13 58. Appointment of Settlement Administrator. The Parties have agreed to the
14 appointment of the Settlement Administrator to perform the duties of a settlement administrator,
15 including mailing the Notice, using standard devices to obtain forwarding addresses,
16 independently reviewing and verifying documentation associated with any claims or opt-out
17 requests, resolving any disputes regarding the calculation or application of the formula for
18 determining the Individual Settlement Payments and the portion of the PAGA Penalties owed to
19 the Aggrieved Employees, drafting and mailing the settlement checks to Participating Class
20 Members and to the Aggrieved Employees, issuing 1099 Tax Forms, unclaimed funds due
21 diligence, reporting and remittance obligations, and performing such other tasks as set forth
22 herein or as the Parties mutually agree or that the Court orders.

23 59. Disputes Regarding Settlement Administration. Any and all disputes relating to
24 administration of the Settlement by the Settlement Administrator (except for disputes regarding
25 Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction
26 over the terms and conditions of this Settlement Agreement, until Plaintiffs and Defendants
27 notify the Court that all payments and obligations contemplated by this Settlement Agreement
28 have been fully carried out. Prior to presenting any issue to the Court, counsel for the Parties

1 will confer in good faith to resolve the dispute without the necessity of Court intervention. The
2 Settlement Administrator shall also be responsible for issuing to Plaintiffs, Settlement Class
3 Members, and Class Counsel any 1099 or other Tax Forms as may be required by law for all
4 amounts paid pursuant to this Agreement. The Settlement Administrator shall also be
5 responsible for setting up all necessary tax accounts and forwarding all taxes and penalties to the
6 appropriate government authorities.

7 60. Class Data. Within ten (10) days after entry of the Preliminary Approval Order,
8 Defendants shall provide the Class Data to the Settlement Administrator. The Settlement
9 Administrator will run a check of the Class Members' addresses against those on file with the
10 U.S. Postal Service's National Change of Address List. The Class Data provided to the
11 Settlement Administrator will remain confidential, shall be used solely to administer the
12 Settlement, and will not be used or disclosed to anyone, except as required by applicable tax
13 authorities, pursuant to Defendants' express written consent, or by order of the Court. Although
14 Class Counsel will not be provided with the list of Class Data, nothing herein shall prevent Class
15 Counsel from communicating with Class Members regarding the Action and Settlement.

16 61. Notice. The Notice, as approved by the Court, shall be sent by the Settlement
17 Administrator to the Settlement Class Members, by first class mail, in English, within ten (10)
18 calendar days following the Settlement Administrator's receipt of the Class Data. The
19 Settlement Administrator shall use standard devices, including a skip trace, to obtain forwarding
20 addresses of Settlement Class Members if any envelopes are returned.

21 62. Returned Notices. The Settlement Administrator will take steps to ensure that the
22 Notice is received by all Settlement Class Members, including utilization of the National Change
23 of Address Database maintained by the United States Postal Service to review the accuracy of
24 and, if possible, update a mailing address. Notices will be re-mailed to any Class Member for
25 whom an updated address is located within ten (10) calendar days following both the Settlement
26 Administrator learning of the failed mailing and its receipt of the updated address. The Notice
27 shall be identical to the original Notice, except that it shall notify the Class Member that the
28 exclusion (opt-out) request or objection must be returned by the later of the Notice Response

1 Deadline or fifteen (15) days after the remailing of the Notice.

2 63. Disputes Regarding Information on Notices. Class Members are deemed to
3 participate in the Settlement unless they opt-out. The Notice will inform Class Members of
4 his/her estimated Individual Settlement Payment and the number of Weeks Worked during the
5 Class Period. Class Members may dispute their Weeks Worked if they feel they should be
6 credited with more Work Weeks than Defendants' records show by timely submitting evidence
7 to the Settlement Administrator. Defendants' records will be presumed determinative absent
8 reliable evidence to rebut Defendants' records, but the Settlement Administrator will evaluate the
9 evidence submitted by the Class Member and provide the evidence submitted to Class Counsel
10 and Defense Counsel who agree to meet and confer in good faith about the evidence to determine
11 the Class Member's actual number of Work Weeks and estimated Individual Settlement
12 Payment. If Class Counsel and Defense Counsel are unable to agree, they agree to submit the
13 dispute to the Settlement Administrator to render a final decision. Class Members will have until
14 the Notice Response Deadline to dispute Weeks Worked, object or opt out, unless extended by
15 the Court. In the event that the Settlement Administrator increases the number of Weeks
16 Worked for any Settlement Class Member, then the Settlement Administrator will recalculate the
17 Individual Settlement Payments; accordingly, in no event will Defendants be required to increase
18 the Maximum Settlement Amount.

19 64. Declaration of Due Diligence. The Settlement Administrator shall provide
20 counsel for the Parties, at least twenty-five (25) calendar days prior to the final approval hearing,
21 a declaration of due diligence and proof of mailing with regard to the mailing of the Notice.

22 65. Settlement Class Members' Rights. Each Settlement Class Member will be fully
23 advised of the Settlement, the ability to object to the settlement, and the ability to opt-out or
24 request exclusion from the Settlement. The Notice will inform the Settlement Class Members of
25 the Court-established deadlines for filing objections or requesting exclusion from the Settlement
26 in accordance with the following guidelines:

27 (a) Requests for Exclusion from Settlement Class. Any Settlement Class
28 Member, other than Plaintiffs, may request to be excluded from the Settlement Class by

1 submitting a “Request for Exclusion” to the Settlement Administrator, postmarked on or before
2 the Notice Response Deadline. The Request for Exclusion should state:

3 “I WISH TO BE EXCLUDED FROM THE SETTLEMENT
4 CLASS IN THE JUST IN TIME CARGO LAWSUIT. I
5 UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM
6 THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY
7 MONEY FROM THE SETTLEMENT OF THIS LAWSUIT.”

8 To be valid, any Request for Exclusion must include the full name, address, telephone
9 number, last four digits of the social security number or date of birth, and signature of the
10 Settlement Class Member requesting exclusion. The Request for Exclusion must be returned by
11 mail to the Settlement Administrator at the specified address. Any such Request must be made
12 in accordance with the terms set forth in the Notice. A Request for Exclusion will be timely only
13 if postmarked by the Notice Response Deadline unless the Parties otherwise agree in writing.
14 Any Settlement Class Member who timely requests exclusion in compliance with these
15 requirements: (i) will not have any rights under this Agreement, including the right to object,
16 appeal or comment on the Settlement; (ii) will not be entitled to receive any payments under this
17 Agreement; and (iii) will not be bound by this Agreement, or the Judgment. Any Aggrieved
18 Employee who requests timely exclusion will still be subject to the PAGA Released Claims to
19 the fullest extent permitted by law and receive a share of PAGA Penalties.

20 All Parties and their counsel, including Defendants’ respective owners, officers and
21 managers, shall not encourage or solicit opt-outs or objections, directly or indirectly, through any
22 means.

23 (b) Binding Effect on Final Settlement Class Members. Except for those
24 Settlement Class Members who exclude themselves in compliance with the procedures set forth
25 above, all Settlement Class Members will: (i) be deemed to be Participating Class Members for
26 all purposes under this Agreement; (ii) will be bound by the terms and conditions of this
27 Agreement, the Judgment, and the releases set forth herein; and (iii) except as otherwise
28 provided herein, will be deemed to have waived all objections and oppositions to the fairness,

1 reasonableness, and adequacy of the Settlement.

2 (c) Objections to Settlement. Any Settlement Class Member, other than
3 Plaintiffs, may object to the terms of this Agreement. To object, a Settlement Class Member
4 shall inform the Settlement Administrator, in writing, of his or her objection which must be
5 postmarked by the Notice Response Deadline at the address set forth in the Notice. Such
6 objection shall include the objecting Settlement Class Member's full name, address, telephone
7 number, and dates of employment with Defendants, the case name and number, the basis for the
8 objection, including any legal support and each specific reason in support of the objection, as
9 well as any documentation or evidence in support thereof, and, if the Objecting Settlement Class
10 Member is represented by counsel, the name and address of his or her counsel. The Settlement
11 Administrator shall provide objections, if any, to Class Counsel and Defense Counsel within
12 three (3) calendar days of receipt, and the Settlement Administrator shall attach the same to its
13 declaration of due diligence and file with the Court prior to the Final Approval Hearing. Any
14 Participating Class Member who files an objection remains eligible to receive monetary
15 compensation from the Settlement. Plaintiffs and Defendants shall not be responsible for any
16 fees, costs, or expenses incurred by any Class Member and/or his or her counsel related to any
17 objections to the Settlement. Submitting an objection does not preserve the right to appeal a
18 final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely
19 and properly intervening or filing a motion to vacate the judgment under Code of Civil
20 Procedure § 663.

21 (d) Failure to Object. Any Settlement Class Member who desires to object
22 but fails to timely submit a written objection or in person objection at the Final Approval
23 Hearing waives any right to object and will be foreclosed from making any objection to this
24 Settlement. Any Settlement Class Member who does not timely and properly become a party of
25 record by intervening or filing a motion to vacate the judgment waives any and all rights to
26 appeal from the Judgment, including all rights to any post-judgment proceeding and appellate
27 proceeding, such as a motion to vacate judgment, motion for new trial, a motion under California
28 Code of Civil Procedure section 473, and extraordinary writs.

1 (e) Responses to Objections. Counsel for the Parties may file a response to
2 any objections submitted by objecting Settlement Class Members at least five (5) court days
3 before the date of the Final Approval Hearing.

4 (f) Settlement Class Members will have until the Notice Response Deadline
5 to object or submit a Request for Exclusion to the Settlement Administrator by U.S. Mail. The
6 Settlement Administrator shall disclose jointly to Class Counsel and Defendants' counsel what
7 objections or Requests for Exclusion were timely submitted on a weekly basis, and upon the
8 request of Class Counsel or Defense Counsel.

9 (g) Defective Submissions. If a Settlement Class Member's Request for
10 Exclusion or objection is defective as to the requirements listed herein, that Settlement Class
11 Member will be given an opportunity to cure the defect(s). The Settlement Administrator will
12 mail the Settlement Class Member a cure letter within three (3) business days of receiving the
13 defective submission to advise the Settlement Class Member that his or her submission is
14 defective and that the defect must be cured to render the Request for Exclusion or objection
15 valid. The Settlement Class Member will have the later of (i) the Notice Response Deadline or
16 (ii) 15 calendar days from the date of the cure letter to postmark or fax a revised Request for
17 Exclusion or objection. If the revised Request for Exclusion or objection is not postmarked or
18 received by fax within that period, it will be deemed untimely.

19 66. Funding of the Settlement Amount. Defendants shall make a one-time deposit
20 into the QSF of the Gross Settlement Amount by no later than fifteen (15) calendar days after the
21 Effective Date. Once Defendants have complied with their obligation set forth in this paragraph,
22 they shall be deemed to have satisfied all of the payment terms and conditions of this Agreement,
23 shall be entitled to all the protections afforded it under the Agreement. The Settlement
24 Administrator (and not Defendants) shall issue the applicable W-2s and IRS Form 1099
25 reflecting all payments to the Class Members

26 67. Distribution of Funds. No later than ten (10) calendar days after the deposit of the
27 payment into the QSF, the Settlement Administrator will mail the Individual Settlement
28 Payments to the Participating Class Members, the payment to Class Counsel for the Attorneys'

1 Fees and Costs Award, any Service Payments to the Class Representatives, the payment to the
2 LWDA for PAGA Penalties, mail to the Aggrieved Employees their portion of the PAGA
3 Penalties and will pay itself the Settlement Administration Costs.

