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Attorneys for Plaintiffs GERARDO VALADEZ and MIGUEL DIAZ,

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

GERARDO VALADEZ, MIGUEL DIAZ,
LUPE RODRIGUEZ, and ARTHUR
BEBEKYAN, in a Representative capacity
only, and on behalf of other members of the
general public similarly situated,

Plaintiff,

v.

CALIBER HOLDINGS CORP; CALIBER
COLLISION TRANSPORT SERVICES
LLC; and DOES 1-10, inclusive.

Defendants

CASE NO. 37-2020-00015935-CU-OE-CTL

(Representative Action only)

**DECLARATION OF ERIC K. YAECKEL
IN SUPPORT OF PLAINTIFFS'
UNOPPOSED EX PARTE APPLICATION
*RE: PAGA SETTLEMENT APPROVAL***

Date: April 26, 2022

Time: 8:30 a.m.

Dept.: C-73

Judge: Hon. Joel R. Wohlfeil

1 I, Eric K. Yaeckel, hereby declare as follows:

2 1. I am an attorney licensed to practice law before this Court and am an employed at the law firm
3 of Sullivan & Yaeckel Law Group, APC, attorneys of record for Plaintiffs in the
4 above-captioned matter. I make this declaration regarding Plaintiffs' **Unopposed Ex Parte**
5 Request re Settlement Approval.

6 2. I have personal knowledge of the facts set forth in this declaration and, if called to testify as
7 a witness, I could and would do so.

8 **Summary of Application**

9 3. As this is a "PAGA" action only, the Covered Period begins on September 11, 2018. There are
10 a total of approximately **8,175** Representative Action Members and **over 475,000** pay-periods
11 at issue at issue.

12 4. Following the exchange of both formal and informal discovery, analysis of numerous sets of
13 time and wage data, and a Mediation presided over by Lisa Klerman, the parties reached a
14 proposed settlement that includes a settlement payment to the LWDA to resolve the PAGA
15 claims. Attached hereto as **Exhibit 1** is a true and correct copy of the PAGA Representative
16 Action Settlement and Release ("Settlement Agreement").

17 5. As a part of the settlement the parties have submitted, a proposed First Amended Consolidated
18 Complaint. This consolidated Complaint contains the claims made in this matter on behalf of
19 GERARDO VALADEZ and MIGUEL DIAZ. It also incorporates in the separate PAGA claims
20 against Defendants filed by LUPE RODRIGUEZ and ARTHUR BEBEKYAN, that were
21 originally pending in the Los Angeles Superior Court, Case No. 21STCV10037. A true and
22 correct copy of the First Amended Complaint is attached as **Exhibit 2**.

23 6. This Court has previously granted PAGA approval on an *Ex Parte* basis. This application
24 attempts to track exactly the prior applications approved by this Court.

25 7. On **April 25, 2022** Plaintiffs' counsel first notified the LWDA of the settlement proposal.
26 (Yaeckel Decl., ¶ 5). The Settlement Agreement was uploaded and the LWDA was given notice
27 of the hearing. As with all uploads to this filing portal, Plaintiffs' counsel immediately received
28

an auto-generated email that its submission was received by the LWDA. (*Id.*) To date, no response from the LWDA has been received. If the LWDA contacts Plaintiffs' counsel at any time prior to the hearing, Plaintiffs' counsel will provide an updated declaration to the Court.

8. As is reflected in the Settlement Agreement, the Total Value of the proposed Settlement is **\$3,075,000.00** which is broken down as follows:

* **\$22,500** Settlement Administrator Fees (not to exceed);

• **\$40,000** Lead Plaintiff Enhancements (\$10,000 each)

* **\$1,230,000** Attorneys' Fees (40% of total settlement value);

* **\$16,750** Costs of Litigation

* Remaining PAGA Payment of **\$1,765,750**.

• 75% of the PAGA Payment (**\$1,324,312.50**) shall be assigned/paid to the LWDA.

• 25% of the PAGA Payment (**\$441,437.50**) shall be assigned and disbursed among all PAGA Settlement Employees based on pay periods worked during the PAGA period..

9. Given the above, the Individual Settlement Amount for each Representative Action Member will be determined by multiplying the individual percentage of total Applicable Pay Periods worked by that Representative Action Member by the 25% of the Net Settlement Amount allocated to all Representative Action Members. Based on the above numbers, the "average" PAGA member will receive a share of approximately \$54.00

10. The release of claims is limited to PAGA claims only that are asserted in the First Amended Complaint and the PAGA letters. Accordingly, all employees retain their rights to any individual wage and hour claims.

Basis for Ex Parte Application

11. The instant *Ex Parte* request is based on the fact that **(1)** the PAGA period "Effective (cutoff) Date" is contingent on Court approval, any delay diminishes the amounts received by the impacted employees; and **(2)** Notice to certain former employees may be adversely impacted

1 by further delay (*i.e.* many of the PAGA Settlement Employees are former employees who may
2 change their mailing address without providing any notice to the employer of a new address
3 and may fail to file a proper “forwarding address”).

- 4 12. An expedient approval of this settlement will provide a direct benefit to the impacted
5 employees at issue. There is no risk of future Labor Code non-compliance and employees and
6 the state receive an immediate monetary benefit. It also allows Defendant the opportunity to
7 move on, and focus on future business.

8 **The Nature And Scope Of The Alleged Violations**

- 9 13. The Complaint in this action alleges Labor Code violations which triggered penalties under the
10 PAGA statute (Labor Code §2698 et seq.) (See ROA #1.) Plaintiffs generally alleged that all
11 non-exempt employees were denied compliant meal and rest breaks, minimum wages,
12 overtime compensation, accurate wage statements, reimbursements of business expenses,
13 suffered waiting time violations, did not receive all sick pay owed, were not provided with
14 accurate records and other related wage and hour claims and penalties brought under the
15 PAGA statute. The First Amended Complaint Contains the Claims of all the various Plaintiffs.
16 (See Exhibit 2).

17 **Analysis of Potential Liability, On A Representative Basis**

- 18 14. The catalyst of this litigation concerned allegations that Plaintiffs were not correctly paid for
19 all time worked, were forced to work through their breaks and that Defendants failed to keep
20 compliant time and wage records.
- 21 15. Investigations completed by our office revealed some instances of uncompensated work time.
22 However, these investigations also revealed that the "rate of violation" by Defendant was
23 significantly less than 100%. On many of those occasions, it appears that Defendant did, in
24 fact, comply with the law. Further, Defendant contends that it maintained compliant policies,
25 compensated employees for all time worked, paid meal break premiums, and did not require
26 or permit off the clock work for any reason. Further, Defendant contends that to the extent off
27 the clock work occurred, there is no evidence that it knew or should have known about the
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1 alleged off the clock work.

2 16. Our office is aware of the Court’s discretion to significantly reduce the award of PAGA
3 penalties pursuant to California Labor Code section 2699(e)(2). To confirm, Plaintiffs’
4 counsel experienced the mitigation of “PAGA” penalties in *Carrington v. Starbucks Corp.*
5 (2018) 30 Cal.App.5th 504. In *Carrington*, Honorable Katherine A. Bacal significantly
6 mitigated PAGA penalties (\$5 per violation), due to the efforts made by the employer to
7 comply with the law.

8 17. Our office agrees with Honorable Katherine A. Bacal, and with the provision of the Labor
9 Code, that penalties should be mitigated where violations are minimal, or where the employer
10 makes significant efforts to comply with the Labor Code.

11 18. As the above exists in this case, it is the opinion of myself and our office that the settlement
12 is fair, adequate, and reasonable. Moreover, upon notice of the potential violations, Defendant
13 immediately stepped up to address the claims and participate in mediation.

14 **Experience of Counsel**

15 19. Plaintiffs’ counsel, William B. Sullivan has approximately 27 years of experience in “class
16 action” and representative action litigation, both as plaintiff and defense counsel. Mr. Yaeckel
17 has over 10 years of experience prosecuting class and representative action claims under the
18 California Labor Code. Counsel are the attorneys of record in a matter that was recently (and
19 favorably) decided by the California Supreme Court. See *Donohue v. AMN Services* (2021) 11
20 Cal.5th 58. The *Donohue* matter is a certified class and PAGA action. Plaintiffs’ counsel are
21 currently lead counsel on approximately 40 employment “wage and hour” claims with class
22 action and/or representative actions allegations. Based on said experience, it is the opinion of
23 Plaintiffs’ counsel that this settlement represents a fair and adequate payment to resolve these
24 claims.

25 20. Defendants, and its counsel, deserve credit for their willingness to consider - and address - the
26 allegations. Specifically, Defense Counsel (who have extensive experience and knowledge in
27 “Wage and Hour” litigation) agreed to produce a substantial amount of documents and
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1 information necessary to evaluate the parameters of settlement. Following a full day Mediation
2 and numerous follow up arms-length negotiations, the parties have reached a proposed
3 settlement that includes a settlement payment to resolve claims for penalties under PAGA.

4 **Ex Parte Notice**

5 24. I gave notice of the ex parte application to Defendants' counsel and counsel for the proposed
6 additional Plaintiffs on April 25, 2022. All Counsel was subsequently provided a draft of the
7 papers.

8
9 I declare under penalty of perjury under the laws of the State of California that the foregoing
10 is true and correct. Executed this 25th day of April, 2022 at San Diego, California.

11 *Eric Yaeckel*

12
13 _____
ERIC K. YAECKEL

EXHIBIT 1

JOINT STIPULATION OF PAGA REPRESENTATIVE ACTION SETTLEMENT AND RELEASE

This Joint Stipulation of PAGA Representative Action Settlement and Release (hereinafter “Settlement Agreement”) is made and entered into by and between the following parties: Plaintiff Gerardo Valadez, Plaintiff Miguel Diaz, Plaintiff Lupe Rodriguez and Plaintiff Arthur Bebekyan (collectively “Plaintiffs”) individually and as a proxy of the State of California and the California Labor and Workforce Development Agency (“LWDA”) on behalf of all other allegedly aggrieved employees, and Defendant Caliber Holdings LLC f/k/a Caliber Holdings Corporation (“Caliber”) (collectively, the “Parties”), and their respective counsel of record. This Settlement Agreement is subject to the terms and conditions set forth below and to the approval of the Court. This Settlement Agreement accurately sets forth the Parties’ PAGA representative action settlement in the total amount of Three Million Seventy-Five Thousand Dollars (\$3,075,000) to resolve all claims, as detailed below.

I. DEFINITIONS

1. “Action” means the action entitled “*Gerardo Valadez v. Caliber Holdings Corporation, et al.*,” Case No. 37-2020-15935, filed in the Superior Court of California in and for the County of San Diego. It is also intended to include the claims made in the *Rodriguez Action*, as defined below, which shall be incorporated via a First Amended Complaint.

2. “Approval Date” means the date the Court approves this Settlement Agreement, and enters the Order Granting Settlement Approval and Judgment to that effect.

3. “Approval Hearing” means the hearing on the Motion for Settlement Approval and Judgment.

4. “Caliber Releasees” means Caliber Holdings LLC and Caliber Collision Transport Services LLC, and all of their current, future, and former parents, subsidiaries, divisions, affiliates, affiliates and subsidiaries under common ownership, owners, shareholders, members, directors, officers, employees, attorneys, insurers, benefit plans, agents and independent contractors, and the predecessors, successors, and assigns of each of them.

5. “Court” means the Superior Court of California in and for the County of San Diego, which presides over the Action.

6. “Covered PAGA Pay Periods” means, as reflected on Caliber’s internal records, pay periods from March 24, 2019 and the Approval Date during which a PAGA Member worked for Caliber as a non-exempt employee in California, excluding any pay periods previously released by a PAGA Member in the *Uribe* Action.

7. “Defendants” means Caliber and Caliber Collision Transport Services LLC.

8. “Defendants’ Counsel” means Morgan, Lewis & Bockius LLP.

9. “Estimated Pay Periods” means the estimate of the pay periods at issue provided by Caliber in connection with the execution of the Parties’ Memorandum of Understanding.

10. “Individual Settlement Amount” means the final gross amount sent and paid to any PAGA Member under this Settlement Agreement.

11. “Individual Settlement Fund” means the twenty-five percent (25%) of the Net Settlement Amount allocated for the Individual Settlement Amount payments to the PAGA Members.

12. “LWDA” means the California Labor and Workforce Development Agency.

13. “Maximum Settlement Amount” is the sum of Three Million Seventy-Five Thousand Dollars (\$3,075,000), which represents the maximum amount payable in this Settlement by Caliber, and includes all attorneys’ fees, litigation costs, the Settlement Administration Expenses, the Service Enhancement to the Plaintiff, and all settlement payments to the LWDA and the PAGA Members.

14. “Net Settlement Amount” equals the Maximum Settlement Amount less Plaintiff’s Counsel’s attorneys’ fees and actual litigation costs, Settlement Administration Expenses, and the Service Enhancements to the Plaintiffs.

15. “Order Granting Settlement Approval and Judgment” means the Order entered by the Court in the Action, *inter alia*: (1) approving the terms and conditions of this Settlement Agreement, including the payments and the release of claims as set forth herein; (2) approving the amount of attorneys’ fees and litigation costs to be awarded to Plaintiff’s Counsel, the Settlement Administration Expenses, and the Service Enhancement to be awarded from the Maximum Settlement Amount; and (3) dismissing the Action with prejudice and entering judgment in the Action pursuant to and consistent with the terms and conditions of this Settlement Agreement.

16. “PAGA” means the California Labor Code Private Attorneys General Act of 2004, California Labor Code §§ 2698 et seq.

17. “PAGA Member(s)” means all individuals employed by Caliber as non-exempt employees in California between March 24, 2019 and the Approval Date.

18. “Plaintiffs’ Counsel” means Sullivan & Yaeckel Law Group APC and Lavi & Ebrahimian, LLP and Law Office of Sahag Majarian II.

