

1 David Mara, Esq. (230498)
Matthew Crawford, Esq. (310230)
2 **MARA LAW FIRM, PC**
2650 Camino Del Rio North, Suite 205
3 San Diego, California 92108
Telephone: (619) 234-2833
4 Facsimile: (619) 234-4048

5 Attorneys for MIGUEL HERNANDEZ,
on behalf of himself, all others similarly situated,
6 and on behalf of the general public.

7 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

8 **IN AND FOR THE COUNTY OF SAN DIEGO**

9 MIGUEL HERNANDEZ, on behalf of
10 himself, all others similarly situated, and
on behalf of the general public,

11 Plaintiff,

12 v.

13 MJ INDUSTRIES, INC.; MJ TANK
14 LINES, INC.; and DOES 1 through 100,
inclusive,

15 Defendants.
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Case No. 37-2017-00003218-CU-OE-CTL

**DECLARATION OF DAVID MARA, ESQ. IN
SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: July 24, 2020

Time: 9:00 a.m.

Judge: Hon. Ronald L. Styn

Dept.: C-74

1 I, DAVID MARA, declare as follows:

- 2 1. I am President of Mara Law Firm, PC and counsel of record for Plaintiff and the putative class in
3 this matter. I am duly admitted to practice before all the courts of the state of California. The
4 following facts are within my personal knowledge and, if called to testify, I could and would
5 competently testify thereto.
- 6 2. I have been practicing law in California since 2004.
- 7 3. I extensively handle employment cases which involve violations of the California Labor Code
8 and Industrial Welfare Commission Wage Orders, such as wage and hour class actions and cases
9 alleging violations of the Private Attorneys General Act of 2004 ("PAGA").
- 10 4. I was co-class counsel in *Hohnbaum v. Brinker Restaurant Corp.*, San Diego Superior Court
11 Case No. GIC834348, which was the underlying case in the California Supreme Court's
12 landmark decision in *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, in
13 which the California Supreme Court delineated the scope of employer obligations to provide, and
14 employee rights to receive, meal and rest periods under California law.
- 15 5. I wrote an Amicus brief on behalf of Consumer Attorneys Of California ("CAOC") in the recent
16 decision by the California Supreme Court in *Augustus v. ABM Security Services, Inc.* (2016) 2
17 Cal.5th 257 (rest breaks must be duty-free and time spent being on call during rest breaks is not
18 considered duty-free).
- 19 6. My firm also wrote an Amicus brief on behalf of CAOC in the recent decision by the California
20 Supreme Court in *Williams v. Superior Court* (2017) 3 Cal. 5th 531 (PAGA and wage and hour
21 class action).
- 22 7. My firm has been granted class certification in both state and federal courts.
- 23 8. I am also Plaintiff's counsel in a host of other class actions involving violations of
24 California's wage and hour laws, many of which involve the transportation industry. For
25 example, I have been and am involved as counsel for plaintiffs in the following class actions
26 involving wage and hour violations under California law: *Davis v. Apria Healthcare Group*
27 (Case No. 37-2015-00007743); *Norona v. B&G Delivery System, Inc.* (Case No. 34-2015-
28 00186826-CU-OE-GDS); *Perez v. City of San Diego* (Case No. 37-2014-00016621); *Cuellar-*
Ramirez v. US Foods, Inc. (Case No. RG15770766); *Peron v. The Vons Companies, Inc.*

(Case No. 37-2014-00006965); *Hilderbrand v. LinkUs Enterprises, LLC* (Case No. DR150155); *Belton v. Pacific Pulmonary Services* (Case No. CGC-15-547564); *Medina v. Central Cal Transportation, Inc.* (Case No. RG15770011); *Dotson v. Asbury Environmental Services* (Case No. 34-2017-00214070-CU-OE-GDS); *Spikes v. Bear Trucking, Inc.* (Case No. CIV17DS1715151); *Montes v. Coram Specialty Infusion Services, Inc.* (Case No. 37-2016-00028950-CU-OE-CTL); *Rodriguez v. Delta Sierra Beverage, LLC* (Case No. 34-2017-00206727); *Clavel v. La Jolla Beach & Tennis Club, Inc.* (Case No. 37-2017-00004802-CU-OE-CTL); *Martin v. Sysco Central California, Inc.* (Case No. 1:16-cv-00990-DAD-SAB).