4 68. Deadline for Cashing Settlement Checks. Participating Class Members and
5 Aggrieved Employees shall have 180 calendar days after mailing by the Settlement
6 Administrator to cash their settlement checks. If any Participating Class Member or Aggrieved
7 Employee's check is not cashed within that period, the check will be void and a stop-payment
8 will be issued, and the Settlement Administrator shall issue the unclaimed funds to the California
9 State Controller's Office in the name of the Class Member and/or Aggrieved Employee. The
10 release will be binding upon all Participating Class Members who do not cash their checks
11 within the 180-day period. In the event that any settlement check is returned to the Settlement
12 Administrator within 180 days of mailing, the Settlement Administrator will, within five (5)
13 business days of receipt of the returned settlement check, perform a skip trace to locate the
14 individual, and notify Defense Counsel and Class Counsel of the results. If a new address is
15 located by these means, the Administrator will have ten (10) business days to re-issue the check.
16 Neither Defendants, Defense Counsel, Class Counsel, Plaintiffs, nor the Settlement
17 Administrator will have any liability for lost or stolen settlement checks, forged signatures on
18 settlement checks, or unauthorized negotiation of settlement checks. Without limiting the
19 foregoing, in the event a Participating Class Member and/or Aggrieved Employee notifies the
20 Settlement Administrator that he or she believes that a settlement check has been lost or stolen,
21 the Settlement Administrator shall immediately stop payment on such check. If the check in
22 question has not been negotiated prior to the stop payment order, the Settlement Administrator
23 will issue a replacement check.

24 69. No person shall have any claim against Defendants (or their designees),
25 Defendants' Counsel, Plaintiffs, Class Counsel, or the Settlement Administrator based on
26 mailings, distributions, payments or reports made in accordance with or pursuant to this
27 Agreement. This provision does not, however, prevent a Party from seeking enforcement of this
28 Agreement.

1 **G. Duties of the Parties Prior to the Court's Approval**

2 70. Promptly after execution of this Settlement Agreement, Plaintiffs will move the
3 Court for Preliminary Approval of this Settlement and entry of the Preliminary Approval Order
4 accomplishing the following:

5 (a) Scheduling the Final Approval Hearing on the issue of whether this
6 Settlement should be finally approved as fair, reasonable and adequate as to the Class Members
7 and a hearing on fees, costs and the Service Payment;

8 (b) Approving as to form and content the proposed Notice;

9 (c) Directing the mailing of the Notice by first class mail to the Settlement
10 Class Members;

11 (d) Preliminarily approving this Settlement; and

12 (e) Preliminarily certifying the class for purposes of this Settlement.

13 **H. Duties of the Parties Following Court's Final Approval**

14 71. In connection with the Final Approval Hearing provided for in this Settlement
15 Agreement, Class Counsel shall submit a proposed Final Approval Order:

16 (a) Approving the Settlement, adjudging the terms thereof to be fair,
17 reasonable and adequate, and directing consummation of its terms and provisions;

18 (b) Approving Class Counsel's Award of Attorneys' Fees and Costs, the
19 Service Payment to the Class Representative, and the payment to the Settlement Administrator
20 for costs of administering the settlement; and

21 (c) Entering judgment approving settlement, thereby permanently barring all
22 Settlement Class Members from prosecuting any Released Claims against any of the Released
23 Parties.

24 72. Final Judgment. Class Counsel shall provide the Settlement Administrator with a
25 copy of the Final Judgment once it is entered by the Court, and the Settlement Administrator
26 shall mail a postcard setting forth the terms of the Final Judgment as requested by the Parties.

27 **I. Voiding the Agreement**

28 73. If the Settlement is voided or fails for any reason, Plaintiffs and Defendants will

1 have no further obligations under the Settlement, including any obligation by Defendants to pay
2 the Maximum Settlement Amount, or any amounts that otherwise would have been owed under
3 this Settlement.

4 74. If the Settlement is voided or fails for any reason, any costs incurred by the
5 Settlement Administrator shall be borne equally by Defendants and Plaintiffs, unless otherwise
6 specified in this Agreement.

7 **J. Other Terms**

8 75. Waiver. The waiver by one Party of any breach of this Agreement by another
9 Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

10 76. Parties' Authority. The signatories hereto represent that they are fully authorized
11 to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions
12 hereof.

13 77. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
14 accomplish the terms of this Settlement Agreement, including but not limited to, execution of
15 such documents and to take such other action as may reasonably be necessary to implement the
16 terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their
17 best efforts, including all efforts contemplated by this Settlement Agreement and any other
18 efforts that may become necessary by order of the Court, or otherwise, to effectuate this
19 Settlement Agreement and the terms set forth herein. As soon as practicable after execution of
20 this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of
21 Defendants and Defendants' Counsel, take all necessary steps to secure the Court's preliminary
22 and final approval of the settlement, and the final entry of judgment. Class Counsel shall provide
23 Defendants' Counsel with copies of the Preliminary Approval Motion and Final Approval
24 Motion for review at least three business days prior to the filing deadline.

25 78. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
26 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,
27 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
28 cause of action or rights released and discharged by this Settlement Agreement.

1 79. No Admission. Defendants deny any and all liability to Plaintiffs and/or any
2 Settlement Class Member in this Action, as to any and all causes of action that were asserted or
3 that might have been asserted in this Action. Nonetheless, Defendants wish to settle and
4 compromise the matters at issue in the Action to avoid further substantial expense and the
5 inconvenience and distraction of protracted and burdensome litigation. Defendants also have
6 taken into account the uncertainty and risks inherent in litigation, and without conceding any
7 infirmity in the defenses that they have asserted or could assert against Plaintiffs, have
8 determined that it is desirable and beneficial that Plaintiffs' claims be settled in the manner and
9 upon the terms and conditions set forth in this Agreement.

10 80. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
11 Order, nothing contained herein, nor the consummation of this Settlement Agreement, is to be
12 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part
13 of Defendants or any of the other Released Parties. Each of the Parties hereto has entered into
14 this Settlement Agreement with the intention of avoiding further disputes and litigation with the
15 attendant inconvenience and expenses. This Settlement Agreement is a settlement document,
16 and it, along with all related documents such as the notices, and motions for preliminary and
17 final approval, shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of
18 Evidence 408, be inadmissible in evidence in any proceeding, except an action or proceeding to
19 approve the settlement, and/or interpret or enforce this Settlement Agreement. The stipulation
20 for class certification as part of this Settlement Agreement is for settlement purposes only and if,
21 for any reason the settlement is not approved, the stipulation will be of no force or effect.

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

26 To the Settlement Class:

27 Brian Mankin
28 ***brian@LMLfirm.com***
 Lauby Mankin Lauby LLP

4590 Allstate Drive
Riverside, CA 92501
Tel: (951) 320-1444 | Fax: (951) 320-1445

To Defendants:

Brook T. Barnes (Bar No. 276667)
brook.barnes@procopio.com
Procopio Cory Hargreaves & Savitch LLP
525 B Street, Suite 2200
San Diego, CA 92101
Tel: (619) 238-1900 | Fax: (619) 235-0398

82. Construction. The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or her or its counsel participated in the drafting of this Settlement Agreement. Plaintiffs and Defendants expressly waive the common-law and statutory rule of construction that ambiguities should be construed against the drafter of an agreement and further agree, covenant, and represent that the language in all parts of this Agreement shall be in all cases construed as a whole, according to its fair meaning.

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

84. Modification. This Settlement Agreement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by all of the Parties hereto.

85. Dispute Resolution. Prior to instituting legal action to enforce the provisions of this Agreement or to declare rights and/or obligations under this Agreement, a Party shall provide written notice to the other Party and allow an opportunity to cure the alleged deficiencies, and Plaintiffs and Defendants agree to seek the help of the mediator to resolve any

1 dispute they are unable to resolve informally. During this period, the Parties shall bear their own
2 attorneys' fees and costs. This provision shall not apply to any legal action or other proceeding
3 instituted by any person or entity other than Plaintiffs or Defendants.

4 86. Choice of Law. This Settlement Agreement shall be governed by and construed,
5 enforced and administered in accordance with the laws of the State of California.

6 87. Integration Clause. This Settlement Agreement contains the entire agreement
7 between the Parties relating to the settlement and transaction contemplated hereby, and all prior
8 or contemporaneous agreements, understandings, representations, and statements, whether oral
9 or written and whether by a Party or such Party's legal counsel, are merged herein. No rights
10 hereunder may be waived except in writing.

11 88. Binding On Assigns. This Settlement Agreement shall be binding upon and inure
12 to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
13 successors and assigns.

14 89. Signatures of All Class Members Unnecessary to be Binding. It is agreed that,
15 because the members of the Settlement Class are numerous, it is impossible or impractical to
16 have each Class member execute this Settlement Agreement. The Notice will advise all
17 Settlement Class Members of the binding nature of the release provided herein and such shall
18 have the same force and effect as if this Settlement Agreement were executed by each Settlement
19 Class Member.

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

24 91. Counterparts. This Settlement Agreement may be executed in counterparts, and
25 when each Party has signed and delivered at least one such counterpart, each counterpart shall be
26 deemed an original, and, when taken together with other signed counterparts, shall constitute one
27 fully signed Settlement Agreement, which shall be binding upon and effective as to all Parties.
28 Electronic signatures shall have the same force and effect as an original.

1 Dated: 10/27/21

PLAINTIFF AND CLASS REPRESENTATIVE



Blair Woods (Oct 27, 2021 16:03 PDT)

Blair Woods

2
3
4 Dated: 10/27/21

PLAINTIFF AND CLASS REPRESENTATIVE



Kenneth Jackson (Oct 27, 2021 18:23 PDT)

Kenneth Jackson

5
6
7
8 Dated: 10/28/2021

CLASS COUNSEL

LAUBY, MANKIN & LAUBY LLP



Brian J. Mankin

Attorneys for Plaintiffs

9
10
11
12
13 Dated:

DEFENDANT JUST IN TIME CARGO INC.

14
15
16 By:

Title:

17 Dated:

DEFENDANT TACHE GABRIEL GEORGESCU

18
19
20 Tache Gabriel Georgescu

21
22 Dated:

DEFENDANTS' COUNSEL:
PROCOPIO CORY HARGREAVES & SAVITCH LLP

23
24
25 Brook T. Barnes, Esq.
26 Attorneys for Defendants
27
28

1 Dated: _____

PLAINTIFF AND CLASS REPRESENTATIVE

2
3
4 Blair Woods

5 Dated: _____

PLAINTIFF AND CLASS REPRESENTATIVE

6
7 Kenneth Jackson

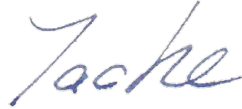
8 Dated: _____

CLASS COUNSEL
LAUBY, MANKIN & LAUBY LLP

9
10
11 Brian J. Mankin
12 Attorneys for Plaintiffs

13 Dated: October 28, 2021

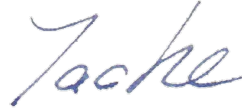
DEFENDANT JUST IN TIME CARGO INC.

14
15 

16 By: Tache Gabriel Georgescu
17 Title: President

18 Dated: October 28, 2021

DEFENDANT TACHE GABRIEL GEORGESCU

19
20 

Tache Gabriel Georgescu

21 Dated: October 28, 2021

DEFENDANTS' COUNSEL:
PROCOPIO CORY HARGREAVES & SAVITCH LLP

23
24 

25 Brook T. Barnes, Esq.
26 Attorneys for Defendants
27
28

Exhibit B

NOTICE OF SETTLEMENT OF CLASS ACTION

Blair Woods and Kenneth Jackson v. Just In Time Cargo Inc., et al.
Superior Court of the State of California, County of San Bernardino
Case No. CIVDS 2000750

To: all current and former truck drivers that performed services for Defendant Just In Time Cargo Inc. (“JITC”) in California and who were classified as independent contractors by Defendants JITC and Tache Gabriel Georgescu (“Defendants”) at any time between January 10, 2016, and [REDACTED], 2021 (the “Class”):

THIS NOTICE is of a proposed settlement of a class action lawsuit, and an announcement of a court hearing that you may choose to attend. Your rights may be affected by the legal proceedings in this action. The Court will conduct a hearing on [REDACTED], 2021 to address whether the proposed settlement should be approved (the “Final Approval Hearing”). You may be entitled to receive a payment under the terms of this class action settlement contained in the Settlement Agreement.