19. “Released Claims” means any and all claims, obligations, demands, rights, causes of action, and liabilities against Caliber Releasees, under PAGA that have been asserted or that could have been asserted in the Complaint, the First Amended Complaint, the PAGA letter to the LWDA, the Amended PAGA letter to the LWDA, and any amendments thereto; or that could have been asserted in the Complaint, the First Amended Complaint, the PAGA letter to the LWDA, the Amended PAGA letter to the LWDA, and any amendments thereto, based on the facts, claims and/or allegations pled therein. Released Claims include, but are not limited to, claims for failure to pay minimum wage, failure to pay overtime or pay overtime at the correct rate of pay, failure to pay for all hours worked (off-the-clock work), failure to properly pay for sick and/or vacation time, failure to allow employees to take sick leave at their sole discretion, failure to provide meal periods, failure to provide rest periods, failure to properly compensate employees for rest breaks, failure to pay premiums at the correct rate of pay, failure to timely pay final wages and wages earned during employment including sick leave and vacation pay, failure to provide reimbursement for necessary business-related expenditures, failure to maintain wage-related records and/or furnish accurate wage statements, failure to obtain employees’ voluntary authorizations for payment of wages by direct deposit, improperly restricting employees from lawful conduct occurring during nonworking hours away from the employer’s premises, and requiring employees to enter into invalid restrictive covenants and/or non-compete agreements, and includes all such claims from March 24, 2019 through and including the Approval Date.

20. “Service Enhancement” means the incentive payment paid to each Plaintiff in an amount not to exceed \$10,000, for the Plaintiffs efforts and work in prosecuting the Action.

21. “Settlement Administration Expenses” means all settlement administration fees and costs,

including those for the Settlement Administrator, in effectuating the Settlement and approved by the Court in an amount not to exceed \$22,500.

22. “Settlement Administrator” means CAC Services, LLC, or any other third-party settlement administrator that the Parties jointly select.

23. “Settlement Agreement” or “Settlement” will mean this Joint Stipulation of PAGA Representative Action Settlement and Release.

24. “Settlement Effective Date” means, after the Order Granting Settlement Approval and Judgment has been entered by the Court in the Action, the latter of the following dates: (a) if an appeal, review, or writ is not sought from the Order Granting Settlement Approval and Judgment, the 63rd day after service of notice of entry of the Order Granting Settlement Approval and Judgment; or (b) if an appeal, writ, or review is sought from the Order Granting Settlement Approval and Judgment, the day after the Order Granting Settlement Approval and Judgment is affirmed or the appeal, review, or writ is dismissed or denied, and the Order Granting Settlement Approval and Judgment is no longer subject to any further judicial review.

25. “*Rodriguez Action*” means the action entitled *Lupe Rodriguez and Arthur Bebekyan v. Caliber Holdings Corporation, et al.*, , Case No. 21STCV10037, filed in the Superior Court of California in and for the County of Los Angeles. The Plaintiff’s in the Rodriguez action are represented by Lavi & Ebrahimian, LLP and Law Office of Sahag Majarian II (collectively, “Rodriguez’ Counsel”),

26. “*Uribe Action*” means the action entitled “*Luis Uribe, et al. v. Caliber Collision Transport Services LLC, et al.*,” Case No. 20STCV09633, filed in the Superior Court of California in and for the County of Los Angeles.

II. LITIGATION BACKGROUND

27. On or about January 2, 2020, Plaintiff Valadez served the LWDA by mail with a PAGA notice letter which stated that Plaintiff intended to seek civil penalties against Caliber for alleged violations of the California Labor Code. On or about February 18, 2022, Plaintiff Valadez and Diaz served the LWDA by mail with an Amended PAGA notice letter.

28. On May 26, 2020, Plaintiff Valadez filed a representative action under PAGA against

Defendants in the Superior Court of California for the County of San Diego.

29. On March 12, 2021, the Plaintiffs in the Rodriguez action served the LWDA by mail with a PAGA notice letter which stated that Plaintiffs intended to seek civil penalties against Caliber for alleged violations of the California Labor Code.

30. On March 15, 2021, the Rodriguez Action was filed against Defendants in the Superior Court of California for the County of Los Angeles.

31. Within 3 days of execution of this Settlement Agreement, the Parties will file a stipulation with the Court requesting leave for Plaintiffs to file a proposed First Amended Complaint, as set forth in Section IV.C. The proposed First Amended Complaint shall comport with the scope of the claims and allegations in the PAGA Letter and Amended PAGA letter filed in this action and with the scope of the claims and allegations filed in the *Rodriguez Action*. The Plaintiffs in the *Rodriguez Action* will dismiss that case, with prejudice, within 14 days after the Court enters an Order Granting Settlement Approval and Judgment in the instant matter.

32. Caliber denies Plaintiffs' claims, and asserts that it has complied fully with California's labor laws and wage orders. Consequently, Caliber does not believe that any liability to Plaintiffs, the State of California or the LWDA, or to any other PAGA Member exists, or that Plaintiffs, the State of California or the LWDA, or any other PAGA Member are entitled to any recovery in the Action.

33. On January 25, 2022, counsel for the Parties participated in a mediation with experienced mediator Lisa Klerman, Esq. With Ms. Klerman's assistance, the Parties negotiated the key terms of a complete settlement of Plaintiffs' claims. Negotiations continued over several months. The terms of the settlement are now set forth in complete and final form in this Settlement.

34. Neither this Settlement, nor any final judgment pursuant to this Settlement, will constitute an admission of any form of wrongdoing or liability on the part of Caliber or the accuracy of any allegation raised in the Action. This Settlement is entered into in compromise of disputed claims. Plaintiffs and Caliber intend, by their actions pursuant to this Settlement, merely to avoid the expense, delay, uncertainty, and burden of litigation. This Settlement and any related court documents or orders may not be cited or otherwise admitted as evidence of liability. There has been no final determination by any Court as to the

merits of the Action.

35. It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge all disputes and claims against the Caliber Releasees arising from or related to the Action.

36. It is the intention of the Parties that this Settlement Agreement will constitute a full and complete settlement and release of the claims averred in the Action by the Plaintiffs, both individually and as a proxy of the State of California and the LWDA on behalf of all PAGA Members pursuant to PAGA. This release includes in its effect a release of all the Caliber Releasees of the Released Claims.

III. JURISDICTION AND VENUE

37. This Court has jurisdiction over the Parties and the subject matter of this Settlement. This Court will have continuing jurisdiction over the terms and conditions of this Settlement Agreement, until all payments and obligations provided for herein have been fully executed.

IV. TERMS OF SETTLEMENT

38. NOW, THEREFORE, in consideration of the mutual covenants, promises, and undertakings set forth herein, the Parties agree, subject to the Court's approval, as follows:

A. Non-Admission of Liability

39. Nothing in this Settlement Agreement, or any communications, papers, or orders related to this Settlement Agreement, will be construed to be or deemed an admission by the Caliber Releasees of any liability, culpability, negligence, or wrongdoing toward the Plaintiff, the PAGA Members, or any other person, and the Caliber Releasees specifically disclaim any liability, culpability, negligence, or wrongdoing toward the Plaintiffs, the PAGA Members, or any other person. Caliber also maintains that, for any purpose other than settlement, the claims alleged in the Action are not suitable or appropriate for representative action treatment and are not manageable pursuant to California Labor Code § 2698 *et seq.*, nor are the claims alleged in the Action suitable or appropriate for class and/or collective action treatment under California Code of Civil Procedure Section 382, the Fair Labor Standards Act, or any other applicable laws or rule(s). Each of the Parties has entered into this Settlement Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and contingencies, including in the Action. This Settlement Agreement and any communications, papers, or orders related to the Settlement

Agreement may not be cited or otherwise admitted as evidence of liability, whether in the Action or elsewhere. There has been no final determination by any Court as to the merits of the claims asserted by Plaintiff against Defendants.

40. Furthermore, nothing in this Settlement Agreement will be considered a form of waiver of any of the alternative dispute resolution provisions contained in Caliber's Arbitration Agreement or any other applicable alternative dispute resolution agreement with Caliber, and Caliber expressly does not waive any right to enforce arbitration agreements and class, collective, and representative action waivers in any other circumstance.

B. Non-Approval By The Court

41. If this Settlement Agreement is not approved by the Court, fails to become effective, is reversed, withdrawn or modified by the Court:

- (a) The Settlement Agreement will have no force or effect, other than the confidentiality and non-disclosure provisions in Section XI and the non-admission provisions in Section IV.A;
- (b) The Settlement Agreement will not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural;
- (c) None of the parties to this Settlement Agreement will be deemed to have waived any claims, objections, defenses or arguments with respect to the merits of Plaintiffs' claims; and
- (d) Caliber does not waive, and instead expressly reserves its right to challenge the propriety of the Action proceeding as a representative action.

C. First Amended Complaint

42. Within 3 days of execution of this Settlement Agreement, the Parties will file a joint stipulation with the Court requesting leave for Plaintiffs to file the proposed First Amended Complaint attached as **Exhibit B**.

D. Settlement Payments

43. Caliber agrees to pay a Maximum Settlement Amount of Three Million Seventy-Five Thousand Dollars (\$3,075,000), inclusive of (a) all PAGA penalty settlement payments to the LWDA and PAGA Members; (b) any award of attorneys' fees and out-of-pocket litigation costs and expenses to Plaintiff's Counsel; (c) any award of a Service Enhancement; and (d) all Settlement Administration Expenses. The Parties specifically agree, subject to Court approval, to the following allocations to be paid from the Maximum Settlement Amount:

- (a) From the Maximum Settlement Amount, Plaintiff's Counsel may seek from the Court attorneys' fees up to \$1,230,000 (40% of the total) and actual litigation costs up to \$16,3750. for serving as Plaintiff's' Counsel. Of this total, Rodriguez' counsel is seeking \$150,000 in attorneys' fees and up to \$3,750 in litigation costs. Sullivan & Yaeckel Law Group, APC is seeking \$1,080,000 in attorneys' fees and up to \$13,000 in litigation costs. Caliber takes no position on Plaintiff's request for fees and costs provided it does not exceed these amounts and Plaintiffs and Plaintiffs' Counsel are not in breach of the Settlement Agreement.
- (b) From the Maximum Settlement Amount, Plaintiffs' Counsel may seek from the Court a Service Enhancement award to Plaintiffs not to exceed \$10,000 each, which Caliber will not oppose so long as Plaintiffs and Plaintiffs' Counsel are not in breach of the Settlement Agreement.
- (c) From the Maximum Settlement Amount, Settlement Administration Expenses in a reasonable amount currently estimated at \$22,500.
- (d) From the Net Settlement Amount, settlement payments attributable to PAGA penalties will be allocated and paid to the LWDA and the PAGA Members.
 - (i) Seventy-five percent (75%) of the Net Settlement Amount will be paid to the LWDA as its share of the Settlement attributable to PAGA penalties.
 - (ii) The remaining twenty-five percent (25%) of the Net Settlement Amount will be the Individual Settlement Fund and will be distributed as Individual

Settlement Amounts to the PAGA Members based on their eligible employee service time for Covered PAGA Pay Periods, as reflected on Caliber's internal records. Individual Settlement Amounts will be calculated as follows: the numerator shall be the number of the PAGA Member's individual Covered PAGA Pay Periods; the denominator shall be the total Covered PAGA Pay Periods for all PAGA Members; this fraction shall be multiplied by the Individual Settlement Fund.

- (e) If the Court approves a lesser amount of attorneys' fees and litigation costs and expenses, the Service Enhancement, and Settlement Administrator Expenses, than those sought by Plaintiffs and Plaintiff's Counsel, any amount disallowed by the Court will be added to the Individual Settlement Fund to be distributed in pro rata shares to the PAGA Members. The Parties agree that the Settlement Agreement will remain binding with such modification(s) as ordered by the Court, and its terms will be otherwise unchanged. This Settlement is not conditioned upon the Court's approval of Plaintiff's Counsel's petition for fees and costs or the amount of any Service Enhancement award.
- (f) The Settlement Administrator will disburse monies from the Net Settlement Amount as and when authorized in this Settlement Agreement and by order of the Court, will file and issue any necessary tax reporting documents, and will inform the Parties and the Court of its fulfillment of the duties imposed by this Settlement Agreement.
- (g) The Settlement Administrator will issue settlement checks to the LWDA and PAGA Members under this Settlement Agreement, as well as the Service Enhancement to the Plaintiff and attorneys' fees and costs awarded to Plaintiff's Counsel, by sending such payments by mail, wire, or other reliable means to the respective recipients as specified below.

E. Estimated Pay Periods

44. In connection with the Parties' execution of the Memorandum of Understanding, Caliber has provided to Plaintiff the number of Estimated Pay Periods. If, as of the end date of the Covered PAGA Pay Periods, the number of Covered PAGA Pay Periods exceeds the Estimated Pay Periods by more than five percent, Caliber shall have the option to (1) increase the Maximum Settlement Amount on a pro rata basis per pay period to cover the number of pay periods above the five percent increase (*e.g.*, for an increase of six percent to the Estimated Pay Periods, Caliber shall add an extra 1% to the Maximum Settlement Amount; for a ten percent increase to the Estimated Pay Periods, Caliber shall add an extra 5% to the Maximum Settlement Amount); or (2) modify the end date for the Covered PAGA Pay Periods and Released Claims to a date earlier than the Approval Date; or (3) withdraw from the Settlement pursuant to Paragraph 76.

F. Released Claims

45. Upon the Settlement Effective Date, Plaintiffs individually, and the State of California, the LWDA, and all PAGA Members, through Plaintiffs acting as a proxy for the State of California and the LWDA and as a Private Attorney General acting on behalf of all other PAGA Members, will be deemed to have fully, finally, and forever released the Caliber Releasees from all Released Claims as set forth in Section VII.A. Plaintiff, in conjunction with his execution of this Settlement Agreement and requesting his Service Enhancement, also will enter into the General Release as set forth in Section VII.B.

G. Waiver of Appeal

46. The Parties expressly acknowledge and agree that approval of this Settlement Agreement, through the Order Granting Settlement Approval and Judgment, effectuates the Releases set forth in Section VII, extinguishes all Released Claims, and dismisses the Action with prejudice. Upon the Approval Date, Plaintiff, Caliber, and their counsel expressly agree to hereby waive and extinguish their right to appeal any order or judgment in the Action, and the judgment entered in the Action will be final.