9. After filing, the Parties engaged in extensive discovery. Plaintiff's discovery requests, coupled with the Parties extensive meet and confer efforts, led to Defendant producing over ten thousand pages of documents. These documents included, but were not limited to, Defendant's meal and rest period policies, employee handbooks, time records and wage records for class members, and additional relevant policies. Additionally, Defendant provided Plaintiff with data that enabled him to fully evaluate class-wide claims and potential exposure. Plaintiff also performed an independent analysis of the case and interviewed numerous class members about their experiences working for Defendant.

10. On May 3, 2019, Plaintiff filed his Motion for Class Certification. Defendant opposed this motion. The Court held a hearing on Plaintiff's motion on July 12, 2019, and the Court issued an order granting Plaintiff's Motion for Class Certification only as to Plaintiff's meal period and rest period claims. On or around November 6, 2019, Defendant filed its Motion for Summary Judgment arguing that the certified class claims were preempted by the Federal Motor Carrier Safety Administration's ("FMCSA") hours of service regulations and the Pipeline and Hazardous Materials Safety Administration's ("PHMSA") administrative determination that California's meal period rules are preempted. The Parties reached the instant settlement prior to having the motion heard by the Court.

11. This entire case hinges on whether Plaintiff's and class members' claims for failure to provide compliant meal and rest periods under California law are preempted by federal law. A September 21, 2018 opinion by the Pipeline and Hazardous Materials Safety Administration

1 (“PHMSA”) found that California’s meal and rest period laws do not apply to drivers of motor
2 vehicles that are transporting hazardous materials. PHMSA opined that “California’s meal and
3 rest break requirements create an unnecessary delay in the transportation of hazardous
4 materials and are therefore preempted.” Further, on December 28, 2018, the Federal Motor
5 Carrier Safety Administration issued a separate opinion determining that the California meal
6 and rest break provisions are more stringent than the Agency’s hours of service regulations,
7 that they have no safety benefits that extend beyond those already provided by the Federal
8 Motor Carrier Safety Regulations, that they are incompatible with the Federal hours of service
9 regulations, and that they cause an unreasonable burden on interstate commerce. Thus,
10 California meal and rest break laws, therefore, are preempted under 49 U.S.C. 31141(c).

11 12. Plaintiff argues that these opinions cannot and do not apply retroactively, and Defendant is
12 still liable for violating California law for nearly the entirety of the Class Period prior to the
13 issuance of this opinion. Federal agency decisions and opinions, like the FMCSA and
14 PHMSA opinions, are “subject to the presumption of prospectivity that attends true exercises
15 of legislative authority.” *Gutierrez-Brizuela v. Lynch* (10th Cir. 2016) 834 F.3d 1142, 1144.
16 As FMCSA and PHMSA orders are subject to the presumption of prospectivity, there must be
17 express language in the statutory grant of legislative rulemaking authority enabling these
18 administrative agencies to extend their regulations retroactively. Here, the statutes enabling
19 these agencies to issue this legislative regulations, 49 U.S.C. §§ 31141 and 5125, are
20 completely void of any language, evidence, or indication whatsoever that Congress expressly
21 granted these agencies with the power to promulgate retroactive rules, nor do the FMCSA and
22 PHMSA Orders themselves give any indication that they are to be interpreted retroactively.
23 Hence, because agency orders are presumed prospective unless congress expressly conveys
24 the power to promulgate retroactive rules, and congress never expressly granted the power to
25 issue retroactive preemption determinations, the FMCSA and PHMSA opinions are not
26 retroactive Further, Plaintiff contends that this opinion holds no weight over California
27 Superior Courts, and will ultimately be struck down and/or reversed by the appropriate
28 legislative and judicial bodies.

1 13. Therefore, Plaintiff's arguments, as outlined below, are only relevant if the Court were to find
2 that the PHMSA and FMCSA opinions have no, or only a limited, effect on Plaintiff's case.
3 Because of this, Plaintiff had to take into consideration the possibility that Defendant's
4 position could prevail and had to discount his damage exposure significantly.

5 14. Based upon the discovery and litigation conducted, Plaintiff contends – and Defendant
6 disputes – that class members are always subject to MJ's control and command, including
7 during meal and rest breaks. Plaintiff alleges that MJ has uniform policies which require class
8 members to remain in constant attendance of their trucks and its contents at all times. Because
9 Defendant transports hazardous materials, Plaintiff asserts that under Title 49 of the Code of
10 Federal Regulations, Section 397.5(a) (49 CFR 397.5(a)) drivers are required to attend to their
11 trucks at all times throughout the workday, even on meal and rest periods. As a result,
12 employees are not provided with rest periods in which they are free to use the time for their
13 own purposes.