[IDENTIFYING INFORMATION]

You have been identified as a Class Member in the above lawsuit. Under the terms of the proposed settlement, you are estimated to receive approximately \$**INSERT AMOUNT** as your share of the Settlement should the Court grant the settlement in full. Please note that this is only an estimate. Your actual share may be more or less than this estimate. Your estimate is based on the number of calendar weeks during which you performed services for JITC between January 10, 2016, and [REDACTED], 2021 (the “Class Period”). Your options and eligibility requirements for receiving payments are described below.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	If you want to receive your settlement payment, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator if the Settlement receives final approval by the Court. You will be bound by the terms of the Settlement Agreement and will give up your right to sue on the Released Claims described in Section IV.
EXCLUDE YOURSELF	If you do not wish to participate in the settlement, you may “opt-out” of the settlement. If you choose to opt-out, you must submit a Request for Exclusion by [REDACTED], 2021 (see Section V for more details on how to opt-out). If you opt-out, you will no longer be a Class Member, and you will (1) <u>not</u> receive any settlement payment, but you will preserve your right to pursue the Released Claims described in Section IV subject to applicable statutes of limitations, and (2) be barred from filing an objection to the settlement.
OBJECT	If you decide to object to the settlement because you find it unfair or unreasonable, you must submit an objection stating why you object to the settlement by [REDACTED], 2021 (see Section V for more details on how to object).
DISPUTE YOUR NUMBER OF WORK WEEKS CREDITED	If you believe that the number of calendar weeks that you are credited with working during the Class Period is incorrect, you may submit a written dispute to the Settlement Administrator (see Section IV for more details on how to dispute your credited pay periods). JITC’s records will be presumed correct, but you may provide evidence to the Settlement Administrator showing that your Pay Period calculation is inaccurate.

I. Why should I read this Notice?

The Court has granted preliminary approval of a proposed settlement (the “Settlement”) in *Woods and Jackson v. Just In Time Cargo Inc.* San Bernardino County Superior Court Case No. CIVDS 2000750 (the “Lawsuit”). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

JITC’s records show that you were a truck driver that performed services for JITC in California and you were classified as an independent contractor (meaning you were paid on a 1099 basis) at some point between January 10, 2016, and [REDACTED],

2021 (“Class Period”). The Court ordered this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE SETTLEMENT: If you were a truck driver that performed services for JITC in California and you were classified as an independent contractor by Defendants during the Class Period, you are automatically included in the Settlement and do not need to take any further action to receive a payment.

The purpose of this Notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the proposed Settlement, and to discuss your rights and options in connection with the Lawsuit and the Settlement.

II. What is this lawsuit about?

On January 10, 2020, Plaintiff and Class Representative Blair Woods, through his attorneys (“Class Counsel”), filed a class action complaint against JITC for alleged wage and hour violations on behalf of all current and former truck drivers that performed services for JITC in California and that were classified as independent contractors since January 10, 2016. During litigation, Plaintiff and Class Representative Kenneth Jackson was also added to the Lawsuit. Plaintiffs Woods and Jackson allege that Defendants violated various Labor Code sections due to the misclassification of the Class as independent contractors rather than employees, as well as the failure to pay wages for all hours worked, provide all required meal and rest breaks, timely pay final wages, provide accurate and complete wage statements, and other related claims.

Defendants have denied, and continue to deny, the factual and legal allegations in the Lawsuit and believes that there are valid defenses to Plaintiffs’ claims. By agreeing to settle, Defendants are not admitting liability on any of the factual allegations or claims in the case or that the case can or should proceed as a class action. Defendants have agreed to settle the case as part of a compromise with Plaintiffs and the Class Members.

The Court has not ruled on the merits of Plaintiffs’ claims. And, by approving the Settlement and issuing this Notice, the Court is not suggesting which side would win or lose this case if it went to trial. However, to avoid additional expense, inconvenience, and risks of continued litigation, Defendants and Plaintiffs have concluded that it is in their respective best interests and the interests of the Settlement Class to settle the Lawsuit on the terms summarized in this Notice. After providing extensive information to Class Counsel, the Settlement was reached following an arm’s length mediation. In these negotiations, both sides recognized the substantial risk of the Court deciding against them at trial and determined that the Proposed Settlement was a good option to resolve the disputed claims.

The Class Representatives and Class Counsel support this Settlement. Among the reasons for their support are the defenses to liability potentially available to JITC, the risk of denial of class certification, the inherent risk of trial on the merits, and the delays and uncertainties associated with litigation.

If you are still working as a truck driver for JITC, this Settlement will not affect your status. California law strictly prohibits unlawful retaliation. Further, Defendants will not take any adverse action against or otherwise target, retaliate, or discriminate against any Class Member because of the Class Member’s participation or decision not to participate in this Settlement. If a Class Member does not participate, his/her share will be paid to those who do participate.

III. Who are the Class Members’ attorneys?

Attorneys for the Class Members:

Brian Mankin, Esq.
brian@LMLfirm.com
Peter Carlson, Esq.
peter@LMLfirm.com
Lauby Mankin Lauby LLP
4590 Allstate Drive
Riverside, CA 92501
Tel: (951) 320-1444

IV. What are the terms of the Settlement?

On [PA DATE], the Court certified a class, for settlement purposes only, of all current and former truck drivers that performed services for JITC in California and who were classified as independent contractors by Defendants at any time between January 10, 2016, and [REDACTED], 2021 (the “Settlement Class”). Individuals who do not opt out of the Settlement Class, pursuant to the procedures set forth in this Notice, will become “Participating Class Members” and will be mailed Settlement checks, and in exchange will be bound by the Settlement and release of certain wage and penalty claims against JITC.

Without admitting any wrongdoing, Defendants have agreed to pay \$450,000 (the “Gross Settlement Amount”) to fully resolve all claims in the Lawsuit. The Parties agreed to the following payments from the Gross Settlement Amount:

Settlement Administration Costs. The Court has approved Simpluris to act as the “Settlement Administrator,” who is sending this Notice to you and will perform many other duties relating to the Settlement. Under the Settlement, a maximum of \$10,000 will be paid from the Gross Settlement Amount to pay the Settlement Administration Costs.

Penalties to the California Labor Workforce and Development Agency. The Labor Code Private Attorneys General Act (“PAGA”) authorizes employees to file lawsuits to attempt to recover civil penalties on behalf of other Aggrieved Employees and the State of California for alleged Labor Code violations. Under the Settlement, \$20,000 of the Gross Settlement Amount will be allocated to Plaintiff’s claim under PAGA. Of this amount, \$15,000 will be paid to the LWDA in satisfaction of the claims for penalties under PAGA, and the remaining \$5,000 will be divided between all Aggrieved Employees based on the number of weeks worked. Aggrieved Employees includes “all current and former truck drivers who performed services for JITC in the State of California and who were classified by Defendants as independent contractors from January 10, 2019, through [REDACTED], 2021.” Review the information below to determine if you are an Aggrieved Employee and eligible to receive a share of the \$5,000 allocation:

Aggrieved Employee?	Weeks Worked as Aggrieved Employee?	Your Share of PAGA Penalties
YES/NO	INSERT	\$INSERT

Service Payment to Class Representative. Class Counsel will ask the Court to award Service Payments in the amount of \$10,000 to Plaintiff Blair Woods and \$10,000 to Plaintiff Kenneth Jackson to compensate them for service and extra work provided on behalf of the Class Members and in exchange for a general release of claims. The Class Representatives also may receive a share of the Settlement as a Class Member.

Attorneys’ Fees and Costs. Class Counsel have been prosecuting the Lawsuit on behalf of the Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys’ fees, which will be paid from the Gross Settlement Amount. Class Members are not personally responsible for any of Class Counsel’s attorneys’ fees or costs. Class Counsel will ask for fees of one-third (\$150,000) of the common fund Gross Settlement Amount as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through finalization of the Settlement. Class Counsel also will ask for reimbursement of up to \$20,000 for the costs Class Counsel incurred in connection with the Lawsuit.

Calculation of Individual Settlement Payments to Class Members. After deducting the amounts above from the Gross Settlement Amount, the balance will form the Net Settlement Amount for distribution to Participating Class Members (who are Class Members who do not opt-out). The Net Settlement Amount will total approximately \$[REDACTED]. Individual Settlement Payments to Class Members will be calculated and apportioned from the Net Settlement Amount based on the number of Weeks Worked by each Settlement Class Member during the Class Period. A Class Member is credited with one Week Worked for each calendar week during which the Settlement Class Member performed work for JITC during the Class Period. Specific Calculations of Individual Settlement Payments will be made as follows: the Settlement Administrator will divide the total Weeks Worked by all Settlement Class Members into the Net Settlement Amount to determine a per “Work Week Value.” The Work Week Value will be multiplied by the number of Weeks Worked by each Settlement Class Member during the Class Period to determine the Individual Settlement Payment for each Settlement Class Member. If any Settlement Class Member opts-out of the Settlement, his/her Individual Settlement Payment will be distributed to all Participating Class Members (i.e., those who do not opt-out).

For each Settlement Class Member, the Weeks Worked for JITC during the Class Period will be calculated from JITC’s records. JITC’s records indicate that you worked for [TOTAL] Work Weeks in California during the Class Period of January 10, 2016, through [REDACTED], 2021. If you disagree with this number, you may submit evidence to the Settlement

Administrator on or before [REDACTED], 2021, with documentation to establish the number of eligible Weeks Worked you claim to have worked for JITC between January 10, 2016, and [REDACTED], 2021. **DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED; DO NOT SEND ORIGINALS.** The Settlement Administrator will render a final decision.

Payments to Class Members and Aggrieved Employees. After the Court grants Final Approval of the Settlement and Judgment is entered, settlement checks will be mailed to all Participating Class Members who did not timely request to be excluded. Aggrieved Employees will receive checks regardless of a timely request to be excluded. Participating Class Members and/or Aggrieved Employees will have 180 days from the issuance of the last check to cash all of the checks. In the event that any Participating Class Member and/or Aggrieved Employee fails to timely cash a settlement check, a stop payment will be placed on the check and the funds will be paid to the California State Controller's Office in the name of the Participating Class Member, so that the Participating Class Member can attempt to collect the funds at a later date.

Allocation and Taxes. Because the Class Members performed contract services for JITC as independent contractors, rather than as employees, and because Defendants fully dispute the allegations alleged herein, the Individual Settlement Payments will be allocated and paid to the Participating Class Members as contract compensation, interest, and penalties from which no state or federal taxes will be withheld or deducted. Participating Class Members will be issued an IRS Form 1099 and will assume full responsibility and liability for the payment of taxes due, if any. The Settlement Administrator, Defendants and their counsel, and Class Counsel cannot provide tax advice and make no representations as to the tax treatment or legal effect of the Individual Settlement Payments. Participating Class Members and Aggrieved Employees will be solely responsible for the payment of any taxes and penalties assessed on their Individual Settlement Payments. Accordingly, Participating Class Members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. Once the Court approves the proposed Settlement and enters Judgment, and Defendants fund the Settlement, then the Settlement Agreement will bind all Class Members who have not opted out of the Settlement and will bar them from bringing certain claims against Defendants. Specifically, the Participating Class Members will fully release and discharge Defendant Just In Time Cargo, along with its officers, directors, members, managers, employees, agents and representatives, and Defendant Tache Gabriel Georgescu of any and all claims stated in the operative Complaint and those that could have been made based solely upon the facts alleged, including: (1) willful misclassification, (2) failure to pay minimum wages, (3) failure to pay for rest and recovery periods and other nonproductive time under Labor Code § 226.2, (4) failure to provide rest breaks, (5) failure to provide meal periods, (6) failure to reimburse business expenses, (7) failure to timely pay wages each period and upon separation of employment, (8) failure to provide accurate itemized wage statements, (9) unfair and unlawful competition, and (10) all other civil and statutory penalties, including those recoverable under the Private Attorneys General Act, Labor Code § 2698 *et seq.* based on the facts or claims alleged in the Complaint. These released claims and damages are hereinafter referred to as "Released Claims." The time period governing these Released Claims shall be at any time from January 10, 2016, through [REDACTED], 2021 ("Release Period"). Aggrieved Employees will release all PAGA claims made in the Action or that could have been made based on the facts asserted in the Action regardless of a timely request for exclusion.