H. No Right to Exclusion or Objections by PAGA Members

47. Because this Settlement resolves claims and actions brought pursuant to PAGA by Plaintiffs acting as a proxy and as a Private Attorney General of and for the State of California and the

LWDA, the Parties agree that no PAGA Member has the right to exclude himself or herself from the Settlement. PAGA Members will be bound by the terms of the Settlement Agreement, upon its approval by the Court, regardless of whether he or she cashes any Individual Settlement Amount payment received as a result of this Settlement. The Parties also agree that no PAGA Member, including Plaintiffs, has the right to object to the terms of the Settlement Agreement and Plaintiffs agree not to object to the Settlement.

I. Motion for Settlement Approval and Entry of Judgment

48. Plaintiffs will file motion for settlement approval and entry of judgment with the Court, in which Plaintiff will request that the Court, among other things, enter an Order Granting Settlement Approval and Judgment in accordance with the terms of this Settlement Agreement. Concurrent with filing the request for settlement approval and entry of judgment, Plaintiff will submit that motion and any supporting papers, including a copy of this Settlement Agreement, to the LWDA pursuant to Labor Code § 2699(l)(2).

V. SETTLEMENT ADMINISTRATION

A. Settlement Administrator Duties

49. Pursuant to the terms of this Settlement Agreement, the Settlement Administrator will be responsible for and the Settlement Administration Expenses will cover: (a) calculating and determining the LWDA's 75% share of the Net Settlement Amount, and preparing and mailing that payment to the LWDA; (b) preparing a list of all PAGA Members, calculating the Individual Settlement Amounts due to each PAGA Member from the Individual Settlement Fund, and issuing and mailing checks payable to said PAGA Members, including taking appropriate steps to trace, update and locate any PAGA Members whose address or contact information as provided to the Settlement Administrator is inaccurate or outdated; (c) issuing to Plaintiffs, Plaintiffs' Counsel, and PAGA Members any tax forms as may be required by applicable law for all amounts paid pursuant to this Settlement Agreement; (d) forwarding all taxes and penalties to the appropriate government authorities; (e) maintaining the Maximum Settlement Amount account in an interest-bearing account at a federally insured banking institution, as discussed below; (f) preparing and mailing the amount of attorneys' fees and litigation costs awarded to Plaintiff's Counsel from the Maximum Settlement Amount; (g) preparing and mailing the Service Enhancement awarded to

Plaintiffs from the Maximum Settlement Amount; (h) reporting to Defendants' Counsel, Plaintiffs' Counsel, and, if necessary, the Court regarding the completion of the tasks identified in this paragraph; and (i) carrying out other related tasks including the proper maintenance of undisbursed Individual Settlement Amounts or uncashed checks in an interest bearing account and any reporting required for that account, in accordance with the terms of this Settlement Agreement.

50. All disputes relating to the Settlement Administrator's ability and need to perform its duties will be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Settlement Agreement, until all payments and obligations contemplated by the Settlement Agreement have been fully executed.

B. Qualified Settlement Fund

51. The Settlement Administrator will create a Qualified Settlement Fund ("QSF"), to be funded by the Maximum Settlement Amount paid by Caliber and administered by the Settlement Administrator. The Settlement Administrator shall have control over the distribution of funds from the QSF, once funded. With respect to the QSF, the Settlement Administrator shall: (1) satisfy all federal, state and local income and other tax reporting, return, and filing requirements with respect to the QSF and any interest or other income earned by the QSF; and (2) satisfy out of the QSF all fees, expenses and costs incurred in connection with the opening and administration of the QSF and the performance of its duties and functions as described in this Settlement Agreement. The aforementioned fees, costs and expenses shall be treated as and included in the costs of administering the QSF and as Settlement Administration Expenses. The Parties agree to cooperate with the Settlement Administrator and one another to the extent reasonably necessary to carry out the provisions of this Section. If the Court does not enter the Order Granting Settlement Approval and Judgment, Caliber shall not be obligated to fund the QSF.

C. Calculating and Issuing Payments To PAGA Members

52. The Settlement Administrator shall calculate the Individual Settlement Amount payments to PAGA Members as described in Paragraph 41(d)(ii).

53. In addition to the payments to PAGA Members, Caliber, through the Settlement Administrator, shall also make a payment to the California LWDA as consideration for the release of all

PAGA claims that are the subject of the Action on behalf of the State of California. Of the Net Settlement Amount, seventy-five percent (75%) shall be paid to the LWDA.

54. Prior to mailing the Individual Settlement Amount payments to PAGA Members, the Settlement Administrator will update the addresses for the PAGA Members using the National Change of Address database and other available resources deemed suitable by the Settlement Administrator. Any returned envelopes from the initial mailing with forwarding addresses will be used by the Settlement Administrator to locate PAGA Members and re-mail the Individual Settlement Amount payments to the correct or updated address. The Settlement Administrator will use appropriate tracing methods, including skip tracing, to ensure that the Individual Settlement Amount payments are received by PAGA Members. The Settlement Administrator will also take reasonable steps, including skip tracing, to locate any PAGA Member whose Individual Settlement Amount payments are returned as undeliverable.

55. The Individual Settlement Amount payments mailed to each PAGA Member will include the notice letter attached to this Settlement Agreement as **Exhibit A** and will provide a payment of each PAGA Member's pro rata share from the Individual Settlement Fund.

56. All settlement payments from the Maximum Settlement Amount, including any payment to the LWDA, any Individual Settlement Amount payments, and any Service Enhancement approved by the Court, will be treated as civil penalties under PAGA, and will be reported on an IRS Form 1099 without withholdings. The payments to Plaintiff's Counsel for attorneys' fees and litigation costs will be treated as miscellaneous income and will be reported on an IRS Form 1099 without withholdings. The Plaintiff and PAGA Members will be exclusively liable for any and all tax liability, if any. All Parties represent that they have not received, and will not rely on, advice or representations from other Parties or their agents or attorneys regarding the tax treatment of payments under federal, state, or local law.

D. Settlement Administration Expenses

57. All Settlement Administration Expenses will come out of the Maximum Settlement Amount. If the actual Settlement Administration Expenses are less than the amount approved by the Court, those funds will be added to the Net Settlement Amount.

VI. DISTRIBUTION OF NET SETTLEMENT AMOUNT

A. Process and Deadlines

58. Within thirty (30) days after the Approval Date, Caliber will provide information in an electronic format regarding all PAGA Members, including name(s), last known residence addresses, Social Security numbers, and all Covered PAGA Pay Periods worked, to the Settlement Administrator only, contingent upon the Settlement Administrator's execution of a confidentiality agreement. PAGA Member data will be used by the Settlement Administrator only for the purpose of calculating settlement shares and finding and paying PAGA Members their portion of the Individual Settlement Fund. Data for PAGA Members will be kept confidential by the Settlement Administrator, and will not be disclosed to Plaintiff, Plaintiff's Counsel, the LWDA, or any other PAGA Member without the written consent of Caliber.

59. Within thirty (30) days after the Approval Date, Caliber will provide payment of the Maximum Settlement Amount to the Settlement Administrator to fund the QSF to be created by the Settlement Administrator. It will be considered a material breach of the Settlement Agreement if Caliber does not provide payment of the Maximum Settlement Amount to the Settlement Administrator within thirty (30) days after the Approval Date. If that occurs, Caliber will pay interest on the Court-approved Maximum Settlement Amount for each day that the settlement funding is late at the rate of 15% per annum. Additionally, in the event of Caliber's failure to send the payment of the Maximum Settlement Amount to the Settlement Administrator within thirty (30) days after the Approval Date, Plaintiffs may immediately petition the Court for settlement enforcement, and will be entitled to an award of all fees and costs incurred in conjunction with that settlement enforcement.

60. Within forty-five (45) days after the Approval Date, the Settlement Administrator will calculate the Net Settlement Amount and will make the calculation of payments from the Net Settlement Amount to be distributed to the LWDA (representing its 75% share under PAGA of the Net Settlement Amount) and to each of the PAGA Members (representing, in the aggregate, their 25% share under PAGA of the Net Settlement Amount). Upon completion of its calculation of payments, and at least seven (7) days prior to the distribution of payments to the LWDA and PAGA Members, the Settlement Administrator will provide Defendants' Counsel with a report listing the amount of all payments to be made to the LWDA

and to each PAGA Member from the Net Settlement Amount.

61. Within and no earlier than thirty-one to thirty-three (31-33) days after the QSF has been funded with the Maximum Settlement Amount, and provided that no timely appeal has been filed of the Court's Order Granting Settlement Approval and Judgment, the Settlement Administrator will distribute and pay Individual Settlement Amount checks to all PAGA Members, issue a Settlement check to the LWDA for its payment of PAGA penalties, pay Plaintiffs the Service Enhancement, and pay Plaintiffs Counsel any awarded attorneys' fees and costs. The Settlement Administrator will then also issue a payment to itself in the amount approved by the Court for services performed in administering this Settlement. In the event that a timely appeal of the Court's Order Granting Settlement Approval and Judgment is filed, the Settlement Administrator will not disburse the settlement amounts pursuant to this Paragraph until a date approved by both Parties.

B. Uncashed Settlement Checks

62. PAGA Members who are sent Individual Settlement Amount payments will have 90 calendar days after mailing by the Settlement Administrator to cash their settlement checks and will be so advised of such deadline. If PAGA Members do not cash their checks within that period, those checks will become void and the settlement payment amounts will be paid to the State's Unclaimed Wage Fund in the name of the employee.

VII. RELEASE OF CLAIMS

A. Release of Claims by Plaintiff, the LWDA, and All PAGA Members

63. Upon the Approval Date, Plaintiffs, on behalf of himself, the State of California and the LWDA, and all PAGA Members, fully and forever releases and discharges the Caliber Releasees (as defined in Paragraph 4) from the Released Claims as defined in Paragraph 20. The Parties agree that this Settlement Agreement is conditioned upon this release of all Released Claims, both by Plaintiff individually, and by the State of California, the LWDA, and all PAGA Members through Plaintiffs acting on behalf of, and as a Private Attorney General for, the State of California, the LWDA, and all allegedly aggrieved current and former employees of Caliber. Upon the Settlement Effective Date, Plaintiffs, the LWDA, and each and every PAGA Member will be bound by the terms of this Settlement Agreement and

will have recourse exclusively to the benefits, rights, and remedies provided hereunder.

64. The Parties further understand and agree that this Settlement Agreement, in conjunction with the Order Granting Settlement Approval and Judgment, prohibits and enjoins any PAGA Member (including Plaintiffs), from bringing against the Caliber Releasees any of the Released Claims (including unknown Released Claims) through and including the Approval Date. Upon the Settlement Effective Date, Plaintiffs, on behalf of himself and on behalf of the LWDA and each and every PAGA Member, will be deemed to have, and by operation of the Order Approving Settlement Agreement and Judgment entered by the Court will have fully, finally, and forever released, relinquished, and discharged each and all of the Caliber Releasees from any and all Released Claims (including unknown Released Claims) through the Approval Date.

65. With respect to the Released Claims only, the Parties stipulate and agree that, upon the Settlement Effective Date, the LWDA and PAGA Members will be deemed to have, and by operation of the Order Approving Settlement Agreement and Judgment entered by the Court will have waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of California Civil Code § 1542, which provides:

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

Plaintiff, the LWDA, and all PAGA Members will be deemed to have acknowledged that this Settlement Agreement is intended to include in its effect all Released Claims that they do not know or suspect to exist in their favor up through the Approval Date.

B. General Release by Plaintiffs

66. For and in accepting the consideration of the Service Enhancement awarded, Plaintiffs will further make a general release as set forth in this Section VII.B (the “General Release”) on behalf of

themselves and their heirs, executors, administrators, representatives, successors and assigns, of the Caliber Releasees (as defined in Paragraph 4), to the fullest extent permitted by law, of and from any and all claims, actions, causes of action, lawsuits, attorneys' fees, costs, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, bonuses, controversies, agreements, promises, claims, charges, complaints and demands whatsoever, whether in law or equity, known and unknown, asserted and unasserted, which against the Caliber Releasees, Plaintiffs (and their heirs, executors, administrators, representatives, successors and assigns) may now have or hereafter later determines that Plaintiffs have or had upon or as of the date of execution of this Settlement Agreement. This includes all of Plaintiffs' claims against the Caliber Releasees related to or arising out of Plaintiffs' employment with the Caliber Releasees, and/or the cessation of employment or purported employment therefrom. These claims expressly include, but are not limited to, claims arising under the Americans With Disabilities Act, the National Labor Relations Act, the Fair Labor Standards Act, the Equal Pay Act, the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.*, as amended, including, but not limited to, breach of fiduciary duty and equitable claims arising under § 1132(a)(3) ("ERISA"), the Worker Adjustment and Retraining Notification Act, as amended, Title VII of the Civil Rights Act of 1964, the Vocational Rehabilitation Act of 1973, The Age Discrimination in Employment Act of 1967, as amended by the Older Workers Benefit Protection Act of 1990, the Civil Rights Acts of 1866, 1871 and 1991, including Section 1981 of the Civil Rights Act, the Family and Medical Leave Act (to the extent permitted by law), the Fair Credit Reporting Act or other federal, state or local laws relating to background checks, the Sarbanes-Oxley Act, the Dodd-Frank Wall Street and Consumer Protection Act, the California Family Rights Act ("CFRA"), California Equal Pay Law, California Whistleblower Protection Laws Cal. Bus. And Prof. Code § 17200 *et seq.* ("UCL"), the California Fair Employment and Housing Act, and any and all claims related to the following: failure to pay minimum wages; failure to pay overtime wages or pay overtime at the correct rate of pay; failure to pay for all hours worked (off-the-clock work); failure to properly pay for sick and/or vacation time; failure to allow employees to take sick leave at their sole discretion; failure to provide meal periods; failure to provide rest periods; failure to properly compensate workers for rest breaks; failure to pay premiums at the correct rate of pay; failure to timely pay final wages and wages earned during employment

including sick leave and vacation pay; failure to provide reimbursement for necessary business-related expenditures; failure to maintain wage-related records; failure to furnish accurate wage statements; failure to obtain employees' voluntary authorizations for payment of wages by direct deposit; improperly restricting employees from lawful conduct occurring during nonworking hours away from the employer's premises; requiring employees to enter into invalid restrictive covenants and/or non-compete agreements; any alleged violations of the the California Labor Code and the Industrial Welfare Commission Wage Orders; any alleged violation of and/or any remedy provided by the California Civil Code and/or the California Code of Civil Procedure including, but not limited to, section 1021.5; any claims for penalties under the California Labor Code and/or the California Private Attorneys General Act, California Labor Code section 2698 *et seq.* ("PAGA"); and/or any other federal, state or local human rights, civil rights, wage-hour, pension or labor law, rule, statute, regulation, constitution or ordinance and/or public policy, contract or tort law, or any claim related to whistleblowers or retaliation under such laws, or any claim of breach of any contract (whether express, oral, written or implied from any source), or any claim of intentional or negligent infliction of emotional distress, tortious interference with contractual relations, wrongful or abusive or constructive discharge, defamation, prima facie tort, fraud, negligence, loss of consortium, malpractice, breach of duty of care, breach of fiduciary duty or any action similar thereto against the Caliber Releasees, including any claim for attorneys' fees, expenses or costs based upon any conduct from the beginning of the world up to and including the date of this General Release; provided, however, that Plaintiff does not waive any right to file an administrative charge with the Equal Employment Opportunity Commission ("EEOC") or the National Labor Relations Board ("NLRB"), subject to the confidentiality provisions of the Settlement Agreement, and subject to the condition that Plaintiff not seek, or in any way obtain or accept, any monetary award, recovery or settlement therefrom and understands that such limitation does not in any way restrict Plaintiffs' ability to file and pursue such charge consistent with the confidentiality obligations set forth in this Settlement Agreement; and further provided, however, that Plaintiffs do not waive any rights with respect to, or release the Caliber Releasees from, any claims for California Workers' Compensation benefits, unemployment insurance or indemnification provided by state law (except that Plaintiffs hereby release and waive any claims that his termination was to avoid payment

of such benefits or payments or that, as a result of his termination, he is entitled to additional benefits or payments); and further provided, however, that Plaintiffs do not release any claim that cannot be released by private contract or for breach of the terms of the Settlement Agreement, subject to the confidentiality obligations in Section XI below. Plaintiff's General Release also includes the waiver of any right to bring, maintain, or participate in a class, collective, or representative action against the Caliber Releasees to the maximum extent permitted by law.