14 15. Plaintiff argues that the cases *Brinker Restaurant Corp. v. Superior Court* ("Brinker"), (2012)
15 53 Cal.4th 1004, and *Augustus v. ABM Security Services, Inc.* ("Augustus"), (2016) 2 Cal. 5th
16 257, provide that employers are required to relinquish any control over how employees spend
17 their break time, and relieve their employees of all duties. Plaintiff contends that when an
18 employer requires drivers to remain in constant attendance of their truck and trailers during
19 meal and rest periods, that is, when an employer prevents drivers from leaving their trucks
20 unattended due to their containment of hazardous materials to maintain the employer's
21 compliance with 49 CFR 397.5(a), the employer has impermissibly imposed a restraint not
22 inherent in the meal and rest period requirements itself, and places drivers on-duty for meal
23 and rest periods. Under California Labor Code § 226.7(a), "[n]o employer shall require any
24 employee to work during any . . . rest period mandated by an applicable order of the Industrial
25 Welfare Commission." If an employer does not provide a duty-free meal or rest period, i.e.,
26 one that is free of employer control, the 226.7 premium is triggered.

27 16. Furthermore, Plaintiff contends that because MJ mandates drivers attend to their trucks and its
28 contents, drivers are not paid wages for all hours worked. Under California law, employees

1 must be paid for all hours worked. Hours worked is defined in Wage Order 9-2001¹ as “the
2 time during which an employee is subject to the control of an employer, and includes all the
3 time the employee is suffered or permitted to work, whether or not required to do so.” Wage
4 Order 9-2001, Subd. 2(K); *see also Mendiola v. CPS Security Solutions, Inc.*, 60 Cal. 4th 833
5 (2015). Under this standard, “it is only necessary that the worker be subject to the control of
6 the employer in order to be entitled to compensation.” *Morillion v. Royal Packing Co.*, 22 Cal.
7 4th 575, 584 (2000). Plaintiff asserts that this deprives drivers of wages for all hours worked,
8 specifically during unpaid meal periods).

9 17. The Parties participated in a full day mediation with the Jeffrey Krivis on January 22, 2018.

10 The matter did not settle at mediation, but the Parties continued settlement discussions
11 throughout the course of the litigation. In light of the points raised in Defendant’s Motion for
12 Summary Judgment, and appreciating the significant risks on both sides, the Parties reached a
13 settlement in principle. The Parties then met and conferred regarding all the terms of the
14 settlement and finalized their agreement in the Joint Stipulation, of which the Parties seek
15 preliminary approval in the instant motion.

16 18. In addition to being able to discover the strengths and vulnerabilities associated with
17 Plaintiff’s claims, Defendant provided Plaintiff with information regarding class members
18 during the Class Period for exposure analysis purposes. Based upon the data provided by
19 Defendant’s Counsel, Plaintiff has determined that there are approximately 187 non-exempt,
20 hourly class members who worked approximately 86,260 shifts within the Class Period. The
21 average hourly rate is approximately \$21.50 per hour for the Class Period.

22 19. As discussed above, Plaintiff contends that Defendant has a policy under which class
23 members are not relieved of all duty during meal and rest periods because they are required to
24 maintain constant vigilance over their trucks and its contents throughout the entirety of the
25 meal and rest periods. If Plaintiff were to prevail on this theory of liability, employees would
26 be entitled to a meal and rest period premium for each shift worked. Therefore, the *maximum*

27 _____
28 ¹ This is the Wage Order that governs the driver class members in this case.

1 ***potential exposure*** under this theory of liability would be \$3,709,180 (86,260 shifts x \$21.50
2 per hour x 2 premiums = \$3,709,180).

3 20. Plaintiff also asserts that because MJ mandates drivers attend to their trucks and its contents,
4 drivers are not paid wages for all hours worked during their unpaid meal periods. If Plaintiff
5 were to prevail on this theory of liability, each class member would be entitled to thirty
6 minutes of unpaid time per shift. Thus, Defendant's ***maximum potential exposure*** under
7 Plaintiff's unpaid wages theory of liability is \$927,295 (86,260 shifts x \$21.50 per hour x 30
8 minutes = \$927,295).