Waiver of Labor Code Section 206.5(e). Participating Class Members will be deemed to have acknowledged and agreed that their claims for wages and/or penalties in the Lawsuit are disputed, and that the Individual Settlement Payments constitute payment of all sums allegedly due to them. Participating Class Members will be deemed to have acknowledged and agreed that California Labor Code Section 206.5 is not applicable to the Individual Settlement Payments. That section provides in pertinent part as follows:

"No employer shall require the execution of any release of any claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of such wages has been made."

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class, and the entry of Judgment.

V. What options do I have?

- A. **Do Nothing and Participate in the Settlement.** Under the Settlement, you will automatically receive an Individual Settlement Payment unless you exclude yourself from the settlement by following the opt-out procedure set forth below. If you disagree with the number of Weeks Worked, as described in this Notice, you may dispute the allocation of the Settlement without excluding yourself or objecting, as described above. It is the responsibility of all Class

Members to ensure that the Settlement Administrator has your current address on file, or you may not receive important information or an Individual Settlement Payment.

If you are a current driver for JITC, your decision as to whether or not to participate in this Settlement will not be considered by JITC, who will not take any adverse action against you based on your participation in the Settlement.

- B. **Exclude Yourself from the Settlement.** If you **do not** wish to take part in the Settlement, you may exclude yourself by sending to the Settlement Administrator a “Request for Exclusion from the Class Action Settlement” letter/card postmarked no later than [REDACTED], 2021 with your full name, address, telephone number, last four digits of your social security number or your date of birth, and signature. The Request for Exclusion should state:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE JUST IN TIME CARGO LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT.”

Send the Request for Exclusion directly to the Settlement Administrator, [ADDRESS], postmarked no later than [REDACTED], 2021. Any person who files a timely Request for Exclusion from the Class Action Settlement, upon receipt: (1) will not have any rights under this Settlement, including the right to object, appeal or comment on the Settlement; (2) will not be entitled to receive any money under this Settlement; and (3) will not be bound by this Settlement, or the Judgment.

- C. **Object to Settlement.** You also have the right to object to the terms of the Settlement if you believe they are unfair or unreasonable. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object, you must submit a written objection stating your full name, address, telephone number, dates that you performed work for JITC, the case name and number, the name and address of your attorney(s) if you are represented, and each specific reason in support of your objection. You must also include any documentation or evidence in support of the objection, if any. Objections must be in writing and mailed to the Settlement Administrator, [ADDRESS], by no later than [REDACTED], 2021. Objections that do not include all required information, or that are not submitted timely, may not be considered by the Court. **You need not object to the Settlement if you only dispute the number of Weeks Worked.**

If you choose to object to the Settlement, you may also appear at the Final Approval Hearing scheduled for [REDACTED], 2021, at _____ a.m. in Department S26 of the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415. You have the right to appear either in person or through your own attorney at this hearing. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before [REDACTED], 2021. All objections or other correspondence must state the name and number of the case. If you wish to appear at the Final Approval hearing, please contact Class Counsel or the Settlement Administrator in advance of the scheduled hearing to ensure that the hearing has not been continued by the Court.

If you object to the Settlement, you will remain a Class Member, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Participating Class Members who do not object. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment before entry of judgment.

VI. What is the effect of the settlement?

Released Rights and Claims. The Settlement is intended to settle all claims against the Released Parties that were asserted or could have been asserted in the Lawsuit regarding the alleged violations of wage and hour laws. If you performed services as a truck driver for JITC in the State of California and were classified by Defendants as an independent contractor at any time during the Class Period and do not elect to exclude yourself from the Settlement Class, you will be deemed to have entered into this Release and to have released the above-described Released Claims. If the Settlement is not approved by the Court or does not become final for some other reason, the Lawsuit may continue, and the releases will not take effect.

VII. What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement, and Class Counsel's request for attorneys' fees and reimbursement of documented litigation costs and the Service Payment to the Class Representative on [REDACTED], 2021 at _____ a.m. in Department S26 of the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415.

You are not required to attend the Final Approval Hearing, although any Class Member is welcome to attend.

VIII. How can I get additional information?

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court's files and the Class Action Settlement Agreement at Office of the Clerk, San Bernardino County Superior Court, 247 West Third Street, San Bernardino, CA 92415, during regular court hours. You may also contact Class Counsel or the Settlement Administrator using the contact information listed above for more information including to receive a copy of the settlement agreement.

IX. Reminder as to time limits.

Class Members do not have to take any further action to participate in the Settlement. The deadline for submitting a Request for Exclusion is [REDACTED], 2021. The deadline for mailing an objection to the Settlement Administrator is [REDACTED], 2021. These deadlines will be strictly enforced.

**PLEASE DO NOT CALL OR WRITE THE COURT
FOR INFORMATION ABOUT THIS SETTLEMENT**

Exhibit C



January 3, 2020

Sent Via Online Filing to the LWDA

California LWDA
Attn: PAGA Administrator
455 Golden Gate Ave., 9th Fl.
San Francisco, CA 94102

Sent Via U.S. Mail and Certified Mail

Just in Time Cargo, Inc.
3525 Hyland Ave., Suite 100
Costa Mesa, CA 92626

Just in Time Cargo, Inc.
PO Box 60085
Irvine, CA 92602

Tache Gabriel Georgescu
27884 Via Magdalena
Laguna Niguel, CA 92677

Re: Wage/Hour/Penalty Claim of Blair Woods v. Just in Time Cargo, Inc. and Tache Gabriel Georgescu

Dear Labor and Workforce Development Agency, Just in Time Cargo, Inc., and Mr. Tache Gabriel Georgescu:

Pursuant to the Labor Code Private Attorneys General Act of 2004 ("PAGA"), Labor Code §§ 2699, *et seq.*, Labor Code §§ 201, 202, 203, 204, 208, 210, 218.6, 226, 226.2, 226.3, 226.7, 226.8, 256, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, among possibly other sections inadvertently omitted, and/or sections of the applicable Industrial Welfare Commission Wage Order(s), this letter shall serve as the wage/hour and penalties claim of aggrieved employee Blair Woods ("Claimant"), on behalf of the State of California and all Aggrieved Employees, against his former employer(s), Just in Time Cargo, Inc., and/or Mr. Tache Gabriel Georgescu and/or any affiliated entities (collectively the "Company").

FACTUAL BACKGROUND

Claimant was employed by the Company from approximately October through December 2019 as a truck driver. However, at all relevant times, the Company engaged in a practice of willfully misclassifying Claimant as an independent contractor. Claimant alleges that he and all other truck drivers employed by the Company (the "Aggrieved Employees") were subjected to the same policies, working conditions, and corresponding wage and hour violations to Claimant was subjected during his employment.

Notably, at all relevant times, the Company engaged in a practice of willfully misclassifying the Aggrieved Employees as independent contractors when they are/were employees of the Company because they (A) are/were subject to the control and direction of the Company in connection with the performance of their work, both under contract and in fact, (B) performed work that was the core

business of the company (e.g., cargo pickup and delivery, etc.), and therefore the tasks were not outside the usual course of the Company's business, and (C) were not customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed by the Company.

Also, at all relevant times, Claimant and the Aggrieved Employees were subject to the direction and control of the Company in regard to work assignments, scheduling requirements, and days of work. Furthermore, the Company directly and indirectly exercised control over the wages, hours, and working conditions of Claimant and the Aggrieved Employees. At all relevant times, the daily schedule for Claimant and the Aggrieved Employees was controlled solely by the Company, and the Company told them the exact time and location for all of his daily appointments. Furthermore, through the performance of their job duties, Claimant and the Aggrieved Employees performed an integral and entirely essential aspect of the Company's business. In fact, Claimant and the Aggrieved Employees were tasked to perform the one and only service that the Company provided: cargo pickup and delivery. In this role, Claimant and the Aggrieved Employees drove trucks owned by the Company that were plastered with the Company's logo and information and operated under the Company's Department of Transportation authority (while using the Company's insurance). Additionally, the customers are and/or were the Company's customers, not those of Claimant or the Aggrieved Employees. Claimant and the Aggrieved Employees were also prohibited from performing similar services for other companies and, thus, were not engaged in an independently established trade, occupation or business of the same nature as the work performed by the Company. And, perhaps most importantly, the Company retained the right to terminate Claimant and the Aggrieved Employees' working relationship without cause and at its discretion. Despite these facts, the Company misclassified Claimant and the Aggrieved Employees as independent contractors.

In addition to the misclassification claims, Claimant and the Aggrieved Employees were subjected to a multitude of Labor Code violations. For instance, during employment, Claimant and the Aggrieved Employees were only paid on a piece-rate (per-mile) basis and, as such, did not receive separate hourly compensation at no less than the minimum wage for unpaid, on-duty, time including tasks such as pre-trip and post-trip inspections, detention time, loading and unloading time, completing paperwork, refueling or repair, and downtime between runs.

Furthermore, at all relevant times, Claimant and the Aggrieved Employees were denied paid rest breaks by virtue of the Company's policy that only paid its truck drivers for miles driven. As Claimant and the Aggrieved Employees could not accrue miles during a rest break, Claimant and the Aggrieved Employees were illegally denied paid rest breaks. Claimant and the Aggrieved Employees were also not provided mandated 30-minute off-duty meal periods. Claimant and the Aggrieved Employees were not paid the mandatory one-hour wage premium for each such meal period or rest break denied. Also, the Company failed to pay Claimant and the Aggrieved Employees for rest and recovery periods and other nonproductive time as required by Labor Code § 226.2.

Also, the Company required Claimant and the Aggrieved Employees to incur necessary business-related expenses and costs without reimbursement, including, but not limited to, acquiring and maintaining a smart phone and related monthly data plan to communicate with the Company via phone and text message. The Company also failed to reimburse Claimant and the Aggrieved Employees for expenses and/or unlawfully deducted amounts from the wages of Claimant and the Aggrieved Employees for taxes, fuel, lease fees, insurance, fees, and so forth.

The Company also failed to comply with the mandates of Labor Code § 204 regarding the timing of the payment of wages to its employees each period, including meal and rest period premiums, and failed to comply with the mandates of Labor Code §§ 201 – 203 regarding payment of final wages upon separation of employment. Moreover, at all relevant times, the Company provided inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a).

Claimant alleges that he worked under the joint direction and control of Just in Time Cargo, Inc., and Mr. Tache Gabriel Georgescu and is informed and believes that each of them acted in all respects pertinent to this action as the agent of the others, carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of each are legally attributable to the others. On information and belief, a unity of interest and ownership between each exists such that Just in Time Cargo, Inc., and Mr. Tache Gabriel Georgescu acted as a single employer of Claimant and the Aggrieved Employees. Furthermore, on information and belief, Just in Time Cargo, Inc., and Mr. Tache Gabriel Georgescu are an integrated enterprise and should be treated as a single employer because Just in Time Cargo, Inc., and Mr. Tache Gabriel Georgescu share an interrelation of operations, with common human resources and personnel policies and shared common offices and facilities. Upon information and belief, Just in Time Cargo, Inc., and Mr. Tache Gabriel Georgescu share common management, a centralized control of labor operations, and common ownership or financial control.