67. Thus, for the purpose of implementing a full and complete release and discharge of the Caliber Releasees, Plaintiffs expressly acknowledges that this General Release is intended to include in its effect, without limitation, all claims which Plaintiffs do not know or suspect to exist in Plaintiffs' favor at the time of execution hereof, and that this General Release contemplates the extinguishment of any such claim or claims.

68. In connection with such waiver and relinquishment, Plaintiffs hereby acknowledges that Plaintiffs or their attorneys may hereafter discover claims or facts in addition to, or different from, those which he now knows or believes to exist, but that he expressly agrees to fully, finally and forever settle and release any and all claims, known or unknown, suspected or unsuspected, which exist or may exist on his behalf against the Caliber Releasees at the time of execution of the Settlement Agreement, including, but not limited to, any and all claims relating to or arising from Plaintiff's employment with the Caliber Releasees or the cessation of that employment. Plaintiffs and Caliber further acknowledge, understand and agree that this representation and commitment is essential to each Party and that this Settlement Agreement would not have been entered into were it not for this representation and commitment.

69. It is further understood and agreed that as a condition of this General Release, and to effect a full and complete general release as described above, Plaintiffs hereby expressly waives and relinquishes any and all claims, rights or benefits that he may have under California Civil Code Section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR
OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY

HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Plaintiffs warrant that they have read this Settlement Agreement, including the waiver of California Civil Code section 1542, and that they have each consulted with or had the opportunity to consult with counsel of his choosing and specifically about the waiver of section 1542, that they understand this Agreement and the section 1542 waiver, and that they freely and knowingly enters into this Agreement, this General Release, and the section 1542 waiver.

70. Plaintiffs further agree that, unless required to do so by law, they will not testify, provide documents, or otherwise participate, or request others to participate on his behalf, in any proceeding or litigation that is related to any conduct by any Caliber Releasee as of the date of this Settlement Agreement. Notwithstanding the foregoing, nothing in this General Release will prohibit or restrict Plaintiffs from: (i) providing information to, or otherwise assisting in, an investigation by Congress, the Equal Employment Opportunity Commission or the NLRB, the Securities and Exchange Commission (“SEC”) or any other federal regulatory or law enforcement agency or self-regulatory organization (“SRO”); (ii) testifying, participating, or otherwise assisting in a proceeding relating to an alleged violation of any federal law relating to fraud or any rule or regulation of the SEC or any SRO; or (iii) complying with a lawful subpoena or other legal process, subject to the terms of the Settlement Agreement.

71. If any of the provisions, terms, clauses, waivers or releases of claims and rights contained in this General Release are declared illegal, unenforceable, or ineffective in a legal forum of competent jurisdiction, such provisions, terms, clauses, waivers or releases of claims or rights will be modified, if possible, in order to achieve, to the extent possible, the intentions of the Parties and, if necessary, such provisions, terms clauses, waivers and releases of claims and rights will be deemed severable, such that all other provisions, terms, clauses and waivers and releases of claims and rights contained in this General Release will remain valid and binding upon the Parties, provided, however, that, notwithstanding any other provision of this General Release, if any portion of the waiver or release of claims or rights is held to be unenforceable, Caliber may, at its option, seek modification or severance of such portion, or terminate the Settlement Agreement pursuant to Section X.

72. Plaintiffs further covenant that they will not participate in any other legal actions against the Caliber Releasees, and will opt-out of those actions if he becomes aware of such actions. Plaintiffs further agree that any other dispute relating to his employment with the Caliber Releasees will be subject to alternative dispute resolution under Caliber's Arbitration Agreement.

73. Plaintiffs will certify that he has returned all of Caliber's property in Plaintiffs or his attorney's possession, custody, or control, including without limitation, proprietary or confidential information, equipment, telephones, credit cards, keys, pagers, documents, computers and computer discs, personal data assistants, files and data, other than records related solely to Plaintiffs' own compensation or benefits.

VIII. DUTIES OF THE PARTIES

74. Plaintiffs' Counsel, subject to Caliber's approval, will submit this Settlement Agreement to the Court and a proposed Order Granting Settlement Approval and Judgment.

75. Following entry of the Court's Order Granting Settlement Approval and Judgment, the Parties will each act to assure his or its timely execution and the fulfillment of all provisions in that Order and in this Settlement Agreement, including but not limited to the following:

- (a) Within ten (10) days after the Approval Date, Plaintiff's Counsel will submit a copy of the Order Granting Settlement Approval and Judgment to the LWDA pursuant to Labor Code § 2699(l)(3).
- (b) Within thirty (30) days after the Approval Date, Caliber will provide to the Settlement Administrator: (1) payment of the Maximum Settlement Amount to fund the QSF, and (2) the PAGA Member list and identification and contact information specified in Paragraph 56 above. Caliber will submit this information in electronic format as specified by the Settlement Administrator and will thereafter assist the Settlement Administrator as necessary or as requested to use, correct, or update this information in order to enable the Settlement Administrator to locate and contact PAGA Members, and to provide information needed or requested by the Settlement Administrator in order to make determinations on

PAGA Members' challenges.

- (c) Upon entry of the Order Granting Settlement Approval and Judgement, all Parties will waive their right to appeal the judgment and all other court orders in the Action.
- (d) Plaintiffs/ Counsel and Defendants' Counsel will assist the Settlement Administrator as needed or requested in the process of identifying and locating PAGA Members entitled to payments from the Individual Settlement Fund and assuring delivery of such payments.
- (e) Plaintiffs/ Counsel and Defendants' Counsel will cooperate with each other and assist the Settlement Administrator as needed or requested in completing the distribution of any residual amount of the Individual Settlement Fund for any uncashed checks to the Cy Pres Recipient.

IX. SETTLEMENT APPROVAL PROCEDURES AND TIMELINE FOR COMPLETION OF SETTLEMENT

76. This Settlement Agreement will become final and effective only upon the occurrence of all of the following events:

- (a) Execution of this Settlement Agreement by the Parties and their respective counsel of record.
- (b) Submission of the Settlement Agreement to the Court for approval.
- (c) Plaintiffs/ submission of the Settlement Agreement to the LWDA.
- (d) Entry by the Court of an Order Approving Settlement Approval and Judgment, which, among other things, must:
 - (i) approve the Settlement and the release of claims set forth herein, adjudging the terms thereof to be fair, adequate, reasonable, and binding on Plaintiff, the LWDA, and all PAGA Members through Plaintiffs acting on behalf of, and as a Private Attorney General for, the State of California, the LWDA, and all PAGA Members, and directing that its terms and

- provisions be carried out;
- (ii) approve settlement administration services to be provided by the Settlement Administrator;
 - (iii) permanently enjoin and prohibit Plaintiffs, the LWDA, and all other PAGA Members from pursuing and/or seeking to reopen claims that have been released by this Agreement;
 - (iv) provide that the Court will retain jurisdiction to oversee administration and enforcement of the terms of the Settlement and the Court's orders;
 - (v) otherwise incorporate the terms of this Settlement Agreement; and
 - (vi) occurrence of the Settlement Effective Date.

77. The schedule for approval and payment procedures carrying out this Settlement is as follows. The schedule may be modified depending on whether and when the Court grants necessary approvals. In the event of such modification, the Parties will cooperate in order to complete the settlement procedures as expeditiously as reasonably practicable.

Within 10 days after the Approval Date	Plaintiff's Counsel to submit a copy of the Approval Order and Judgment to the LWDA.
Within 30 days after the Approval Date	Caliber to (1) send payment of the Maximum Settlement Amount to the Settlement Administrator to be deposited into the QSF; and (2) provide the Settlement Administrator the PAGA Member information, including names, last known residence addresses, social security numbers, and the number of Covered PAGA Pay Periods.
Within 45 days after the Approval Date	Settlement Administrator to make the calculation of payments from the Net Settlement Amount to be distributed to the LWDA and to the PAGA Members and provide Defendants' Counsel with a report listing the amount of all payments to be made to the LWDA and to each PAGA Member. Settlement Administrator to complete any skip trace or other address searches for PAGA Members, including updating any contact information.

Settlement Effective Date	Following entry of the Order Granting Settlement Approval and Judgment, the latter of the following dates: (a) if an appeal, review, or writ is not sought from the Order Granting Settlement Approval and Judgment, the 63rd day after service of notice of entry of the Order Granting Settlement Approval and Judgment; or (b) if an appeal, writ, or review is sought from the Order Granting Settlement Approval and Judgment, the day after the Order Granting Settlement Approval and Judgment is affirmed or the appeal, review, or writ is dismissed or denied, and the Order Granting Settlement Approval and Judgment is no longer subject to further judicial review.
Within 31-33 days after the QSF has been funded with the Maximum Settlement Amount; alternatively, if a timely appeal of the Court's order and judgment is filed, on a date approved by both Parties	Settlement Administrator to distribute and pay Settlement checks to the LWDA and to all PAGA Members from the Net Settlement Amount, pay the Plaintiff his Service Enhancement, and pay Plaintiff's Counsel the attorney's fees and costs approved and awarded by the Court.
90 days after distribution of settlement checks	Expiration of PAGA Members' settlement checks.
Within 120 days after distribution of settlement checks	Settlement Administrator to calculate and pay any remaining amount from the Net Settlement Amount (due to expired settlement checks) to the State's Unaid Wage Fund.

X. VOIDING OR MODIFYING THE SETTLEMENT AGREEMENT

78. Caliber has the right to withdraw from the Settlement at any time prior to the Settlement Effective Date if: (a) the Settlement is construed by the Court in such a fashion that Caliber is required to pay more than the Maximum Settlement Amount; or (b) the Court denies approval of the Settlement or any material terms thereof (excluding any reduction of Plaintiffs and Plaintiffs' Counsel's requests for attorneys' fees, litigation costs and expenses, and the Service Enhancement); or (c) the Court does not order the release of claims of the PAGA Members set forth in this Settlement Agreement, or otherwise makes an order inconsistent with any of the material terms of this Settlement Agreement; or (d) Plaintiffs or Plaintiffs' counsel breaches this Settlement Agreement; or (e) the number of Covered PAGA Pay Periods exceeds the Estimated Pay Periods by more than five percent.

79. If for any reason the Settlement Agreement is not approved, or the Court fails to enter the

Order Granting Settlement Approval and Judgment, or Caliber or Plaintiffs withdraw from the Settlement, this Settlement Agreement and any related settlement documents (including the Parties' memorandum of understanding) will be null and void, other than the confidentiality and non-disclosure provisions in Section XI and the non-admission provisions in Section IV.A. In such an event, neither this Settlement Agreement, nor the parties' memorandum of understanding, nor the settlement documents, nor the negotiations leading to the Settlement, may be used as evidence for any purpose, and Caliber will retain the right to challenge all claims and allegations in the Action and to assert all applicable defenses on all applicable grounds.

80. Other than as specified above, this Settlement Agreement may not be changed, altered, or modified, except in writing and signed by counsel for 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 the Parties hereto, and approved by the Court.

XI. CONFIDENTIALITY AND PUBLICITY

81. Names of PAGA Members and their allocation amounts will be kept strictly confidential by the Settlement Administrator, who will not release such information to Plaintiffs or Plaintiffs' Counsel and will only file such information under seal if necessary. Plaintiffs' Counsel agrees that any information they receive or have received in connection with this Settlement, may be used for the purposes of settling the Action only, and may not be used for any purpose or in any other action or proceeding.

82. Plaintiffs and Plaintiffs' Counsel agree to keep this settlement and Settlement Agreement confidential before the Settlement Agreement is filed with the Court, and after filing not to disclose the terms of this settlement and Settlement Agreement except in court papers or if required by legal process. In the event that Plaintiffs and/or Plaintiffs' Counsel believe they are legally obligated by statutory or regulatory requirements (including compulsory legal process, such as a subpoena) to make disclosures regarding the terms of this settlement or Settlement Agreement, they must notify Defendants' Counsel, Carrie A. Gonell, by email at carrie.gonell@morganlewis.com, within three (3) business days of receiving such notice that gives Plaintiffs and/or Plaintiffs' Counsel reason to believe they are so obligated, and they shall take reasonable steps to maintain the confidentiality of this settlement and Settlement Agreement, including by filing any required disclosures under seal. Neither Plaintiffs nor Plaintiffs' Counsel, directly

or indirectly, will issue a press release, hold a press conference, publish information about the settlement on any website, or otherwise publicize the settlement, with the exception that Plaintiff's Counsel may put information available in the public record about the settlement in a description of their experience or the like in order to describe their experience to a court. Plaintiffs and Plaintiffs' Counsel agree not to respond to any press inquiries concerning the settlement except to refer reporters generally to papers filed with the Court.