9 21. Plaintiff is also seeking PAGA penalties. PAGA allows the private enforcement of certain
10 California Labor Code sections relating to wage and hour violations. PAGA Section
11 2699(f)(2) provides for a standard penalty amount where a civil penalty is not otherwise
12 specified by statute:

13 [T]he civil penalty is one hundred dollars (\$100) for each aggrieved
14 employee per pay period for the initial violation and two hundred dollars
15 (\$200) for each aggrieved employee per pay period for each subsequent
16 violation.

17 Plaintiff alleges that Defendant has three (3) chief violations – unlawful meal periods,
18 unlawful rest periods, and failure to pay for time worked – of the Labor Code sections which
19 give rise to PAGA penalties. The statute of limitations for PAGA violations goes back one
20 year; based of the information provided by Defendant, there were approximately 1,092 PAGA
21 periods in the statutory period. Plaintiff calculates Defendant's potential maximum exposure
22 under PAGA as \$327,600².

23 22. Thus, not taking into consideration any of its defenses, MJ's total exposure if Plaintiff was
24 successful in his core claims would be approximately \$4,636,475. This maximum potential
25 exposure, however, had to be discounted considerably in light of Defendant's arguments. In
26 addition, Plaintiff also had to consider that, should the Court agree with Plaintiff's position,

27 _____
28 ² 1,092 PAGA periods x \$100 x 3 PAGA violations

1 they may not be awarded the full exposure at trial. In light of Defendant's defenses,
2 supporting evidence, and the current legal landscape, the settlement amount of \$150,000 –
3 with an average settlement share amount estimated at \$349.90– Plaintiff and his counsel
4 believe that this is a reasonable and fair settlement amount.

5 23. The adequacy requirement is met if Plaintiff has no interests adverse to the interests of the
6 proposed Class Members and is committed to vigorously prosecuting the case on behalf of the
7 Class. *Hanlon*, 150 F.3d at 1020; *McGhee v. Bank of America* (1976) 70 Cal.App.3d 442,
8 450-51. Plaintiff contends those standards are met here. Plaintiff does not have any conflicts
9 of interest with the Class. He has been and continues to be committed to vigorously
10 prosecuting this case.

11 24. A true and correct copy of the Joint Stipulation and Settlement Agreement is attached hereto
12 as **Exhibit 1**. A true and correct copy of the proposed Class Notice is attached to **Exhibit 1** as
13 **Exhibit A**.

14 25. Attached hereto as **Exhibit 2** is a true and correct copy of the notice alleging PAGA violations
15 Plaintiff provided to the Labor and Workforce Development Agency ("LWDA").

16 26. Attached hereto as **Exhibit 3** is a true and correct copy of the confirmation that the upload of
17 his PAGA notice was received by the LWDA.

18 27. Attached hereto as **Exhibit 4** is a true and correct copy of the filing receipt from Plaintiff's
19 upload of his preliminary approval motion and supporting documents to the LWDA's website.

20 28. Attached hereto as **Exhibit 5** is a true and correct copy of the confirmation that the upload of
21 his preliminary approval motion was received by the LWDA.

22 I hereby declare under penalty of perjury under the laws of the State of California that the
23 foregoing is true and correct.

24 Dated: June 17, 2020



26 _____
27 David Mara
28

Exhibit 1

JOINT STIPULATION AND SETTLEMENT AGREEMENT

Subject to final approval by the Court, this Settlement Agreement is between Miguel Hernandez ("Plaintiff"), and Defendant MJ Industries, Inc. dba MJ Tank Lines ("Defendant" or "MJ"). Plaintiff and Defendant collectively are referred to in this Agreement as the "Parties."

I. DEFINITIONS

In addition to the other terms defined in this Agreement, the terms below have the following meaning:

- A. **Administration Costs**: The costs incurred by the Settlement Administrator to administer this Settlement, which shall not exceed \$7,500. All Administration Costs shall be paid from the Gross Settlement Amount ("GSA"). If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
- B. **Agreement, Settlement Agreement, Joint Stipulation, or Settlement**: The settlement agreement reflected in this document, titled "Joint Stipulation and Settlement Agreement."
- C. **Attorney Fee Award**: The amount, not to exceed 33 1/3% of the GSA or \$50,000, finally approved by the Court and awarded to Class Counsel. The Attorney Fee Award shall be paid from the GSA and will not be opposed by Defendant. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
- D. **Class**: All individuals employed by Defendant as drivers at any time between January 25, 2013, through preliminary approval of the settlement.
- E. **Class Counsel**: David Mara and Matthew Crawford of Mara Law Firm, PC.
- F. **Class Member**: Each person eligible to participate in this Settlement who is a member of the Class as defined above.
- G. **Class Notice or Notice**: The Notice of Class Action Settlement, substantially similar to the form attached hereto as **Exhibit A**, subject to Court approval.
- H. **Class Period**: January 25, 2013, through preliminary approval of the settlement.
- I. **Class Representative or Plaintiff**: Miguel Hernandez.