Furthermore, Claimant alleges that Mr. Tache Gabriel Georgescu is now and at all material times herein mentioned was the owner of Just in Time Cargo, Inc., and Claimant's and the Aggrieved Employees' actual employer or, in the alternative, was an individual employed by the Company as a managerial and/or supervisory employee and/or agent. In addition, Claimant alleges that at all relevant times herein Mr. Tache Gabriel Georgescu had the authority, in the interest of the Just in Time Cargo, Inc., to exercise independent judgment to hire, transfer, promote, discharge, assign, discipline, or take other similar actions against Claimant and the Aggrieved Employees, and were in Claimant's chain of command at the time of and direct participants in the wrongful conduct which constitutes the basis of Claimant's complaint herein. Claimant also alleges that Just in Time Cargo, Inc., and Mr. Tache Gabriel Georgescu, are the agents, servants, employees, partners, affiliates, and/or representatives of each other, and were, at all times herein mentioned, acting within the course, scope, and purpose of such relationship(s) and with the knowledge, consent and/or ratification of each other. Furthermore, in conducting themselves in the manner described herein, Just in Time Cargo, Inc., and Mr. Tache Gabriel Georgescu, were acting in active concert with on another such that the acts of each were fully attributable to the other in all material respects.

Claimant also alleges that Just in Time Cargo, Inc., was merely the alter ego of Mr. Tache Gabriel Georgescu in that there existed a unity of interest and ownership such that any separateness between them ceased to exist and Mr. Tache Gabriel Georgescu exercised undue dominance, control, influence, and management over Just in Time Cargo, Inc., Inc. Claimant further alleges that, at all relevant times Just in Time Cargo, Inc., has been inadequately capitalized to conduct its business, has failed to follow appropriate corporate formalities, and has simply been a shell and instrumentality through which Mr. Tache Gabriel Georgescu has conducted his personal affairs. Accordingly, the corporate veil should be pierced, and any liability attached to Just in Time Cargo, Inc., should be imposed jointly and severally against Mr. Tache Gabriel Georgescu. Adherence to the fiction of the separate existence of the corporate entity of Just in Time Cargo, Inc., would permit abuse of the corporate privilege, thereby sanctioning fraud and promoting injustice.

Also, in a separate, but not necessarily mutually exclusive, alternative theory of liability, Mr. Tache Gabriel Georgescu is liable for PAGA civil penalties under Labor Code § 558 as “other person(s)” who caused the violations regarding minimum wage among other claims. *See Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820 (“if there is evidence and a finding that a party other than the employer ‘violates, or causes to be violated’ the overtime laws (§ 558(a)) or ‘pays or causes to be paid to any employee’ less than minimum wage (§ 1197.1(a)), then that party is liable for certain civil penalties regardless of the identity or business structure of the employer”); *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S.Dist.LEXIS 40851 (holding the same)

Based on Claimant’s own personal observations, all Aggrieved Employees employed or formerly employed by the Company are entitled to similar wage and hour claims, as further set forth below.

PAGA ASSESSMENT FOR WILLFUL MISCLASSIFICATION
(Labor Code § 226.8)

Labor Code § 226.8(a) states “It is unlawful for any person or employer to engage in any of the following activities: (1) Willful misclassification of an individual as an independent contractor” and/or “(2) Charging an individual who has been willfully misclassified as an independent contractor a fee, or making any deductions from compensation, for any purpose, including for goods, materials, space rental, services, government licenses, repairs, equipment maintenance, or fines arising from the individual’s employment where any of the acts described in this paragraph would have violated the law if the individual had not been misclassified.” Labor Code § 226.8(b) states that if “a person or employer has engaged in any of the enumerated violations of subdivision (a), the person or employer shall be subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law.” Labor Code § 226.8(c) further states that if “a person or employer has engaged in any of the enumerated violations of subdivision (a) and the person or employer has engaged in or is engaging in a pattern or practice of these violations, the person or employer shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law.

In this matter, the Company willfully and knowingly misclassified Claimant and all Aggrieved Employees as independent contractors. Therefore, in addition to recovering the amount of attorneys’ fees and cost incurred herein, Claimant is entitled to the assessment of civil penalties in accordance with Labor Code § 226.8.

PAGA ASSESSMENT FOR FAILURE TO PAY WAGES

(Labor Code §§ 204, 221-223, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198; IWC Wage Order §§ 3, 4(B))

During their employment, Claimant and the Aggrieved Employees were paid on a piece-rate basis and did not receive separate hourly compensation at no less than the minimum wage for unpaid, on-duty, time including tasks such as mandatory paid rest breaks, pre-trip and post-trip inspections, detention time, loading and unloading time, completing paperwork, refueling or repair, and downtime between runs. Additionally, the piece-rate compensation paid to Claimant and the Aggrieved Employees often resulted in a payment of wages at less than the required California minimum wages for all hours worked. Therefore, this resulted in earned, but unpaid, minimum and

regular wages due and owing to Claimant and the Aggrieved Employees. Accordingly, Labor Code §§ 210, 558, 1194.2, 1197.1, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay all wages including, but not limited to, minimum and regular wages in violation of the Labor Code and/or the IWC Wage Orders.

**PAGA ASSESSMENT FOR FAILURE TO PROVIDE SEPARATE PAYMENT FOR REST
AND RECOVERY PERIODS AND OTHER NONPRODUCTIVE TIME**

(Labor Code § 226.2)

Labor Code § 226.2 requires employers that pay their employees on a piece-rate basis to provide separate payment for rest and recovery periods and other nonproductive time. Claimant and the Aggrieved Employees are and/or were employees of the Company who were paid on a piece-rate/flat-rate basis, yet the Company did not comply with the requirements of Labor Code § 226.2 for its piece-rate employees. As a result of these violations, penalties may be assessed pursuant to Labor Code § 2699, among possibly other sections.

**PAGA ASSESSMENT FOR
DENIAL OF MEAL PERIODS, REST BREAKS, AND WAGE PREMIUMS**

(Labor Code §§ 226.7(b) & (c), 512, 558; Cal. Admin. Code, Title 8, § 11090)

Labor Code § 226.7(b) states that “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ...” Labor Code § 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than 5 hours per day without providing the employee with an uninterrupted meal period of not less than 30 minutes [...] [a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.”

Section 12 of applicable IWC Wage Order states in pertinent part: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

Here, Claimant and the Aggrieved Employees were not provided with paid rest periods by virtue of the Company’s policy that only paid on a piece-rate basis. As the Aggrieved Employees could not generate compensation during rest breaks, Claimant and the Aggrieved Employees were denied paid rest breaks. Furthermore, Claimant and the Aggrieved Employees were regularly not provided compliant meal periods and paid rest breaks because the Company did not have any policy which provided compliant meal periods and paid rest breaks to the Aggrieved Employees. Although the Company was required to pay Claimant and all Aggrieved Employees premium wages equal to an additional hour of pay at the employee’s regular rate of pay for each violation under Labor Code § 226.7(c), the Company did not pay the mandatory one-hour wage premiums. Labor Code § 558 imposes a penalty for each violation, plus an amount sufficient to recover the underpaid wages. Additionally, the civil assessment set forth in Labor Code § 2699 applies to these violations.

PAGA ASSESSMENT FOR UNLAWFUL DEDUCTION OF WAGES

(Labor Code §§ 200, 221, 223)

California Labor Code § 200 defines wages to include “all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.” California Labor Code § 221 states that “[i]t shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” Labor Code § 221 reflects “California’s strong public policy favoring the protection of employees’ wages.” *Sciborski v. Pacific Bell Directory* (2012) 205 Cal.App.4th 1152, 1166, quoting *Harris v. Investor’s Business Daily, Inc.* (2006) 138 Cal.App.4th 28, 40–41. Furthermore, Labor Code § 219 states that the protections of Labor Code § 221 cannot “be contravened or set aside by a private agreement.” Therefore, the rights under Labor Code § 221 are nonnegotiable and cannot be waived by the parties. See *Sciborski, supra* at 1166. Also, under Labor Code §§ 219 and 221, an employer may not “require its employees to consent to unlawful deductions from their wages.” *Hudgins v. Neiman Marcus Group, Inc.* (1995) 34 Cal.App.4th 1109, 1124.

Here, the Company had a policy of unlawfully deducting amounts from the wages of the Aggrieved Employees, including Claimant. Accordingly, Labor Code §§ 210, 225.5, 558, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it engaged in the unlawful deduction of wages.

PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES

(Labor Code § 2802; IWC Wage Order § 9(b))

Labor Code § 2802(a) states “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.” IWC Wage Order § 9(b) states “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer.”

Here, the Company required Claimant and the Aggrieved Employees to incur expenses in direct consequence of the discharge of their duties. For example, the Company required Claimant and the Aggrieved Employees to acquire and maintain a smart phone and related monthly data plan to communicate with the Company via phone and text message. Furthermore, the Company required Claimant and the Aggrieved Employees to incur substantial expenses to perform their duties for the Company, without reimbursement. Accordingly, Labor Code § 2699 imposes a penalty upon the Company for each such violation of Labor Code § 2802. Furthermore, Labor Code § 2802(b) states that “[a]ll awards made by a Court for reimbursement of necessary expenditures” shall carry interest, at the same rate as judgments in civil actions, and said interest will accrue from the date on which the employee incurred the necessary expenditure or loss including, but not limited to, reasonable costs and attorney’s fees incurred by the employee enforcing her rights granted pursuant to Labor Code § 2802.

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**PAGA ASSESSMENT FOR FAILURE TO PAY ALL WAGES DUE AND OWING
EACH PAYROLL PERIOD WITHIN THE TIME REQUIRED BY LAW**

(Labor Code §§ 204, 204.1, 208, 256 and 2699)

Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month. Labor Code § 204(d) states “[t]he requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

Here, the Company failed to timely pay all wages due and owing each period, including, but not limited to, all wages and wage premiums. As a result, penalties may be assessed pursuant to Labor Code §§ 203, 210, 256, and/or 2699.

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201, 202, 203, 256 and 2699)

Labor Code § 201(a) provides in pertinent part: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202(a) states in pertinent part “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours’ previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Labor Code § 203(a) states “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

As discussed above, the Company did not pay the Aggrieved Employees all wages that were due and owing within the required time following the end of their employment due to the violations discussed above. Furthermore, Claimant did not receive his final pay within the time required by Labor Code §§ 201 – 202. As a result, all such Aggrieved Employees are entitled to the “waiting time penalty.” (Labor Code §§ 203, 256.) Labor Code § 2699 also imposes a penalty.

**PAGA ASSESSMENT FOR
FAILURE TO PROVIDE ACCURATE, ITEMIZED WAGE STATEMENTS**

(Labor Code §§ 226, 226.3, and 1174)

Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, total hours worked, the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, all deductions, net wages earned, the inclusive dates of the pay period, the employee’s name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Furthermore, Labor Code § 226.2(a) states “[f]or employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period: [...] (2) the itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items specified in that subdivision, separately state the following, to which the provisions of Section 226 shall also be applicable: (A) the total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period [and] (B) [...] the total hours of other nonproductive time, [...] the rate of compensation, and the gross wages paid for that time during the pay period.”

Here, the Company failed to provide accurate itemized wage statements due to violations including: failure to accurately state total hours worked on the Aggrieved Employees’ wage statements; failure to accurately state the number of piece-rate units earned by the Aggrieved Employees and any applicable piece-rate; failure to accurately state gross wages earned; failure to accurately state all deductions; failure to accurately state net wages earned; failure to state all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee; failure to state the total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period; and failure to state the total hours of other nonproductive time, [...] the rate of compensation, and the gross wages paid for that time during the pay period. Accordingly, Claimant and the Aggrieved Employees are entitled to damages under Labor Code § 226(e), including reasonable attorneys’ fees. Labor Code §§ 226.3 and 2699 also impose a civil penalty and/or assessment for these violations.

PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199

(Labor Code § 1199)

An employer violates Labor Code § 1199 if said employer: (a) requires or causes an employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission; (b) pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission; or, (c) violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission. Labor Code § 2699.5 specifically enumerates Labor Code § 1199 as a section to which the civil penalties under the PAGA apply. Therefore, as a result of the Company’s violations described herein, the Company is subject to the civil penalties in accordance with Labor Code § 2699.