XII. PARTIES' AUTHORITY

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

XIII. MUTUAL FULL COOPERATION

84. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, executing such documents and taking such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties to this Settlement Agreement will use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court or otherwise to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement Agreement, Plaintiffs' Counsel will, with the assistance and cooperation of Caliber and Defendants' Counsel, take all necessary steps to secure the Court's approval of this Settlement Agreement.

XIV. NOTICES

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

To Plaintiffs' Counsel:

Eric Yaeckel
SULLIVAN & YAECKEL LAW GROUP APC
2330 Third Ave.
San Diego, CA 92101

Tel: (619) 702-6760
Fax: (619) 702-6761
Yaeckel@sullivanlawgroupapc.com

To Defendants' Counsel:

Carrie A. Gonell
MORGAN, LEWIS & BOCKIUS LLP
600 Anton Boulevard, Suite 1800
Costa Mesa, CA 92626
Tel: (714) 830.0600
Fax: (714) 830.0700
carrie.gonell@morganlewis.com

If the identity of the persons to be notified for any Party changes, or their address changes, that Party will notify all other Parties of the change in writing.

XV. MISCELLANEOUS PROVISIONS

A. Captions and Titles

86. Paragraph titles, headings, 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.

B. Drafting

87. 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. Neither Party will be considered the "drafter" of the Settlement Agreement for purposes of having terms construed against that Party, and this Settlement Agreement will not be construed in favor of or against any Party by reason of the extent to which any Party or their counsel participated in the drafting of this Settlement Agreement.

C. Extensions of Time

88. If a Party cannot reasonably comply with an obligation under this Settlement Agreement by the deadline set forth herein applicable to that obligation, that Party may apply to the Court for a reasonable extension of time to fulfill that obligation. Consent to such a request for an extension will not be unreasonably withheld by the other Party.

D. Governing Law

89. The rights and obligations of the Parties hereunder will be construed and enforced in accordance with, and will be governed by, the laws of the State of California, without regard to principles of conflict of laws.

E. No Impact on Benefit Plans

90. Neither the Settlement Agreement nor any amounts paid under the Settlement Agreement will modify any previously credited hours or service under any employee benefit plan, policy, or bonus program sponsored by Caliber. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under Caliber's sponsored benefit plans, policies, or bonus programs. The payments made under the terms of this Settlement will not be applied retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any other form of compensation for the purposes of Caliber's benefit plan, policy, or bonus program. Caliber retains the right to modify the language of its benefit plans, policies and bonus programs to effect this intent, and to make clear that any amounts paid pursuant to this Settlement Agreement are not for "hours worked," "hours paid," "hours of service," or any similar measuring term as defined by applicable plans, policies and bonus programs for purposes of eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are not required by this Settlement Agreement.

F. Integration

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

G. No Prior Assignments

92. This Settlement Agreement will be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators and successors. The Parties hereto represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim,

demand, action, cause of action or rights herein released and discharged except as set forth herein.

H. Counterparts

93. This Settlement Agreement may be executed in counterparts with signatures transmitted by facsimile or as an electronic image of the original signature. When each Party has signed and delivered at least one such counterpart, each counterpart will be deemed an original, and, when taken together with other signed counterparts, will constitute one Settlement Agreement, which will be binding upon and effective as to all Parties. A facsimile signature or electronic image will have the same force and effect as the original signature.

READ CAREFULLY BEFORE SIGNING

PLAINTIFF

Dated: _____

Gerardo Valadez

PLAINTIFF

Dated: _____

Miguel Diaz

PLAINTIFF

Dated: _____

Lupe Rodriguez

PLAINTIFF

Dated: _____

Arthur Bebekyan

CALIBER HOLDINGS LLC

Dated: _____

Name: _____

Title: _____

APPROVED AS TO FORM

SULLIVAN & YAECKEL LAW GROUP APC

Dated: _____

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Attorneys for Plaintiffs Gerardo Valadez and Miguel
Diaz

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Dated: _____

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Attorneys for Plaintiffs Lupe Rodriguez and Arthur
Bebekyan

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Dated: _____

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EXHIBIT 2

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Attorneys for Plaintiff GERARDO VALADEZ, and MIGUEL DIAZ

(Additional Counsel on Following Page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

GERARDO VALADEZ, MIGUEL DIAZ,
LUPE RODRIGUEZ, and ARTHUR
BEBEKYAN, in a Representative capacity
only, and on behalf of other members of the
general public similarly situated,

Plaintiff,

v.

CALIBER HOLDINGS CORP; CALIBER
COLLISION TRANSPORT SERVICES,
LLC; and DOES 1-10, inclusive

Defendants.

CASE NO. 37-2020-00015935-CU-OE-CTL

(Representative Action)

FIRST AMENDED COMPLAINT FOR:

- 1. MEAL AND REST PERIOD VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.***
- 2. MINIMUM WAGE VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.***
- 3. OVERTIME VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.***
- 4. WAGE STATEMENT AND RECORD KEEPING VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.***
- 5. IMPROPER RESTRAINTS ON TRADE PURSUANT TO LABOR CODE § 2698 *et seq.***
- 6. SICK PAY AND VACATION PAY VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.***
- 7. FAILURE TO OBTAIN REQUIRED**

**PAYROLL AUTHORIZATIONS
PURSUANT TO LABOR CODE §
2698 et seq.**

- 8. FAILURE TO REIMBURSE
PURSUANT TO LABOR CODE §
2698 et seq.**
- 9. FAILURE TO PAY WAGES UPON
SEPARATION PURSUANT TO
LABOR CODE § 2698 et seq.**

Demand for Jury Trial

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Attorneys for Plaintiffs LUPE RODRIGUEZ and ARTHUR BEBEKYAN

COMES NOW GERARDO VALADEZ, MIGUEL DIAZ, LUPE RODRIGUEZ, and ARTHUR BEBEKYAN (hereinafter “Plaintiffs”), in a representative capacity, and on behalf of all other members of the general public similarly situated, and alleges for their First Amended Complaint as follows:

PARTIES, JURISDICTION, AND VENUE

1. This Court has jurisdiction over this matter in that all parties are residents of, or do business within, the State of California and the amount in controversy exceeds the statutory minimum limit of this Court. The monetary damages and restitution sought by Plaintiffs exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. Furthermore, there is no federal question at issue as Wage and Hour protections and remedies related thereto are based solely on California Law and Statutes, including the Labor Code, Civil Code, and IWC Wage Order(s). Also, the Ninth Circuit has already held that, for purposes of establishing federal diversity jurisdiction, penalties pursuant to the Private Attorneys General Act of 2004 (“PAGA”) may **not** be aggregated. *Urbino v. Orkin Servs. of California, Inc.*, 726 F.3d 1118, 1122 (9th Cir. 2013).
2. Venue before this Court is proper in that certain wrongful acts which gave rise to Plaintiffs’ injuries occurred in the County of San Diego, State of California.
3. At all relevant times herein, Plaintiff VALADEZ was an individual residing in the County of San Diego, State of California.
4. Plaintiffs are informed and believe and thereon allege that at all relevant times mentioned herein, Defendant CALIBER HOLDINGS CORPORATION was and is a Delaware Corporation, and Defendant CALIBER COLLISION TRANSPORT SERVICES, LLC was and is a Delaware Limited Liability Company (hereinafter, collectively referred to as “CALIBER” or “Defendants”). At all relevant time periods, both Defendants were doing business throughout the state of California, including the County of San Diego.
5. Plaintiffs are presently unaware of the true names, capacities and liability of Defendants named herein as DOES 1 through 10, inclusive. Accordingly, Plaintiffs will seek leave of court to amend this complaint to allege their true names and capacities after the same have been

ascertained.

6. Plaintiffs are informed and believe and thereon allege that each of the fictitiously named Defendants is responsible in some manner for the wrongs and damages as herein alleged, and in so acting was functioning as the agent, servant, partner, and employee of the co-defendants, and in doing the actions mentioned below, was acting within the course and scope of his or her authority as such agent, servant, partner, and employee with the permission and consent of the co-defendants. Plaintiffs' injuries as herein alleged were proximately caused by said Defendants. Wherever it is alleged herein that any act or omission was done or committed by any specially named Defendant or Defendants, Plaintiffs intend thereby to allege and does allege that the same act or omission was also done and committed by each and every Defendant named as a DOE, both separately and in concert or conspiracy with the named defendant or Defendants.

7. Plaintiffs are informed and believe and thereon allege that Defendants, and each of them, including DOES 1 through 10, are and at all times herein mentioned were either individuals, sole proprietorships, partnerships, registered professionals, corporations, alter egos or other legal entities which were licensed to do and/or were doing business in the County of San Diego, State of California at all times relevant to the subject matter of this action.

FACTUAL BACKGROUND

8. Plaintiff VALADEZ worked for Defendants from approximately October, 2011 through April 9, 2019. Plaintiff DIAZ worked for Defendants from approximately December 13, 2021 through February of 2022. Plaintiff RODRIGUEZ has worked for Defendants from approximately 2016 through the current date. Plaintiff BEBEKYAN worked for Defendants from approximately March 2020 through October 6, 2020. Throughout their employment with Defendants, Plaintiffs have performed their jobs in a capable and competent manner, and were commended for doing so.

9. Throughout the term of their employment, Plaintiffs and all other aggrieved employees were and currently are denied the benefits and protections of the Labor Code due to Defendants' institutionalized pay practices, standard as to all California-based, nonexempt employees.

10. On January 2, 2020, counsel for Plaintiff VALADEZ prepared and electronically submitted a letter to the California Labor & Workforce Development Agency ("LWDA") via the California Department of Industrial Relations' "PAGA Filing" website. A copy of the letter was mailed to the Defendants via USPS Certified Mail. The letter contained the specific provisions of the California Labor Code violated by Defendants, as well as the facts and theories in support of Plaintiff's claims. (Please see **Exhibit 1**, a true and correct copy of this letter.)
11. On March 12, 2021, counsel for Plaintiffs RODRIGUEZ and BEBEKYAN prepared and electronically submitted a letter to the LWDA via the California Department of Industrial Relations' "PAGA Filing" website. A copy of the letter was mailed to the Defendants via USPS Certified Mail. The letter contained the specific provisions of the California Labor Code violated by Defendants, as well as the facts and theories in support of Plaintiffs' claims. (Please see **Exhibit 2**, a true and correct copy of this letter.)
12. On February 18, 2022 counsel for Plaintiffs VALADEZ and DIAZ prepared and electronically submitted a letter to the LWDA via the California Department of Industrial Relations' "PAGA Filing" website. A copy of the letter was mailed to the Defendants via USPS Certified Mail. The letter contained additional specific provisions of the California Labor Code violated by Defendants, as well as the facts and theories in support of Plaintiffs' claims. (Please see **Exhibit 3**, a true and correct copy of this letter.)
13. The statutory period for the LWDA to investigate and/or respond has now lapsed, allowing Plaintiffs to proceed on behalf of the represented employees. Labor Code § 2699.3(a).

REPRESENTATIVE ALLEGATIONS

14. As more specifically set forth below, Plaintiffs bring this action in a representative capacity on behalf of themselves as well as all current and former aggrieved employees of Defendants. Labor Code § 2698 *et seq.*; *Arias v. Superior Court* (2009) 46 Cal. 4th 969, 980-981. Throughout the operative limitations period, Plaintiffs and all other aggrieved employees were denied the protections and benefits of the Labor Code due to Defendants' standard practices. Throughout their employment, Plaintiffs, and all other aggrieved employees were and are denied full and accurate compensation, including overtime compensation, in violation of, *inter*

- alia*, Labor Code sections 510 and 1197. Plaintiffs and the other aggrieved employees were and are denied meal and rest periods and meal and rest period payments, in violation of, *inter alia*, Labor Code sections 226.7 and 512. Defendants failed to furnish accurate itemized wage statements in violation of, *inter alia*, Labor Code section 226. Defendants required employees to agree to illegal restrictive covenants in violation of Labor Code sections 96 and 98.6. Defendants failed to pay all sick time and vacation time in violation of Labor Code sections 246 and 227.3. Defendants failed to pay wages on a lawful instrument in violation of Labor Code sections 212 and 213. Defendants failed to reimburse Plaintiffs and other aggrieved employees for necessary business expenditures in violation of, *inter alia*, Labor Code section 2802. Defendants failed to maintain accurate time and payroll records in violation of Labor Code § 1174 and the IWC Wage Orders. Defendants failed to provide all compensation due at termination of employment in violation of, *inter alia*, Labor Code sections 201 through 203.
15. Plaintiffs bring this action on the grounds that they and other current and former aggrieved employees of Defendants were and are improperly denied the mandated wages resulting from the above-referenced violations. Labor Code § 2698 *et seq.*; *Arias*, 46 Cal. 4th at 980-981. The number of current and former aggrieved employees is believed to exceed Eight Thousand (8,000) members.
 16. The approximately Eight Thousand (8,000) aggrieved employees are comprised of Defendants' current or former California-based employees.
 17. At all times mentioned herein, Defendants were subject to the Labor Codes and Industrial Welfare Commission Wage Orders of the State of California, including, but not limited to, California Labor Code section 2698 *et seq.*
 18. At all times mentioned herein, Defendants are and were "employers" as that term is used within the relevant sections of the California Labor Code.
 19. As set forth above, Plaintiffs have exhausted their administrative remedies and pre-filing requirements pursuant to California Labor Code section 2699.3, and has also fulfilled all notice requirements under the statute. (Please see **Exhibit 1-3**).
 20. The statutory time period for the LWDA to investigate and/or respond, and for the employers

to respond, has concluded, allowing Plaintiffs to proceed with formal litigation.

21. Throughout the operative limitations period, Plaintiffs and all other aggrieved employees were denied the protections and benefits of the Labor Code and IWC Wage Order(s) due to Defendants' standard practices. Said violations are set forth below.