- J. Class Representative Enhancement Payment:** The amount the Court awards to Plaintiff, which will not exceed \$10,000. This payment shall be paid from the GSA and will not be opposed by Defendant. This payment is offered in consideration for the Plaintiff's actions in conferring a benefit upon the State of California and the Class, the time and effort Plaintiff put into pursuing the litigation and in return for a General Release, and reasonable fears of being blacklisted from future employment. If the Court awards less than the amount requested, any amount not awarded will become part of the NSA for distribution to Participating Class Members.
- K. Cost Award:** The amount that the Court orders Defendant to pay Class Counsel for payment of actual litigation costs, which shall not exceed \$15,000. The Cost Award will be paid from the GSA and will not be opposed by Defendant. The Cost Award is subject to Court approval. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
- L. Counsel for Defendant:** Christine D. Baran and Colin P. Calvert of Fisher & Phillips LLP.
- M. Defendant:** MJ Industries, Inc. dba MJ Tank Lines
- N. Disbursement of the Settlement:** The dates on which the Settlement Administrator shall disburse the Gross and Net Settlement Amounts as instructed herein.
- O. Effective Final Settlement Date:** The Effective Final Settlement Date will be (a) if no objections to the settlement are filed, the date the Court enters judgment granting final approval of the settlement; (b) if objections to the settlement are filed and overruled, and no appeal is taken, the date the Court enters judgment granting final approval of the settlement ; (c) if objections to the Settlement are filed and withdrawn, the date the Court enters judgment granting final approval of the Settlement by the Court; or (d) if any appeal is taken from the Court's overruling of objections to the settlement, then the Effective Final Settlement Date shall be 20 days after the appeal is withdrawn or after an appellate decision affirming the final approval decision becomes final and can no longer be appealed.
- P. Employer Taxes:** Defendant's portion of payroll taxes as the Class Members' current or former employer (including the employer's payment of applicable FICA, FUTA, and SUI contributions, etc.) owed to the appropriate local, state, and federal taxing authorities shall be paid from the GSA.
- Q. First Amended Complaint:** As part of the Settlement and prior to filing Plaintiff's Motion for Preliminary Approval, the Parties agree to stipulate to permit Plaintiff leave to file his First Amended Complaint. This stipulation will

also request that the Court deem the First Amended Complaint responded to via Defendant's Answer on file. Prior to filing the Motion for Preliminary Approval, Plaintiff will send out required Notice to the LWDA and follow all pre-filing requirements under California Labor Code sections 2699, *et. Seq.*

- R. **Final Judgment or Final Approval:** The final order entered by the Court finally approving this Agreement.
- S. **Gross Settlement Amount or GSA:** The total value of the Settlement is a non-reversionary One Hundred Fifty Thousand Dollars and Zero Cents (\$150,000). This is the gross amount Defendant can be required to pay under this Settlement Agreement. The GSA includes: (1) the Net Settlement Amount to be paid to Participating Class Members (the payment of employee and employer side taxes on the portion of the settlement shares earmarked as wages shall be paid out of the Net Settlement Amount. Thus, the individual settlement shares that are paid out of the Net Settlement Amount shall be reduced by the employee and employer's tax liability for the share); (2) the Attorney Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (3) the Class Representative Enhancement Payment paid to the Class Representative, as approved by the Court; (4) the Administration Costs, as approved by the Court; and (5) the PAGA Payment to the LWDA and to Participating Class Members, as approved by the Court . No portion of the GSA will revert to Defendant for any reason.
- T. **Individual Settlement Share(s):** The amount payable to each Participating Class Member under the terms of this Settlement Agreement. Class Members are not required to submit a claim form to receive their Individual Settlement Shares pursuant to this Agreement. Rather, Participating Class Members will receive an Individual Settlement Share automatically, without the return of a claim form.
- U. **LWDA:** California Labor and Workforce Development Agency.
- V. **Net Settlement Amount or NSA:** The total amount of money available for payout to Participating Class Members, which is the GSA less the Attorney Fee Award, Cost Award, Class Representative Enhancement Payment, the portion of the PAGA Payment paid to the LWDA, and Administration Costs. In other words, the NSA is the portion of the GSA that will be distributed to Class Members who do not request exclusion from the Settlement. The payment of employee and employer side taxes on the portion of the settlement shares earmarked as wages shall be paid out of the Net Settlement Amount. Thus, the individual settlement shares that are paid out of the Net Settlement Amount shall be reduced by the employee and employer's tax liability for the share.
- W. **PAGA:** The California Labor Code Private Attorneys General Act of 2004 (Cal. Labor Code §§ 2698 *et seq.*).