ATTORNEYS’ FEES, INTEREST, AND PENALTIES

(Labor Code §§ 2699(f)(2), 2699(g)(1), 2699.5)

Labor Code § 2699(g)(1), give employees the right to recover in a civil action the unpaid balance of the full amount of wages, including interest thereon, penalties and other damages, as applicable, reasonable attorneys’ fees, and costs of suit. Additionally, Claimant seeks the assessment of penalties, including civil penalties, under Labor Code §§ 203, 210, 225.5, 226.3, 1174.5, 1197.1, 2699, among possibly other provisions inadvertently omitted herein. Furthermore, Claimant is entitled to bring a wage/hour claim on behalf of all current and former similarly situated employees of the Company. Thus, the Company is exposed to these same penalties for violations involving all Aggrieved Employees.

California Labor and Workforce Development Agency
Just in Time Cargo, Inc. / Mr. Tache Gabriel Georgescu
Re: Blair Woods v. Just in Time Cargo, Inc., et al.
January 3, 2020
Page 9

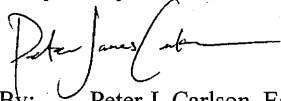
Additionally, Claimant seeks attorney's fees pursuant to *C.C.P.* § 1021.5. Please construe this correspondence as Claimants' notification of alleged wrongdoing and attempted resolution in accordance with *C.C.P.* § 1021.5 and *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553.

CONCLUSION

Based on the foregoing, the Company may be liable for penalties, including unpaid wages under Labor Code § 558, related to the foregoing claims and remedies. If Claimant becomes aware of any additional claims for Labor Code violations related to his employment and/or other employees of the Company, she reserves the right to add new claims by amending this claim letter.

Should you have any questions, please feel free to give me a call. In the meantime, I look forward to your response.

Very Truly Yours,

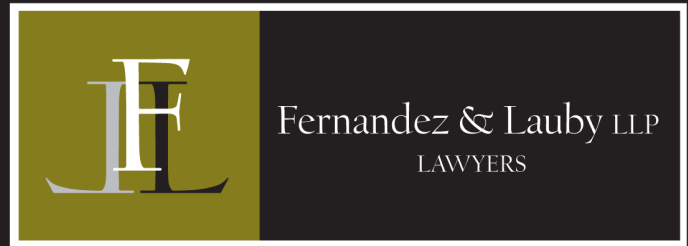


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July 20, 2020

Sent Via Online Filing to the LWDA

California LWDA
Attn: PAGA Administrator
455 Golden Gate Ave., 9th Fl.
San Francisco, CA 94102

Sent Via U.S. Mail and Certified Mail

Just in Time Cargo, Inc.
3525 Hyland Ave., Suite 100
Costa Mesa, CA 92626

Just in Time Cargo, Inc.
PO Box 60085
Irvine, CA 92602

Tache Gabriel Georgescu
27884 Via Magdalenda
Laguna Niguel, CA 92677

Re: Wage/Hour/Penalty Claim of Blair Woods and Kenneth Jackson v. Just in Time Cargo, Inc. and Tache Gabriel Georgescu
LWDA Case No. LWDA-CM-764503-20

Dear Labor and Workforce Development Agency, Just in Time Cargo, Inc., and Mr. Tache Gabriel Georgescu:

Pursuant to the Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, Labor Code §§ 201, 202, 203, 204, 208, 210, 218.6, 226, 226.2, 226.3, 226.7, 226.8, 256, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, among possibly other sections inadvertently omitted, and/or sections of the applicable Industrial Welfare Commission Wage Order(s), this letter shall serve as the Supplemental/Amended notice of the wage/hour and penalties claim of aggrieved employees Blair Woods and Kenneth Jackson (“Claimants”), on behalf of the State of California and all Aggrieved Employees, against his former employer(s), Just in Time Cargo, Inc., and/or Mr. Tache Gabriel Georgescu and/or any affiliated entities (collectively the “Company”).

FACTUAL BACKGROUND

Claimant Woods was employed by the Company from approximately October through December 2019 as a truck driver. Claimant Jackson was employed by the Company from approximately May through June 2020 as a truck driver. However, at all relevant times, the Company engaged in a practice of willfully misclassifying Claimants as independent contractors. Claimants allege that they and all other truck drivers employed by the Company (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and corresponding wage and hour violations to which Claimants were subjected during employment.

Notably, at all relevant times, the Company engaged in a practice of willfully misclassifying the Aggrieved Employees as independent contractors when they are/were employees of the Company

because they (A) are/were subject to the control and direction of the Company in connection with the performance of their work, both under contract and in fact, (B) performed work that was the core business of the company (e.g., cargo pickup and delivery, etc.), and therefore the tasks were not outside the usual course of the Company's business, and (C) were not customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed by the Company.

Also, at all relevant times, Claimants and the Aggrieved Employees were subject to the direction and control of the Company in regard to work assignments, scheduling requirements, and days of work. Furthermore, the Company directly and indirectly exercised control over the wages, hours, and working conditions of Claimant and the Aggrieved Employees. At all relevant times, the daily schedule for Claimants and the Aggrieved Employees was controlled solely by the Company, and the Company told them the exact time and location for all of his daily appointments. Furthermore, through the performance of their job duties, Claimants and the Aggrieved Employees performed an integral and entirely essential aspect of the Company's business. In fact, Claimants and the Aggrieved Employees were tasked to perform the one and only service that the Company provided: cargo pickup and delivery. In this role, Claimants and the Aggrieved Employees drove trucks owned by the Company that were plastered with the Company's logo and information and operated under the Company's Department of Transportation authority (while using the Company's insurance). Additionally, the customers are and/or were the Company's customers, not those of Claimants or the Aggrieved Employees. Claimants and the Aggrieved Employees were also prohibited from performing similar services for other companies and, thus, were not engaged in an independently established trade, occupation or business of the same nature as the work performed by the Company. And, perhaps most importantly, the Company retained the right to terminate Claimants and the Aggrieved Employees' working relationship without cause and at its discretion. Despite these facts, the Company misclassified Claimants and the Aggrieved Employees as independent contractors.

In addition to the misclassification claims, Claimants and the Aggrieved Employees were subjected to a multitude of Labor Code violations. For instance, during employment, Claimants and the Aggrieved Employees were only paid on a piece-rate (per-mile) basis and, as such, did not receive separate hourly compensation at no less than the minimum wage for unpaid, on-duty, time including tasks such as pre-trip and post-trip inspections, detention time, loading and unloading time, completing paperwork, refueling or repair, and downtime between runs.

Furthermore, at all relevant times, Claimants and the Aggrieved Employees were denied paid rest breaks by virtue of the Company's policy that only paid its truck drivers for miles driven. As Claimants and the Aggrieved Employees could not accrue miles during a rest break, Claimants and the Aggrieved Employees were illegally denied paid rest breaks. Claimants and the Aggrieved Employees were also not provided mandated 30-minute off-duty meal periods. Claimants and the Aggrieved Employees were not paid the mandatory one-hour wage premium for each such meal period or rest break denied. Also, the Company failed to pay Claimants and the Aggrieved Employees for rest and recovery periods and other nonproductive time as required by Labor Code § 226.2.

Also, the Company required Claimants and the Aggrieved Employees to incur necessary business-related expenses and costs without reimbursement, including, but not limited to, acquiring and maintaining a smart phone and related monthly data plan to communicate with the Company via

phone and text message. The Company also failed to reimburse Claimants and the Aggrieved Employees for expenses and/or unlawfully deducted amounts from the wages of Claimants and the Aggrieved Employees for taxes, fuel, lease fees, insurance, fees, and so forth.

The Company also failed to comply with the mandates of Labor Code § 204 regarding the timing of the payment of wages to its employees each period, including meal and rest period premiums, and failed to comply with the mandates of Labor Code §§ 201 – 203 regarding payment of final wages upon separation of employment. Moreover, at all relevant times, the Company provided inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a).

Claimants alleges that they worked under the joint direction and control of Just in Time Cargo, Inc., and Mr. Tache Gabriel Georgescu and is informed and believes that each of them acted in all respects pertinent to this action as the agent of the others, carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of each are legally attributable to the others. On information and belief, a unity of interest and ownership between each exists such that Just in Time Cargo, Inc., and Mr. Tache Gabriel Georgescu acted as a single employer of and the Aggrieved Employees. Furthermore, on information and belief, Just in Time Cargo, Inc., and Mr. Tache Gabriel Georgescu are an integrated enterprise and should be treated as a single employer because Just in Time Cargo, Inc., and Mr. Tache Gabriel Georgescu share an interrelation of operations, with common human resources and personnel policies and shared common offices and facilities. Upon information and belief, Just in Time Cargo, Inc., and Mr. Tache Gabriel Georgescu share common management, a centralized control of labor operations, and common ownership or financial control.

Furthermore, Claimants allege that Mr. Tache Gabriel Georgescu is now and at all material times herein mentioned was the owner of Just in Time Cargo, Inc., and Claimant's and the Aggrieved Employees' actual employer or, in the alternative, was an individual employed by the Company as a managerial and/or supervisory employee and/or agent. In addition, Claimants allege that at all relevant times herein Mr. Tache Gabriel Georgescu had the authority, in the interest of the Just in Time Cargo, Inc., to exercise independent judgment to hire, transfer, promote, discharge, assign, discipline, or take other similar actions against Claimants and the Aggrieved Employees, and were in Claimant's chain of command at the time of and direct participants in the wrongful conduct which constitutes the basis of Claimant's complaint herein. Claimants also allege that Just in Time Cargo, Inc., and Mr. Tache Gabriel Georgescu, are the agents, servants, employees, partners, affiliates, and/or representatives of each other, and were, at all times herein mentioned, acting within the course, scope, and purpose of such relationship(s) and with the knowledge, consent and/or ratification of each other. Furthermore, in conducting themselves in the manner described herein, Just in Time Cargo, Inc., and Mr. Tache Gabriel Georgescu, were acting in active concert with on another such that the acts of each were fully attributable to the other in all material respects.

Claimants also allege that Just in Time Cargo, Inc., was merely the alter ego of Mr. Tache Gabriel Georgescu in that there existed a unity of interest and ownership such that any separateness between them ceased to exist and Mr. Tache Gabriel Georgescu exercised undue dominance, control, influence, and management over Just in Time Cargo, Inc. Claimants further allege that, at all relevant times Just in Time Cargo, Inc., has been inadequately capitalized to conduct its business, has failed to follow appropriate corporate formalities, and has simply been a shell and instrumentality through which Mr. Tache Gabriel Georgescu has conducted his personal affairs. Accordingly, the corporate veil should be pierced, and any liability attached to Just in Time Cargo, Inc., should be

imposed jointly and severally against Mr. Tache Gabriel Georgescu. Adherence to the fiction of the separate existence of the corporate entity of Just in Time Cargo, Inc., would permit abuse of the corporate privilege, thereby sanctioning fraud and promoting injustice.

Also, in a separate, but not necessarily mutually exclusive, alternative theory of liability, Mr. Tache Gabriel Georgescu is liable for PAGA civil penalties under Labor Code § 558 as “other person(s)” who caused the violations regarding minimum wage among other claims. *See Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820 (“if there is evidence and a finding that a party other than the employer ‘violates, or causes to be violated’ the overtime laws (§ 558(a)) or ‘pays or causes to be paid to any employee’ less than minimum wage (§ 1197.1(a)), then that party is liable for certain civil penalties regardless of the identity or business structure of the employer”); *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S.Dist.LEXIS 40851 (holding the same)

Based on Claimant’s own personal observations, all Aggrieved Employees employed or formerly employed by the Company are entitled to similar wage and hour claims, as further set forth below.

PAGA ASSESSMENT FOR WILLFUL MISCLASSIFICATION
(Labor Code § 226.8)

Labor Code § 226.8(a) states “It is unlawful for any person or employer to engage in any of the following activities: (1) Willful misclassification of an individual as an independent contractor” and/or “(2) Charging an individual who has been willfully misclassified as an independent contractor a fee, or making any deductions from compensation, for any purpose, including for goods, materials, space rental, services, government licenses, repairs, equipment maintenance, or fines arising from the individual's employment where any of the acts described in this paragraph would have violated the law if the individual had not been misclassified.” Labor Code § 226.8(b) states that if “a person or employer has engaged in any of the enumerated violations of subdivision (a), the person or employer shall be subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law.” Labor Code § 226.8(c) further states that if “a person or employer has engaged in any of the enumerated violations of subdivision (a) and the person or employer has engaged in or is engaging in a pattern or practice of these violations, the person or employer shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law.