FIRST CAUSE OF ACTION
Meal and Rest Period Violations Pursuant to Labor Code § 2698 *et seq.*
Representative Action
(By Plaintiff against Defendants and DOES 1 through 10)

22. Plaintiffs hereby incorporates by reference all paragraphs above as though fully set forth herein
23. Labor Code section 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

Defendants violated this section by establishing working conditions below the standard of the applicable Wage Order.

24. Under applicable California law, "An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes [...]. An 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" Lab. Code § 512(a). Unless the employee is relieved of all duty during a thirty (30) minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. 8 Cal. Code Regs. § 11040 (11).
25. California law requires employers to provide nonexempt employees with a 10-minute rest break for every four hours worked, or "major fraction thereof." 8 Cal. Code Regs. § 11040 (12).
26. An employer who fails to provide meal or rest periods as required by an applicable Wage Order must pay the employee one additional hour of pay at the employee's regular rate of pay for each workday that the meal or rest period was not provided. Lab. Code § 226.7(b); 8 Cal. Code Regs. § 11040 (11), (12).

- 1 27. Within the operative time period, Defendants failed to possess compliant meal and rest period
2 policies.
- 3 28. Defendants' rest period policy does not provide for a rest period for a "major fraction thereof"
4 of every four hours worked. Additionally, Caliber did not provide third rest periods on shifts
5 where employees worked in excess of 10 hours.
- 6 29. Defendants' meal period policy/practice does not provide for the timing of employee meal
7 periods and, as written, does not ensure an employee a meal period no later than the start of an
8 employee's sixth hour of work or a second meal period no later than the start of an employee's
9 eleventh hour of work in a day in violation of Labor Code section 512.
- 10 30. These institutional and established practices of Defendants are illegal, in that Plaintiffs and all
11 other aggrieved employees were denied proper and/or timely meal and rest periods. Plaintiffs
12 and other nonexempt employees were often required to work full shifts exceeding 4 to 6 hours
13 without receiving any rest periods.
- 14 31. Defendants willfully failed and refused to pay Plaintiffs and all other aggrieved employees one
15 additional hour of pay at their regular rate of pay for all workdays that a meal or rest period was
16 not provided, as required by Labor Code section 226.7 and IWC Wage Order 7 § (11), (12).
- 17 32. Any payments made by Defendants for missed or late meal periods were not paid at an
18 employee's "regular rate" of pay in violation of Labor Code section 226.7 and the operative
19 IWC Wage Orders.
- 20 33. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor
21 Code, Plaintiffs and all other aggrieved employees have been injured in an amount to be
22 proven at trial.
- 23 34. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiffs
24 on behalf of themselves and other aggrieved employees by and through Labor Code section
25 2699.3, and as Plaintiffs have complied with all pre-filing requirements, Plaintiffs may recover
26 these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below
27 Prayer For Relief.
- 28 35. Plaintiffs seek an award of statutory civil penalties for each underpaid employee of Defendants

pursuant to Labor Code sections 2699(a), including all unpaid or underpaid wages for each of these employees.

36. Plaintiffs also seek an award of reasonable attorney's fees and costs pursuant to Labor Code section 2699(g)(1).

SECOND CAUSE OF ACTION
Regular Rate and Minimum Wage Violations Pursuant to Labor Code § 2698 et seq.
Representative Action
(By Plaintiff against Defendants and DOES 1 through 10)

37. Plaintiffs hereby incorporates by reference all paragraphs above as though fully set forth herein

38. Defendants failed to pay its employees all compensation due in violation of, among other statutes, Labor Code section 1197. This failure was caused by and through Defendants' failure to maintain accurate Time Records (as required by California law), to the detriment of the employee. Specifically, CALIBER would instruct its employees to report only their "scheduled hours," as opposed to their actual work-times.

39. Additionally, Caliber failed to timely pay all regular, overtime and meal and rest period premium wages. In doing so, Caliber has violated Labor Code § 204 which requires *all* compensation to be paid out on the employer's regular paydays

40. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor Code, Plaintiffs and all other aggrieved employees have been injured in an amount to be proven at trial.

41. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiffs on behalf of themselves and other aggrieved employees by and through Labor Code section 2699.3, and as Plaintiffs have complied with all pre-filing requirements, Plaintiffs may recover these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below Prayer For Relief.

42. Plaintiffs seek an award of statutory civil penalties for each underpaid employee of Defendants pursuant to Labor Code sections 2699(a), including all unpaid or underpaid wages for each of these employees.

43. Plaintiffs also seek an award of reasonable attorney's fees and costs pursuant to Labor Code

1 section 2699(g)(1).

2 **THIRD CAUSE OF ACTION**
3 **Overtime Violations Pursuant to Labor Code § 2698 et seq.**
4 **Representative Action**
5 **(By Plaintiff against Defendants and DOES 1 through 10)**

- 6 44. Plaintiffs hereby incorporates by reference all paragraphs above as though fully set forth herein
- 7 45. Defendants failed to pay Plaintiffs and all other aggrieved employees all compensation,
- 8 including Overtime Compensation due, in violation of, among other statutes, Labor Code
- 9 section 510. These violations occurred due to Defendants' illegal policies and practices.
- 10 46. Additionally, as referenced above, CALIBER required its employees to "self-report" their
- 11 work-time based on their work *schedule*, and not their actual hours worked. Because Plaintiffs,
- 12 and other similarly situated employees, routinely worked more than that despite what their
- 13 schedules may reflect, CALIBER violated, among other statutes, Labor Code section 510.
- 14 47. The systematic failure to provide overtime compensation is a violation of California law.
- 15 48. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor
- 16 Code, Plaintiffs and all other aggrieved employees have been injured in an amount to be
- 17 proved at trial.
- 18 49. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiffs
- 19 on behalf of themselves and other aggrieved employees by and through Labor Code section
- 20 2699.3, and as Plaintiffs have complied with all pre-filing requirements, Plaintiffs may recover
- 21 these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below
- 22 Prayer For Relief.
- 23 50. Plaintiffs seek an award of statutory civil penalties for each underpaid employee of Defendants
- 24 pursuant to Labor Code sections 2699(a), including all unpaid or underpaid wages for each of
- 25 these employees.
- 26 51. Plaintiffs also seek an award of reasonable attorney's fees and costs pursuant to Labor Code
- 27 section 2699(g)(1).

28 **FOURTH CAUSE OF ACTION**
Wage Statement and Record Keeping Violations Pursuant to Labor Code § 2698 et seq.
Representative Action
(By Plaintiff against Defendants and DOES 1 through 10)

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52. Plaintiffs hereby incorporates by reference all paragraphs above as though fully set forth herein
53. Defendants failed to provide Plaintiffs and all other aggrieved employees with accurate itemized wage statements in violation of, among other statutes, Labor Code section 226. These violations include, but are not limited to, Defendants' failure to provide an accurate showing of (A) the gross wages earned, in violation of Labor Code section 226(a)(1), due to underpayments caused by the overtime allegations listed above; (B) the inclusive dates of the period for which the employee is paid in violation of Labor Code section 226(a)(6); (C) the name and address of the legal entity that is the employee in violation of Labor Code section 226(a)(8); (D) accurate net and gross wages, including overtime wages, earned in violation of Labor Code section 226(a)(1) and (5), due to the above referenced violations, and (E) all applicable hourly rates in effect, in violation of Labor Code section 226(a)(9).
54. Defendants also failed to maintain accurate time and payroll records in violation of Labor Labor Code § 1174 and IWC Wage Order 9, § 7(A). Specifically, Defendants' own verified Time Records are inaccurate, in that they fail to capture all time worked by the employees. Specifically, entire sets of punches are missing, even though Defendants appear to attempt to pay for this work-time. In other instances, the records are inconsistent with themselves, as the time reported on the time records does not match with payroll records. These inaccuracies make it impossible to ascertain whether employees received all compensation.
55. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor Code, Plaintiffs and all other aggrieved employees have been injured in an amount to be proven at trial.
56. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiffs on behalf of themselves and other aggrieved employees by and through Labor Code section 2699.3, and as Plaintiffs have complied with all pre-filing requirements, Plaintiffs may recover these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below Prayer For Relief.
57. Plaintiffs seek an award of statutory civil penalties for each underpaid employee of Defendants

pursuant to Labor Code sections 2699(a), including all unpaid or underpaid wages for each of these employees.

58. Plaintiffs also seek an award of reasonable attorney's fees and costs pursuant to Labor Code section 2699(g)(1).

FIFTH CAUSE OF ACTION
Improper Restraints on Trade Pursuant to Labor Code § 2698 et seq.
Representative Action
(By Plaintiff against Defendants and DOES 1 through 10)

59. Plaintiffs hereby incorporate by reference all paragraphs above as though fully set forth herein.

60. As a condition of employment, Defendants required Plaintiffs, and other employees, to agree to a "Non-Disclosure and Non-Solicitation Agreement" which contained a "Covenant Not to Solicit Customers." These types of restrictive covenants and non-competes are not permissible pursuant to California law. See e.g. Business and Professions Code Section 16600.

61. Moreover, these agreements improperly restricted employees from "lawful conduct occurring during non-working hours away from the employer's premises" in violation of Labor Code 96(k) and Labor Code § 98.6.

62. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor Code, Plaintiffs and all other aggrieved employees have been injured in an amount to be proven at trial.

63. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiffs on behalf of themselves and other aggrieved employees by and through Labor Code section 2699.3, and as Plaintiffs have complied with all pre-filing requirements, Plaintiffs may recover these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below Prayer For Relief.

64. Plaintiffs seek an award of statutory civil penalties for each underpaid employee of Defendants pursuant to Labor Code sections 2699(a), including all unpaid or underpaid wages for each of these employees.

65. Plaintiffs also seek an award of reasonable attorney's fees and costs pursuant to Labor Code section 2699(g)(1).

SIXTH CAUSE OF ACTION
Sick Pay and Vacation Pay Violations Pursuant to Labor Code § 2698 et seq.
Representative Action
(By Plaintiff against Defendants and DOES 1 through 10)

66. Plaintiffs hereby incorporates by reference all paragraphs above as though fully set forth herein.
67. Labor Code § 227.3 requires that where an employer adopts a vacation time accrual policy, that all vested vacation shall be paid out as wages at the final rate of pay at the time of termination.
68. Labor Code § 246 sets for the formula for calculating paid “sick time” that is owed to California non-exempt employees. Labor Code § 246.5 sets forth when an employee is entitled to use paid sick time, after making an oral or written request. Finally, Labor Code § 233 states that the designation and use of sick leave for the reasons set forth in Labor Code § 246.5, is at the “sole discretion” of the employee.
69. Defendants had a vacation time accrual policy. However, Defendants failed to pay Plaintiffs, and other employees, all accrued vacation time at the time of their termination.
70. Defendants also failed to comply with the paid “sick time” laws in that its policies are not compliant with the statute and that Defendants refused Plaintiffs, and other employees, from using sick leave as is allowable pursuant to statute.
71. As a direct result of Defendants’ failure to comply with the foregoing provisions of the Labor Code, Plaintiffs and all other aggrieved employees have been injured in an amount to be proven at trial.
72. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiffs on behalf of themselves and other aggrieved employees by and through Labor Code section 2699.3, and as Plaintiffs have complied with all pre-filing requirements, Plaintiffs may recover these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below Prayer For Relief.
73. Plaintiffs seek an award of statutory civil penalties for each underpaid employee of Defendants pursuant to Labor Code sections 2699(a), including all unpaid or underpaid wages for each of these employees.
74. Plaintiffs also seek an award of reasonable attorney’s fees and costs pursuant to Labor Code

1 section 2699(g)(1).

2 **SEVENTH CAUSE OF ACTION**

3 **Failure to Obtain Required Payroll Authorizations Pursuant to Labor Code § 2698 et seq.**
4 **Representative Action**

5 **(By Plaintiff against Defendants and DOES 1 through 10)**

- 6 75. Plaintiffs hereby incorporates by reference all paragraphs above as though fully set forth herein.
- 7 76. Labor Code § 212 requires that any wages be made on an instrument “negotiable and payable
8 in cash, on demand, without discount, at some established place of business in the state.”
9 Additionally, pursuant to Labor Code § 213, if any employer wants to satisfy this obligation
10 through “direct deposit” then they need to prove the “employee has voluntarily authorized that
11 deposit.”
- 12 77. Defendants failed to obtain voluntary authorizations from Plaintiffs, and other employees, prior
13 to paying its employees by direct deposit.
- 14 78. As a direct result of Defendants’ failure to comply with the foregoing provisions of the Labor
15 Code, Plaintiffs and all other aggrieved employees have been injured in an amount to be
16 proven at trial.
- 17 79. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiffs
18 on behalf of themselves and other aggrieved employees by and through Labor Code section
19 2699.3, and as Plaintiffs have complied with all pre-filing requirements, Plaintiffs may recover
20 these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below
21 Prayer For Relief.
- 22 80. Plaintiffs seek an award of statutory civil penalties for each underpaid employee of Defendants
23 pursuant to Labor Code sections 2699(a), including all unpaid or underpaid wages for each of
24 these employees.
- 25 81. Plaintiffs also seek an award of reasonable attorney’s fees and costs pursuant to Labor Code
26 section 2699(g)(1).

27 **EIGHTH CAUSE OF ACTION**

28 **Failure to Reimburse Pursuant to Labor Code § 2698 et seq.**
Representative Action

(By Plaintiff against Defendants and DOES 1 through 10)

82. Plaintiffs hereby incorporates by reference all paragraphs above as though fully set forth herein.

- 1 83. Defendants failed to reimburse its employees for all necessary business expenditures incurred
2 in direct consequence of the discharge of their duties in violation of, among other statutes,
3 Labor Code section 2802. These expenditures are the result of, *inter alia*, Defendants' standard
4 policies which require its employees to use their own money to purchase and/or replace
5 uniforms, and to use their own cell phones for work-related purposes, without reimbursement.
- 6 84. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor
7 Code, Plaintiffs and all other aggrieved employees have been injured in an amount to be
8 proven at trial.
- 9 85. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiffs
10 on behalf of themselves and other aggrieved employees by and through Labor Code section
11 2699.3, and as Plaintiffs have complied with all pre-filing requirements, Plaintiffs may recover
12 these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below
13 Prayer For Relief.
- 14 86. Plaintiffs seek an award of statutory civil penalties for each underpaid employee of Defendants
15 pursuant to Labor Code sections 2699(a), including all unpaid or underpaid wages for each of
16 these employees.
- 17 87. Plaintiffs also seek an award of reasonable attorney's fees and costs pursuant to Labor Code
18 section 2699(g)(1).

19 **NINTH CAUSE OF ACTION**
20 **Failure to Pay Wages Upon Separation Pursuant to Labor Code § 2698 et seq.**
21 **Representative Action**
22 **(By Plaintiff against Defendants and DOES 1 through 10)**

- 23 88. Plaintiffs hereby incorporates by reference all paragraphs above as though fully set forth herein.
- 24 89. Defendants failed to provide Plaintiffs and other aggrieved employees with all wages earned
25 and unpaid at termination in violation of, among other statutes, Labor Code sections
26 201 through 203. These violations resulted from, among other unlawful actions, Defendant's
27 willful failure to provide accurate and complete compensation to aggrieved employees under
28 Labor Code sections 226.7, 510, 512, 1197, and 2802.
90. As a direct result of Defendant's failure to comply with the foregoing provisions of the Labor

Code, Plaintiffs and all other aggrieved employees have been injured in an amount to be proven at trial.

91. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiffs on behalf of themselves and other aggrieved employees by and through Labor Code section 2699.3, and as Plaintiffs have complied with all pre-filing requirements, Plaintiffs may recover these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below Prayer For Relief.

92. Plaintiffs seek an award of statutory civil penalties for each underpaid employee of Defendants pursuant to Labor Code sections 2699(a), including all unpaid or underpaid wages for each of these employees.

93. Plaintiffs also seek an award of reasonable attorney's fees and costs pursuant to Labor Code section 2699(g)(1).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs on their own behalf and on behalf of all aggrieved employees, pray for judgment as follows:

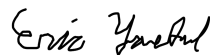
1. For an award of attorneys' fees and costs of suit herein pursuant to Labor Code section 2699(g)(1);
2. For an award of statutory civil penalties pursuant to Labor Code section 2699(f)(2); and
3. For such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby requests that this matter be heard and decided by trial by jury.

Dated: April 22, 2022

SULLIVAN & YAECKEL LAW GROUP, APC



Eric K. Yaeckel
Ryan T. Kuhn
Attorneys for Plaintiffs GERARDO VALADEZ, and
MIGUEL DIAZ,

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LAVI & EBRAHIMIAN, LLP

Dated: April ____, 2022

Joseph Lavi
Victor Grandberry
Attorneys for Plaintiffs LUPE RODRIGUEZ, and
ARTHUR BEBEKYAN

EXHIBIT 1

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FACSIMILE 619-702-6761

January 2, 2020

Labor and Workforce Development Agency
Attn. PAGA Administrator

Submitted Via Online Filing

Re: **GERARDO VALADEZ v. CALIBER HOLDINGS CORP;
CALIBER COLLISION TRANSPORT SERVICES, LLC**
Our File Number: 7155

Dear Administrator:

Please allow this correspondence to serve as “written notice,” as required by California Labor Code section 2699.3(a)(1), of the specific provisions of the California Labor Code believed to have been violated by Caliber Collision Transport Services, LLC and Caliber Holdings Corporation (collectively, “Caliber.”), in the above referenced matter.

This “written notice” is filed on behalf of Mr. Gerardo Valadez and all non-exempt employees employed by Caliber. Thank you for your assistance and instruction on this issue.

The specific provisions alleged to have been violated by Caliber are as follows:

CALIFORNIA LABOR CODE SECTIONS 201-203, 226, 226(a), 226.7, 510, 512, 1194 and 2802, as well as IWC Wage Order 4, codified as Title 8, California Code of Regulations, section 11040 et seq.

Facts and theories supporting the allegations: Our client, Gerardo Valadez, worked as a non-exempt employee for Caliber from October 2011 through April 9, 2019.

Throughout the term of his employment, Caliber required Mr. Gerardo Valadez, and all other non-exempt employees, to experience actions illegal under the California Labor Code, including the following:

Failure to Provide Compliant Meal Periods

- Caliber failed to provide compliant meal periods or requisite meal period penalty payments, in violation of, inter alia, Labor Code sections 226.7, 512, and IWC Wage

Order 4.

- For example, Caliber does not possess a legal meal period policy, and makes no attempt to ensure that its employees are either timely or wholly provided meal periods. The employees would often either miss a meal period entirely, be provided a short or untimely meal period. Caliber would pressure its employees to either skip, or cut short, a meal period as employees were expected to respond to supervisors and remain on the premises. Over the course of his employment, Mr. Valadez was instructed numerous times to remain readily available during his meal periods. Caliber has never provided a compliant meal period penalty payment to any employee as to the above referenced issues.
- Caliber illegally retained control over its employees during Meal Periods. For example, Caliber required Mr. Valadez and other employees to “remain on the premises,” and to remain “On Call” (*i.e.* monitor their telephones and E-mails) at all times, including during Meal Periods.

Failure to Provide Compliant Rest Periods

- Caliber failed to provide compliant rest periods or requisite rest period penalty payments, in violation of, inter alia, Labor Code sections 226.7, 512, and IWC Wage Order 4. For example, Caliber does not possess a legal rest period policy and makes no attempt to ensure that its employees are either timely or wholly provided rest periods. The employees would often either miss a rest period entirely, be provided a short or untimely rest period, or be provided only one rest period, even when they were working in excess of 6.5 hours a day. Caliber would pressure its employees to either skip, or cut short, a meal period as employees were expected to respond to supervisors at all times. Caliber has never provided a compliant rest period penalty payment to any employee as to the above referenced issues.
- Caliber illegally retained control over its employees, during Rest Periods. For example, Caliber required its employees to “remain on the premises,” and to remain “On Call” (*i.e.* monitor their telephones and E-mails) at all times, including during Rest Periods.

Minimum Wage and Overtime Violations

- Caliber failed to provide all compensation, including minimum wage and overtime compensation, to its employees in violation of, inter alia, Labor Code sections 1194 and 510 and the IWC Wage Order 4. This illegal action is due, in part, to Caliber’s policies of (1) failing to properly retain accurate Time Records, in violation of California law, and (2) failing to provide compensation (including both minimum and overtime compensation) for all time worked by the employees, or in control of the employer. For instance, Caliber would instruct Mr. Valadez to report his scheduled (as opposed to actual) work hours, resulting in a loss of compensation. Additionally, Caliber would often require Mr. Valadez to work extended hours

(beyond his scheduled hours), without compensation.

- Finally, Caliber failed to properly calculate the legal Overtime Rate of Pay, by (among other issues) failing to consider certain non-discretionary forms of compensation (including, but not limited to bonuses).

Wage Statement Violations

- Caliber violated Labor Code section 226(a)(1) by failing to furnish an accurate showing of the gross wages earned by its employees. For example, Caliber (a) would not provide compensation for all hours and minutes worked, (b) would use an improper (and lesser) Overtime Rate of Pay, and (c) would fail to pay Meal and/or Rest Period Penalties when due.
- Caliber violated Labor Code section 226(a)(2) by failing to furnish an accurate showing of all hours worked at each hourly rate by the employee. Mr. Valadez and the other employees were not compensated for all hours worked (due in part to Caliber's requirement for employees to list only scheduled work-times, not actual work- times.)
- Caliber violated Labor Code section 226(a)(5) by failing to furnish an accurate showing of the net wages earned by its employees. For example, Caliber (a) would not provide compensation for all hours and minutes worked, (b) would use an improper (and lesser) Overtime Rate of Pay, and (c) would fail to pay Meal and/or Rest Period Penalties when due.
- Caliber violated Labor Code section 226(a)(8) by failing to provide an accurate showing of the name and address of the legal entity that is the employer.
- Caliber violated Labor Code section 226(a)(9) by failing to furnish an accurate showing of all applicable hourly rates, in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Mr. Valadez and the other employees were not compensated for all hours worked.

Failure to Provide Compliant Expense Reimbursement Payments

- Caliber failed to provide compliant expense reimbursement payments in violation of, inter alia, Labor Code section 2802, by failing to provide payments for expenses incurred by Mr. Valadez and other non-exempt employees, including expenses for cell-phone costs, other necessary work supplies, and mileage.

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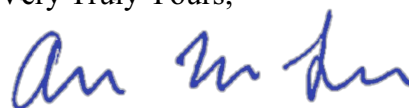
Willful Failure to Provide All Compensation to Ex-Employees

- Caliber failed to provide all compensation upon termination of employment in violation of Labor Code sections 201-203, due, in part, to the fact that Caliber failed to provide proper compensation for all hours worked, and failed to pay full Meal or Rest Period penalties, as discussed above. Mr. Valadez was terminated on April 9, 2019, and did not receive all wages due and owed to him.

To confirm, the Caliber entities are “persons” as defined within California Labor Code section 18.

Again, thank you for your assistance and instruction throughout this matter. Should you have any questions or comments, please do not hesitate to contact the undersigned.

Very Truly Yours,



Andrea J. Torres-Figueroa, Esq.

cc: *Via Certified U.S. Mail*

CT Corporation System

Agent for Service of Process for Caliber Collision Transport Services, LLC
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

Caliber Collision Transport Services, LLC

401 E Corporate Drive, Suite 150
Lewisville, TX 75057

CT Corporation System

Agent for Service of Process for Caliber Holdings Corporation
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

Caliber Holdings Corporation

401 E Corporate Drive, Suite 150
Lewisville, TX 75057

cc: *Courtesy Copy and Filing Fee via U.S. Mail*

Department of Industrial Relations
Accounting Unit
455 Golden Gate Ave., 10th Floor
San Francisco, CA 94102

EXHIBIT 2

LAW OFFICES OF
LAVI & EBRAHIMIAN, LLP
8889 W. OLYMPIC BLVD., SUITE 200
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March 12, 2021

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION 2699.3**

To: California Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Suite 801
Oakland, California 94612
Via Online Submission Only

Department of Industrial Relations
Accounting Unit
455 Golden Gate Avenue, 10th Floor
San Francisco, California 94102
Certified Mail Number: **7020-1810-0000-4148-6756**

CALIBER HOLDINGS CORPORATION
c/o CT Corporation System (C0168406)
818 West Seventh Street, Suite 930
Los Angeles, California 90017
Certified Mail Number: **7020-1810-0000-4148-6763**

CALIBER BODYWORKS, INC.
c/o CT Corporation System (C0168406)
818 West Seventh Street, Suite 930
Los Angeles, California 90017
Certified Mail Number: **7020-1810-0000-4148-6770**

From: LUPE RODRIGUEZ and ARTHUR BEBEKYAN, on behalf of themselves and all other
current and former aggrieved California-based hourly non-exempt employees of
CALIBER HOLDINGS CORPORATION, and CALIBER BODYWORKS, INC.

c/o Joseph Lavi, Esq.
Email: jlavi@lelawfirm.com
Vincent C. Granberry, Esq.
Email: vgranberry@lelawfirm.com
Pooja V. Patel, Esq.
Email: ppatel@lelawfirm.com
LAVI & EBRAHIMIAN, LLP

Labor & Workforce Development Agency
Re: *Rodriguez and Bebekyan v. Caliber Holdings Corporation, et al.*
March 12, 2021
Page 2 of 7

8889 W. Olympic Boulevard, Suite 200
Beverly Hills, California 90211

Sahag Majarian II, Esq.
E-Mail: sahagii@aol.com
LAW OFFICE OF SAHAG MAJARIAN II
18250 Ventura Boulevard
Tarzana, California 91356

My firm has been retained by aggrieved employees LUPE RODRIGUEZ and ARTHUR BEBEKYAN concerning a representative action pursuant to the Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.* ("PAGA") against their employers, CALIBER HOLDINGS CORPORATION, and CALIBER BODYWORKS, INC.

I am filing this written notice with the Labor and Workforce Development Agency ("LWDA") pursuant to the provisions of the California Labor Code Sections 2699, 2699.3, and 2698, *et seq.* The purpose of this letter is to inquire whether LWDA intends to investigate and seek civil penalties associated with my client's allegations of violations of the Labor Code by their Employers. In addition to submitting this letter and the \$75.00 filing fee via the online PAGA filing system, I am causing a copy of this letter to be mailed to the Department of Industrial Relations – Accounting Unit.

FACTUAL STATEMENT AND THEORIES OF LABOR CODE VIOLATIONS

Aggrieved employees LUPE RODRIGUEZ and ARTHUR BEBEKYAN ("Employees") were or are employed by CALIBER HOLDINGS CORPORATION, and CALIBER BODYWORKS, INC. ("Defendants" or "Employers") as an hourly non-exempt employees. Aggrieved employee LUPE RODRIGUEZ has been employed by Employers since on or around, 2016, and is a current employee. Aggrieved employee ARTHUR BEBEKYAN was employed by Employer from on or around March 2020, until on or around October 6, 2020.

1. Failure to Authorize or Permit Meal Periods in Violation of Labor Code Sections 512 and 226.7 and/or Failure to Pay Meal Period Premiums

Employees alleges that during their employment, Employers failed to authorize or permit all legally required and compliant meal periods and/or pay meal period premiums. California law requires an employer to provide an employee an uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of all duties and the employer relinquishes control over the employee's activities prior to the employee's sixth hour of work. Labor Code §§226.7, 512; Wage Order 9, §11; *Brinker Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh hour of work. *Id.* If the employer requires the employee to remain at the work site or facility during the meal period, the meal period must be paid. This is true even where the employee is relieved of all work duties during the meal period. *Bono Enterprises, Inc.*

v. Bradshaw (1995) 32 Cal.App.4th 968. If an employer fails to provide an employee a meal period in accordance with the law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday that a legally required and compliant meal period was not provided. Labor Code §226.7; Wage Order 9, §11.

Employees alleges that Employers failed to authorize or permit them and other current and former aggrieved California-based hourly non-exempt employees to take all legally required and compliant meal periods due to Employers' policies, practices, and/or procedures including, but not limited to:

- failing to authorize or permit Employees and other current and former aggrieved California-based hourly non-exempt employees timely, uninterrupted duty-free meal periods of no less than thirty (30) minutes for shifts exceeding five (5) hours, and/or
- failing to authorize or permit Employees and other current and former aggrieved California-based hourly non-exempt employees a second timely, uninterrupted duty-free meal periods of no less than thirty (30) minutes for shifts exceeding ten (10) hours.