In this matter, the Company willfully and knowingly misclassified Claimants and all Aggrieved Employees as independent contractors. Therefore, in addition to recovering the amount of attorneys’ fees and cost incurred herein, Claimants are entitled to the assessment of civil penalties in accordance with Labor Code § 226.8.

PAGA ASSESSMENT FOR FAILURE TO PAY WAGES
(Labor Code §§ 204, 221-223, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198; IWC Wage Order §§ 3, 4(B))

During their employment, Claimants and the Aggrieved Employees were paid on a piece-rate basis and did not receive separate hourly compensation at no less than the minimum wage for unpaid, on-duty, time including tasks such as mandatory paid rest breaks, pre-trip and post-trip inspections,

detention time, loading and unloading time, completing paperwork, refueling or repair, and downtime between runs. Additionally, the piece-rate compensation paid to Claimants and the Aggrieved Employees often resulted in a payment of wages at less than the required California minimum wages for all hours worked. Therefore, this resulted in earned, but unpaid, minimum and regular wages due and owing to Claimants and the Aggrieved Employees. Accordingly, Labor Code §§ 210, 558, 1194.2, 1197.1, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay all wages including, but not limited to, minimum and regular wages in violation of the Labor Code and/or the IWC Wage Orders.

PAGA ASSESSMENT FOR FAILURE TO PROVIDE SEPARATE PAYMENT FOR REST AND RECOVERY PERIODS AND OTHER NONPRODUCTIVE TIME

(Labor Code § 226.2)

Labor Code § 226.2 requires employers that pay their employees on a piece-rate basis to provide separate payment for rest and recovery periods and other nonproductive time. Claimants and the Aggrieved Employees are and/or were employees of the Company who were paid on a piece-rate/flat-rate basis, yet the Company did not comply with the requirements of Labor Code § 226.2 for its piece-rate employees. As a result of these violations, penalties may be assessed pursuant to Labor Code § 2699, among possibly other sections.

PAGA ASSESSMENT FOR DENIAL OF MEAL PERIODS, REST BREAKS, AND WAGE PREMIUMS

(Labor Code §§ 226.7(b) & (c), 512, 558; Cal. Admin. Code, Title 8, § 11090)

Labor Code § 226.7(b) states that “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ...” Labor Code § 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than 5 hours per day without providing the employee with an uninterrupted meal period of not less than 30 minutes [...] [a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.”

Section 12 of applicable IWC Wage Order states in pertinent part: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

Here, Claimants and the Aggrieved Employees were not provided with paid rest periods by virtue of the Company’s policy that only paid on a piece-rate basis. As the Aggrieved Employees could not generate compensation during rest breaks, Claimants and the Aggrieved Employees were denied paid rest breaks. Furthermore, Claimants and the Aggrieved Employees were regularly not provided compliant meal periods and paid rest breaks because the Company did not have any policy which provided compliant meal periods and paid rest breaks to the Aggrieved Employees. Although the Company was required to pay Claimants and all Aggrieved Employees premium wages equal to an additional hour of pay at the employee’s regular rate of pay for each violation under Labor Code § 226.7(c), the Company did not pay the mandatory one-hour wage premiums. Labor Code § 558

imposes a penalty for each violation, plus an amount sufficient to recover the underpaid wages. Additionally, the civil assessment set forth in Labor Code § 2699 applies to these violations.

PAGA ASSESSMENT FOR UNLAWFUL DEDUCTION OF WAGES
(Labor Code §§ 200, 221, 223)

California Labor Code § 200 defines wages to include “all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.” California Labor Code § 221 states that “[i]t shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” Labor Code § 221 reflects “California’s strong public policy favoring the protection of employees’ wages.” *Sciborski v. Pacific Bell Directory* (2012) 205 Cal.App.4th 1152, 1166, quoting *Harris v. Investor’s Business Daily, Inc.* (2006) 138 Cal.App.4th 28, 40–41. Furthermore, Labor Code § 219 states that the protections of Labor Code § 221 cannot “be contravened or set aside by a private agreement.” Therefore, the rights under Labor Code § 221 are nonnegotiable and cannot be waived by the parties. See *Sciborski, supra* at 1166. Also, under Labor Code §§ 219 and 221, an employer may not “require its employees to consent to unlawful deductions from their wages.” *Hudgins v. Neiman Marcus Group, Inc.* (1995) 34 Cal.App.4th 1109, 1124.

Here, the Company had a policy of unlawfully deducting amounts from the wages of the Aggrieved Employees, including Claimant. Accordingly, Labor Code §§ 210, 225.5, 558, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it engaged in the unlawful deduction of wages.

PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES
(Labor Code § 2802; IWC Wage Order § 9(b))

Labor Code § 2802(a) states “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.” IWC Wage Order § 9(b) states “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer.”

Here, the Company required Claimants and the Aggrieved Employees to incur expenses in direct consequence of the discharge of their duties. For example, the Company required Claimants and the Aggrieved Employees to acquire and maintain a smart phone and related monthly data plan to communicate with the Company via phone and text message. Furthermore, the Company required Claimants and the Aggrieved Employees to incur substantial expenses to perform their duties for the Company, without reimbursement. Accordingly, Labor Code § 2699 imposes a penalty upon the Company for each such violation of Labor Code § 2802. Furthermore, Labor Code § 2802(b) states that “[a]ll awards made by a Court for reimbursement of necessary expenditures” shall carry interest, at the same rate as judgments in civil actions, and said interest will accrue from the date on which the employee incurred the necessary expenditure or loss including, but not limited to, reasonable costs and attorney’s fees incurred by the employee enforcing her rights granted pursuant to Labor Code § 2802.

**PAGA ASSESSMENT FOR FAILURE TO PAY ALL WAGES DUE AND OWING
EACH PAYROLL PERIOD WITHIN THE TIME REQUIRED BY LAW**

(Labor Code §§ 204, 204.1, 208, 256 and 2699)

Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month. Labor Code § 204(d) states “[t]he requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

Here, the Company failed to timely pay all wages due and owing each period, including, but not limited to, all wages and wage premiums. As a result, penalties may be assessed pursuant to Labor Code §§ 203, 210, 256, and/or 2699.

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201, 202, 203, 256 and 2699)

Labor Code § 201(a) provides in pertinent part: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202(a) states in pertinent part “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours’ previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Labor Code § 203(a) states “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

As discussed above, the Company did not pay the Aggrieved Employees all wages that were due and owing within the required time following the end of their employment due to the violations discussed above. Furthermore, Claimants did not receive final pay within the time required by Labor Code §§ 201 – 202. As a result, all such Aggrieved Employees are entitled to the “waiting time penalty.” (Labor Code §§ 203, 256.) Labor Code § 2699 also imposes a penalty.

**PAGA ASSESSMENT FOR
FAILURE TO PROVIDE ACCURATE, ITEMIZED WAGE STATEMENTS**

(Labor Code §§ 226, 226.3, and 1174)

Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, total hours worked, the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, all deductions, net wages earned, the inclusive dates of the pay period, the employee’s name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Furthermore, Labor Code § 226.2(a) states “[f]or employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period: [...] (2) the itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items specified in that subdivision, separately state the following, to which the provisions of Section 226 shall also be applicable: (A) the total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period [and] (B) [...] the total hours of other nonproductive time, [...] the rate of compensation, and the gross wages paid for that time during the pay period.”

Here, the Company failed to provide accurate itemized wage statements due to violations including: failure to accurately state total hours worked on the Aggrieved Employees’ wage statements; failure to accurately state the number of piece-rate units earned by the Aggrieved Employees and any applicable piece-rate; failure to accurately state gross wages earned; failure to accurately state all deductions; failure to accurately state net wages earned; failure to state all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee; failure to state the total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period; and failure to state the total hours of other nonproductive time, [...] the rate of compensation, and the gross wages paid for that time during the pay period. Accordingly, Claimants and the Aggrieved Employees are entitled to damages under Labor Code § 226(e), including reasonable attorneys’ fees. Labor Code §§ 226.3 and 2699 also impose a civil penalty and/or assessment for these violations.

PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199

(Labor Code § 1199)

An employer violates Labor Code § 1199 if said employer: (a) requires or causes an employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission; (b) pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission; or, (c) violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission. Labor Code § 2699.5 specifically enumerates Labor Code § 1199 as a section to which the civil penalties under the PAGA apply. Therefore, as a result of the Company’s violations described herein, the Company is subject to the civil penalties in accordance with Labor Code § 2699.

ATTORNEYS’ FEES, INTEREST, AND PENALTIES

(Labor Code §§ 2699(f)(2), 2699(g)(1), 2699.5)

Labor Code § 2699(g)(1), give employees the right to recover in a civil action the unpaid balance of the full amount of wages, including interest thereon, penalties and other damages, as applicable, reasonable attorneys’ fees, and costs of suit. Additionally, Claimants seek the assessment of penalties, including civil penalties, under Labor Code §§ 203, 210, 225.5, 226.3, 1174.5, 1197.1, 2699, among possibly other provisions inadvertently omitted herein. Furthermore, Claimants are entitled to bring a wage/hour claim on behalf of all current and former similarly situated employees of the Company. Thus, the Company is exposed to these same penalties for violations involving all Aggrieved Employees.

California Labor and Workforce Development Agency
Just in Time Cargo, Inc. / Mr. Tache Gabriel Georgescu
Re: Blair Woods and Kenneth Jackson v. Just in Time Cargo, Inc., et al.
July 20, 2020
Page 9

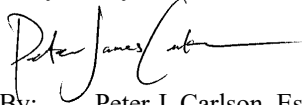
Additionally, Claimants seek attorney's fees pursuant to *C.C.P.* § 1021.5. Please construe this correspondence as Claimants' notification of alleged wrongdoing and attempted resolution in accordance with *C.C.P.* § 1021.5 and *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553.

CONCLUSION

Based on the foregoing, the Company may be liable for penalties, including unpaid wages under Labor Code § 558, related to the foregoing claims and remedies. If Claimants become aware of any additional claims for Labor Code violations related to employment and/or other employees of the Company, they reserves the right to add new claims by amending this claim letter.

Should you have any questions, please feel free to give me a call. In the meantime, I look forward to your response.

Very Truly Yours,



By: Peter J. Carlson, Esq.
Brian J. Mankin, Esq.

E-mail: PJC@fernandezlauby.com

BJM@fernandezlauby.com

www.California-EmploymentLawyers.com

Exhibit D



3194-C Airport Loop Drive
Costa Mesa, CA 92626
800-779-2104 www.simpluris.com

Estimate #:	13548	Prepared By:	Mike Sutherland
Estimate Date:	7/6/2021	Direct Dial #	321-223-5067
		Email:	msutherland@simpluris.com

Plaintiff Attorney
Attorney/Client: **Brian Mankin**
Firm: Fernandez Lauby
Email: bim@fernandezlauby.com

Defense Attorney
Attorney/Client:
Firm:
Email:

Case Name: Woods v. Just in Time Cargo: Opt Out Settlement

Anticipated Total Cost	\$8,972
Professional Courtesy Applied	\$472
Capped Fee*	\$8,500

Terms:

1) Capped Fees assume that Simpluris will receive data in a Single Excel file with no substantial change in class size or response rate.

Total Possible Class Size:	450	Undeliverable Rate:	10%
Response Rate:	1%	Call Rate:	
Mailing Document Language:	English	Fund Distribution:	Simpluris
Reminder Postcard:	No	Redistribution:	None
Unclaimed Funds:	State	State(s):	CA
		Tax Reporting Years	One

Case Setup

Data Compilation - Develop Case Specific Response Tracking - Error Reports

Category	Unit Value	# of Units	Total
Project Manager - Case Setup	\$125.00	5	\$625.00
Database Manager - Initial Data Analysis	\$140.00	5	\$700.00
Total			\$1,325.00

Notification

Notice Packet: 5/6 pg Notice, Double Sided - English

Category	Unit Value	# of Units	Total
Mail Notice Pack	\$1.00	450	\$450.00
Postage	\$0.55	450	\$247.50
NCOA/CASS/LACS	\$0.15	450	\$67.50
Undeliverable Processing	\$0.25	45	\$11.25
Skip Trace RUM	\$1.50	45	\$67.50
Remail	\$1.00	38	\$38.25
Postage	\$0.55	38	\$21.04
Mailing Supervisor	\$50.00	2	\$100.00
Total			\$1,003.04

Call Center

Establish Case Specific Toll Free Number

Category	Unit Value	# of Units	Total
Customer Service Reps/Call Center Support	\$75.00	0	\$0.00
Total			\$0.00



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Administration

Process Mail, Opt-Outs or Objections

Category	Unit Value	# of Units	Total
Database Manager	\$125.00	4	\$500.00
Resolving Mismatched TINs	\$75.00	2	\$150.00
Dispute/Deficiencies - Send One Cure Letter	\$2.50	1	\$2.50
Opt Out Processing	\$2.50	3	\$7.88
Data Entry	\$50.00	1	\$50.00
Project Manager	\$125.00	4	\$500.00
Weekly Reporting to Counsel	WAIVED	12 Wks of Reporting	\$0.00
Total			\$1,210.38

Distribution

Setup a Disbursement Account

Print & Mail Checks to Class Members:

Account Management & Reconciliation. Payment Plan

Category	Unit Value	# of Units	Total
Disbursement Data Preparation	\$140.00	4	\$560.00
Disbursement Manager - Data Validation	\$75.00	2	\$150.00
Setup Banking Account/QSF	\$300.00	1	\$300.00
Print & Mail Check, 1099 only, Attorney Awards	\$2.00	450	\$900.00
Postage	\$0.55	450	\$247.50
Process Returned Checks	\$0.50	5	\$2.25
Skip Trace Search Undeliverable Checks	\$5.00	5	\$22.50
Remail Checks (Includes Postage)	\$4.00	5	\$18.00
QSF Account Reconciliation	\$250.00	1	\$250.00
State Tax reporting, W2 for named plaintiff only	\$350.00	1	\$350.00
QSF Annual Tax Preparation Fee, 2020	\$750.00	1	\$750.00
QSF Reporting/Declaration	\$500.00	1	\$500.00
Reissuing Checks/Mailing	\$5.00	7	\$33.75
Escheat Management-State	\$250.00	1	\$250.00
Disbursement Manager	\$125.00	4	\$500.00
Total			\$4,834.00



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Case Wrap Up

Send Final Reports to Counsel

Category	Unit Value	# of Units	Total
Data Manager-Final Reporting	\$125.00	2	\$250.00
Clerical-Clean Up Any Misc	\$50.00	2	\$100.00
Project Manager-Wrap-up Final Issues	\$125.00	2	\$250.00
Total			\$600.00

Postage	\$516.04	Total Case Costs	\$8,972.41
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All administration services to be provided by Simpluris to Client, are provided subject to the following terms and conditions:

1. **Services.** Simpluris agrees to provide Client those services set forth in the Bid (the "Services") to which these terms and conditions are attached and which has been provided to Client. As compensation for such Services, Client agrees to pay the fees for Services outlined in the Bid. However, Client such fees for Services are estimated based on the requirements provided by Client and actual fees charged by Simpluris may be greater or less than such estimate and Client will be responsible for the payment of all such fees.
2. **Billing and Payment.** Simpluris will invoice Client on a regular basis unless a specific timeframe is otherwise set forth in the Bid. Client shall pay all invoices within 30 days of receipt. Amounts unpaid after thirty (30) days are subject to a service charge at the rate of 1.5% per month or, if less, the highest rate permitted by law. Services are not provided on a contingency basis and Client shall remain liable to Simpluris for all fees for the Services, regardless of any court decisions, and/or actions by the parties, including disapproval or withdrawal of a settlement.
3. **Retention of Documents.** Unless directed otherwise in writing by the Client, Simpluris will destroy all undeliverable mail (except for undeliverable checks) on the date that it is processed and retained in Simpluris' system. Simpluris will maintain records to establish that the subject mail is undeliverable. Simpluris will retain undeliverable checks until the Qualified Settlement Fund is closed. Simpluris will also retain all other class member and putative class member correspondence (including without limitation, claims forms and opt out forms) for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later. Lastly, Simpluris will retain bank & tax documents for such period of time as it determines is required to maintain compliance with various federal and state requirements.
4. **Limitation of Liability; Disclaimer of Warranties.** Simpluris warrants that it will perform the Services diligently, with competence and reasonable care. Simpluris' only obligation will be to correct any non-conformance with the foregoing warranty. In no event will Simpluris be liable for any lost profits/opportunities, business interruption or delay or, special, consequential, or incidental damages incurred by Client relating to the performance of the Services, regardless of whether Client's claim is for breach of contract, tort (including negligence and strict liability) or otherwise. Under no circumstances will Simpluris be liable to Client for any claims, losses, costs, penalties, fines, judgment or damages, including court costs and reasonable attorney's fees (collectively, "Losses"), whether direct or indirect, arising out of, related to, or in connection with Services in an amount in excess of the total fees charged or chargeable to Client for the particular portion of the Services affected by Simpluris' omission or error. THE WARRANTIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.
5. **Force Majeure.** To the extent performance by Simpluris of any of its obligations hereunder is substantially prevented by reason of any act of God or because of any other matter beyond Simpluris' reasonable control, then such performance shall be excused and this Agreement, at Simpluris' option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.
6. **Rights in Data.** Client agrees that it will not obtain, nor does Simpluris convey, any rights of ownership in the programs, system data, or materials provided or used by Simpluris in the performance of the Services.
7. **Electronic Communications.** During the provision of the Services the parties may wish to communicate electronically with each other at a business e-mail address. However, the electronic transmission of information cannot be guaranteed to be secure or error free and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. Accordingly, each party agrees to use commercially reasonable procedures to check for the then most commonly known viruses and to check the integrity of data before sending information to the other electronically, but each party recognizes that such procedures cannot be a guarantee that transmissions will be virus free. It remains the responsibility of the party receiving an electronic communication from the other to carry out a virus check on any attachments before launching any documents whether received on disk or otherwise.
8. **Notice.** Any notice required or permitted hereunder shall be in writing and shall be delivered personally, by, or sent by registered mail, postage prepaid, or overnight courier and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service. Notice should be addressed to an officer or principal of Client and Simpluris, as the case may be.
9. **Waiver.** Failure or delay on the part of a party to exercise any right, power or privilege hereunder shall not operate as a waiver thereof or any of other subject, right, power or privilege.
10. **Termination.** Client may terminate the Services at anytime upon 30 days prior written notice to Simpluris. Termination of Services shall in no event relieve Client of its obligation make any payments due and payable to Simpluris in respect of Services rendered up to the effective date of Termination. Simpluris may terminate this Agreement (i) for any reason upon no less than 90 days prior written notice to the Client; or (ii) upon 15 calendar days' prior written notice, if the Client is not current in payment of fees.
11. **Jurisdiction.** The parties hereto irrevocably and unconditionally submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby irrevocably and unconditionally waive any objection to the laying of venue of any such suit, action or proceeding in such Court.
12. **Survival.** Any remedies for breach of this Agreement, this Section and the following Sections will survive any expiration or termination of this Agreement: Section 4 - Limitation of Liability; Disclaimer of Warranties, Section 6 – Rights in Data, and Section 12- Jurisdiction, 14 -Confidentiality, and Section 15 – Indemnification.
13. **Entire Agreement.** These Terms and Conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.
14. **Confidentiality.** Simpluris maintains reasonable and appropriate safeguards to protect the confidentiality and security of data provided by Client to Simpluris in connection with the Services. If, pursuant to a court order or other proceeding, a third party requests that Simpluris to disclose any confidential data provided by or for Client, Simpluris will promptly notify the Client unless prohibited by applicable law. Client will then have the option to provide Simpluris with qualified legal representation at Client's expense to defend against such request. If, pursuant to a court order, Simpluris is required to disclose data, produce documents, or otherwise act in contravention of the obligation to maintain confidentiality set forth in these terms and conditions, Simpluris will not be liable for breach of said obligation.
15. **Indemnification.** Client will indemnify and hold Simpluris (and the officers, employees, affiliates and agents harmless against any Losses incurred by Simpluris, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by Simpluris in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by Simpluris pursuant to Client's instructions.
16. **Severability.** If any term or condition or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
17. **Database Administration.** Simpluris' database administration for Client assumes that Client will provide complete data that includes all information required to send notifications and calculate and mail settlement payments. Data must be provided in a complete, consistent, standardized electronic format. Simpluris' standardized format is Microsoft Excel, however, Simpluris may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by Simpluris on a time and materials basis according to Simpluris' Standard Rates.

Simpluris Security Summary – White Paper

Simpluris is committed to the security and overall protection of not only our data and information but our client's data and information, as well. As a demonstration of our commitment, we maintain SOC 2 Certification which requires strict adherence to policies and procedures surrounding information security, including processing and storage of confidential customer data. Simpluris supports a comprehensive, written Information Security Program that complies with all applicable laws and regulations (e.g. HIPAA, Gramm-Leach-Bliley Act, MA 201 CMR 17.00) and is designed to (a) ensure the security, privacy and confidentiality of Client and Class Member Information, (b) protect against any reasonably anticipated threats or hazards to the security or integrity of Client or Class Member Information, and (c) protect against unauthorized access to, use, deletion, or modification of Class Member Information. Simpluris has designated specific employees to be responsible for the administration of its Information Security Program. Also, Simpluris regularly and routinely monitors, tests, and updates our Information Security Program.

Simpluris uses Client and Class Member Information only for the purposes for which its' clients provide it, as described in any Agreements or Court Orders governing the provision of Simpluris' services in any particular case. Simpluris maintains a process for identifying, assessing, and mitigating the risks to Class Member Information in each relevant area of Simpluris' operations. At Simpluris, we continuously evaluate the effectiveness of the safeguards for controlling these risks to data and bank accounts. Simpluris restricts access to Class Member Information only to those employees, agents, or subcontractors who need to know the information to perform their jobs. Simpluris performs background checks of all its employees that will have access to Sensitive Personal Information, including a review of their references, employment eligibility, education, and criminal history to ensure they do not pose a risk to the security of Client or Class Member Information.

Simpluris adheres to the following industry best practices to safeguard its systems which process, store or transmit Client and Class Member Information:

- Identity and Access Management;
- Complex passwords are routinely and regularly changed;
- Role-based access control systems to limit individual employee access to network applications and systems based on their particular job role and function;
- Data Loss Prevention and Intrusion Prevention System software at multiple layers to prevent from internal and external threats of data leaks, malicious activity, and policy violations
- Encryption of Class Member Information if transmitted over public or wireless networks (e.g., via email, FTP, the Internet, etc.);
- Implementation of a Secure File Transfer system (using SSL encryption) for transmitting documents back and forth to clients;
- Encryption of servers, portable media, laptops, desktops, smartphones, mobile devices, and new technologies that store Class Member Information;
- Complex password authentication for remote access to Company's networks;
- Upon hire and annually after that, training of all employees with access to Class Member Information, (including any agents, and subcontractors with access to Class Member Information) about their obligations to implement the Information Security Program;
- Strict disciplinary measures for employees who violate the Information Security Program;
- Preventing terminated employees from accessing Class Member Information;
- Appropriately configured and updated firewall, antivirus, and spyware software;
- Prompt application of vendor-recommended security patches and updates to systems and other applications to avoid any adverse impact on Class Member Information;
- Separation of Duties;
- Infrastructure and Physical Security;
- Business Continuity Planning;
- Disaster Recovery Planning

Exhibit E