Additionally, Employees allege that Employers maintained a policy, practice, and/or procedure whereby they failed to pay Employees and other current and former aggrieved California-based hourly non-exempt employees a meal period premium wage of one (1) additional hour of pay at their regular rate of compensation for each workday that they did not receive all legally required and compliant meal periods, in violation of Labor Code section 226.7 and Wage Order 9 at § 11.

Based on these violations, Employees intend to seek civil penalties pursuant to PAGA, Labor Code sections 2698, *et seq.*, on behalf of LWDA against Employers if authorized to file a representative action on behalf of the State of California. As a derivative claim of Employers' failure to authorize or permit all legally required and compliant meal periods and/or failure to pay meal period premium wages, Employees will seek statutory penalties under Labor Code section 226(a)(1) because the failure to pay meal period premiums and/or pay meal period premiums rendered Employees' and other current and former aggrieved California-based hourly non-exempt employees' pay calculations inaccurate and in violation of Labor Code section 226(e)(2)(B)(i).

2. *Failure to Authorize or Permit Rest Periods in Violation of Labor Code Section 226.7 and/or Failure to Pay Rest Period Premiums*

Employees allege that during their employment, Employers failed to authorize or permit all legally required and compliant rest periods and/or failed to pay rest period premiums. California law requires that "[e]very 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...." Wage Order 9, § 12. "Employees are entitled to 10 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on." *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code

§226.7. Additionally, the rest period requirement “obligates Employer to permit – and authorizes employees to take – off-duty rest periods.” *Augustus v. ABM Security Services, Inc.* (2016) 5 Cal.5th 257, 269. That is, during rest periods an employer must relieve employees of all duties and relinquish control over how employees spend their time. *Id.* If the employer fails to authorize or permit a required rest period, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of pay for each workday the employer did not authorize or permit a legally required rest period. Labor Code section 226.7; Wage Order 9 at § 12.

Employees allege that Employers failed to authorize or permit them and other current and former aggrieved California-based hourly non-exempt employees to take all legally required and compliant rest periods due to Employer’s policies, practices, and/or procedures including, but not limited to Employers’ policy, practice, and/or procedure of

- failing to separately compensate Employees and other current and former aggrieved California-based hourly non-exempt employees for the rest periods;
- separately compensate Employees and other current and former aggrieved California-based hourly non-exempt employees in an amount which was the higher of either (1) an average hourly rate determined by dividing the total compensation for the work week, exclusive of compensation for rest and recovery periods and any premium compensation for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods or (2) the applicable minimum wage; and/or
- failing to authorize or permit Employees and other current and former aggrieved California-based hourly non-exempt employees third timely uninterrupted duty-free rest period of a net ten (10) minutes for shifts exceeding ten (10) hours.

Additionally, Employees allege that Employers maintained a policy, practice, and/or procedure whereby they failed to pay Employees and other current and former aggrieved California-based hourly non-exempt employees a rest period premium wage of one (1) additional hour of pay at their regular rate of compensation for each workday that they did not receive all legally required and compliant rest periods, in violation of Labor Code section 226.7 and Wage Order 9 at § 12.

Based on these violations, Employees intend to seek civil penalties pursuant to PAGA, Labor Code sections 2698, *et seq.*, on behalf of LWDA against Employers if authorized to file a representative action on behalf of the State of California. As a derivative claim of Employers’ failure to authorize or permit all legally required and compliant rest periods and/or failure to pay rest period premium wages, Employees will seek statutory penalties under Labor Code section 226(a)(1) because the failure to pay rest period premiums and/or pay rest period premiums rendered Employees’ and other current and former aggrieved California-based hourly non-exempt employees’ pay calculations inaccurate and in violation of Labor Code section 226(e)(2)(B)(i).

3. *Failure to Timely Pay Earned Wages During Employment in Violation of Labor Code Section 204*

Employees alleges that during their employment, Employer failed to timely pay Employees' and other current and former aggrieved California-based hourly non-exempt employees' earned wages. In California, wages must be paid at least twice during each calendar month on days designated in advance by the employer as regular paydays, subject to some exceptions. Labor Code §204(a). Wages earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the 16th and the 26th day of that month and wages earned between the 16th and the last day, inclusive, of any calendar month must be paid between the 1st and 10th day of the following month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be paid within seven (7) calendar days following the close of the payroll period in which wages were earned. Labor Code §204(d).

As a derivative of Employees' claims above, Employees allege that Employer failed to timely pay him and other current and former aggrieved California-based hourly non-exempt employees' earned wages (including meal period premium wages, and/or rest period premium wages), in violation of Labor Code section 204. Employer's aforementioned policies, practices, and/or procedures resulted in Employer failing to pay Employees and other current and former aggrieved California-based hourly non-exempt employees their earned wages within the applicable time frames outlined in Labor Code 204.

Based on these violations, Employees intend to seek civil penalties pursuant to PAGA, Labor Code sections 2698, *et seq.*, on behalf of LWDA against Employer if authorized to file a representative action on behalf of the State of California.

4. *Failure to Provide Accurate Wage Statements*

Labor Code section 226(a) states that "[a]n employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee...an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee...(3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer...and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...."

Employees allege that as a direct violation of Labor Code section 226, Employers, through their policies, practices, and/or procedures, including, but not limited to, failed to provide Employees and other current and former aggrieved California-based hourly non-exempt employees accurate itemized wage statements showing: (1) the total hours worked; (2) the correct rest break compensation; and (3) the current DT and base rate.

Employees allege that as a derivative of their claims above, Employers failed to provide accurate wage and hour statements to Employees and other current and former aggrieved California-based hourly non-exempt employees who were subject to Employers' control for uncompensated time and who did not receive all their earned wages (including meal period premium wages, and/or rest period premium wages), in violation of Labor Code section 226.

Based on these violations, Employees will seek civil penalties under Labor Code section 226.3, and PAGA, Labor Code sections 2698, *et seq.*, on behalf of LWDA, against Employers if authorized to file a representative action on behalf of the State of California.

5. Failure to Timely Pay Final Wages

Labor Code section 201(a) states that "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Labor Code section 202(a) continues, "[i]f 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...." Finally, Labor Code section 203(a) provides, "[i]f an employer willfully fails to pay...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 a result of the aforementioned violations of the Labor Code, Employee BEBEKYAN alleges that he was not paid his final wages in a timely manner as required by Labor Code section 203. Meal period premium wages, and/or rest period premium wages (all described above), were not paid at the time of Employee BEBEKYAN's separation of employment. Employee BEBEKYAN is informed and believe and thereon alleges that former aggrieved California-based hourly non-exempt employees who separated from Employers, whether voluntarily or involuntarily, were not paid all wages due in a timely manner, as required by Labor Code sections 201, 202, and 203.

Based on these violations, Employee BEBEKYAN will seek civil penalties under PAGA, Labor Code sections 2698, *et seq.*, on behalf of LWDA, against Employers if authorized to file a representative action on behalf of the State of California.

6. Employers' Other Violations of the California Labor Code

Finally, pursuant to *Huff v. Securitas Security Services USA, Inc.* (2018) 25 Cal.App.5th 745 ("*Huff*"), as an aggrieved employee, Employees have standing, and intend, on behalf of LWDA, to pursue civil penalties against Employers for any and all other Labor Code violations committed by Employers. In *Huff*, the California Court of Appeals held that an employee alleging a single violation of the Labor Code under PAGA may also bring PAGA claims against the employer for all other alleged Labor Code violations, even those suffered by other employees of the same employer. According to the *Huff* decision, Employees, as "aggrieved" employees affected by at least one Labor Code violation may, and hereby does, pursue penalties on behalf of LWDA for unrelated Labor Code violations by Employers.

Labor & Workforce Development Agency

Re: *Rodriguez and Bebekyan v. Caliber Holdings Corporation, et al.*

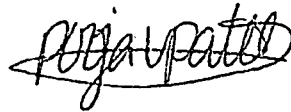
March 12, 2021

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CONCLUSION

My clients intend to file a representative action pursuant to PAGA concerning their wage claims as warranted by Employers' violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 512 and the IWC Wage Orders. This letter is being sent to you as an inquiry into whether LWDA wishes to investigate my clients' claims for civil penalties associated with Employers' violations of the Labor Code, as alleged herein. Thank you for your assistance and cooperation in this matter. If you have any questions or concerns, please contact me at the above-listed information.

Very truly yours,
LAVI & EBRAHIMIAN, LLP

A handwritten signature in black ink, appearing to read "Pooja V. Patel", is written over a horizontal line.

Pooja V. Patel, Esq.

EXHIBIT 3

SULLIVAN & YAECKEL
LAW GROUP

A PROFESSIONAL CORPORATION

2330 THIRD AVENUE
SAN DIEGO, CALIFORNIA 92101

PHONE 619-702-6760
FACSIMILE 619-702-6761

February 18, 2022

Labor and Workforce Development Agency
Attn. PAGA Administrator

Submitted Via Online Filing

Re: **GERARDO VALADEZ & MIGUEL DIAZ v. CALIBER
HOLDINGS CORP; CALIBER COLLISION TRANSPORT
SERVICES, LLC**

LWDA Case No.: LWDA-CM-764268-20
Our File Number: 7155

Dear Administrator:

Please allow this correspondence to serve as a supplemental “written notice,” pursuant to California Labor Code section 2699.3(a)(1), of the specific provisions of the California Labor Code believed to have been violated by Caliber Collision Transport Services, LLC and Caliber Holdings Corporation (collectively, “Caliber”), in the above referenced matter.

Please Note: This letter is meant to supplement and expand upon the original notice letter sent by Mr. Valadez on January 2, 2020. The Court of Appeal has recently held that the “relation back” doctrine can apply in the context of a PAGA case. *See Hutcheson v. Superior Court* (February 7, 2022) First Appellate District, Div. 2, Court of Appeal Case no. A159861.

Additionally, this letter is meant to add claims on behalf of a new proposed Plaintiff, Mr. Miguel Diaz.

This “written notice” is filed on behalf of Mr. Gerardo Valadez, Mr. Miguel Diaz (collectively “Plaintiffs”) and all non-exempt employees employed by Caliber. Thank you for your assistance and instruction on this issue.

The specific additional provisions alleged to have been violated by Caliber are as follows:

CALIFORNIA LABOR CODE SECTIONS 96(k) 98.6, 204, 212, 213, 226.2, 233, 246, 246.5, 432.5, 1174, 1198, & Wage Order 9 (or any applicable Wage Order)

Facts and theories supporting the allegations: Our client, Gerardo Valadez, worked as a non-exempt employee for Caliber from October 2011 through April 9, 2019. Our client, Miguel Diaz, worked as a non-exempt employee for Caliber from December 13, 2021 through the present.

Throughout the term of their employment, Caliber required Plaintiffs, and all other non-exempt employees, to experience actions illegal under the California Labor Code, including the following:

Failure to Timely Pay Wages Earned

- As alleged in the original notice letter, Caliber failed to timely pay all regular, overtime and meal and rest period premium wages. In doing so, Caliber has violated Labor Code § 204 which requires *all* compensation to be paid out on the employer's regular paydays.

Failure to Maintain Accurate Records

- Caliber failed to maintain accurate time and payroll records, in violation of Labor Code § 1174 and IWC Wage Order 9, § 7(A). **Please Note:** it is a violation of the California Labor section 1198 to violate an IWC Wage Order. Specifically, Caliber's own verified Time Records are inaccurate, in that they fail to capture all time worked by the employees. Specifically, entire sets of punches are missing, even though Caliber appears to attempt to pay for this work-time. In other instances, the records are inconsistent with themselves, as the time reported on the time records does not match with payroll records. These inaccuracies make it impossible to ascertain whether employees received all compensation.

Additional Rest Period Allegations

- As set forth in Mr. Valadez's original notice letter, Plaintiffs maintain that they, and other employees, were not provided all legally required rest periods. Plaintiffs contend that Defendant failed to separately compensate employees for rest periods as set forth in Labor Code § 226.2. Additionally, even in instances when employees were separately compensated for rest period violations, that Caliber failed to pay this compensation at the legally owed rates as set forth in Labor Code § 226.2. Finally, Caliber did not provide third rest periods on shifts where employees worked in excess of 10 hours.

Violations of Labor Code §§ 96(k), 98.6

- As a condition of employment, Caliber required Plaintiffs, and other employees, to agree to a "Non-Disclosure and Non-Solicitation Agreement" which contained a "Covenant Not to Solicit Customers." These types of restrictive covenants and non-competes are not permissible pursuant to California law. See e.g. Business and Professions Code Section 16600.

- This improperly restricted employees from “lawful conduct occurring during nonworking hours away from the employer’s premises” in violation of Labor Code 96(k) and Labor Code § 98.6.

Violations of Labor Code §§ 212, 213

- Labor Code § 212 requires that any wages be made on an instrument “negotiable and payable in cash, on demand, without discount, at some established place of business in the state.” Additionally, pursuant to Labor Code § 213, if any employer wants to satisfy this obligation through “direct deposit” then they need to prove the “employee has voluntarily authorized that deposit.” Caliber failed to obtain voluntary authorizations prior to paying its employees by direct deposit.

Paid Sick Time and Vacation Time Violations

- Labor Code § 227.3 requires that where an employer adopts a vacation time accrual policy, that all vested vacation shall be paid out as wages at the final rate of pay at the time of termination. Caliber failed to pay all accrued vacation to its employees at termination.
- Labor Code § 246 sets for the formula for calculating paid sick time that is owed to California non-exempt employees. Labor Code § 246.5 sets forth when an employee is entitled to use paid sick time, after making an oral or written request. Finally, Labor Code § 233 states that the designation and use of sick leave for the reasons set forth in Labor Code § 246.5, is at the “sole discretion” of the employee.

To confirm, the Caliber entities are “persons” as defined within California Labor Code section 18.

Again, thank you for your assistance and instruction throughout this matter. Should you have any questions or comments, please do not hesitate to contact the undersigned.

Very Truly Yours,



Eric K. Yaeckel

cc: *Via Certified U.S. Mail*

Caliber Holdings Corporation
Caliber Collision Transport Services, LLC
MORGAN, LEWIS & BOCKIUS LLP
CARRIE A. GONELL
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Attorneys for Caliber Holdings Corp and Caliber Collision Transport Services, LLC (Authorized to Accept Service)