- X. **PAGA Payment:** The PAGA Payment consists of \$5,000 of the GSA allocated to satisfy the PAGA penalties claim as alleged in the Complaint. Seventy-five percent (75%) of the PAGA Payment (\$3,750) shall be paid to the LWDA, and twenty-five percent (25%) (\$1,250) of the PAGA Payment shall be part of the Net Settlement Amount distributed to Participating Class Members.
- Y. **Participating Class Members:** All Class Members who do not submit a valid and timely request to exclude themselves from this Settlement.
- Z. **Parties:** Plaintiff Miguel Hernandez as an individual and as Class Representative, and Defendant MJ Industries, Inc. dba MJ Tank Lines.
- AA. **Preliminary Approval or Preliminary Approval Order:** The Court's order preliminarily approving the proposed Settlement.
- BB. **Qualified Settlement Fund or QSF:** The Parties agree that the GSA is intended to be a "Qualified Settlement Fund" under Section 468B of the Code and Treasury Regulations § 1.4168B-1, 26 C.F.R. § 1.468B-1 *et seq.*, and will be administered by the Settlement Administrator as such. The Parties and Settlement Administrator shall treat the QSF as coming into existence as a Qualified Settlement Fund on the earliest date permitted as set forth in 26 C.F.R. § 1.468B-1, and such election statement shall be attached to the appropriate returns as required by law.
- CC. **Released Claims:** Class Members who do not opt out of the settlement will release all known and unknown state law claims that were alleged or that could have been alleged based on the facts of the complaints filed in the matter, including for meal and rest breaks, unpaid wages, including minimum wages, regular wages, overtime and double time wages, wage statement violations; separation pay violations; unfair business practices; failure to timely pay wages; failure to keep accurate payroll records; and PAGA. The release will be as to the Released Parties. The release only applies to periods of time when Class Members were members of the Class (i.e., excluding periods of time in an exempt position).
- DD. **Released Parties:** Defendant and its past, present and/or future, direct and/or indirect, officers, directors, members, employees, representatives, administrators, attorneys, agents, parent companies, subsidiaries and affiliated corporations and entities, consultants, shareholders, joint ventures, predecessors, successors, and/or assigns.
- EE. **Response Deadline:** Thirty (30) calendar days from the initial mailing of the Notice.

- FF. First Installment:** The First Installment shall be comprised of \$50,000. The First Installment shall be funded and wired to the Settlement Administrator fifteen (15) days after the Effective Final Settlement Date.
- GG. Second Installment:** The Second Installment shall be comprised of \$50,000. The Second Installment shall be funded no later than ninety (90) days after funding the First Installment.
- HH. Settlement Administration:** The Settlement Administrator will conduct a skip trace for the address of all former employee Class Members. The Settlement Administrator will mail the Notice by first class U.S. mail to all Class Members at the address Defendant has on file for those Class Members and to all former employee Class Members at the address resulting from the skip trace. The Notice will inform Class Members that they have until the Response Deadline to either object to the Settlement or to opt-out of the Settlement. Any Class Member who does not receive Notice after the steps outlined above have been taken will still be bound by the Settlement and/or judgment.
- II. Settlement Administrator:** The third party administrator agreed upon by Parties to administer this Settlement is Simpluris.
- JJ. Superior Court:** Superior Court of the State of California, County of San Diego
- KK. Third Installment:** The Third Installment shall be comprised of \$50,000. The Third Installment shall be funded no later than ninety (90) days after funding the Second Installment.

II. RECITALS

- A.** The Action was filed by Plaintiff Miguel Hernandez in the Superior Court of the State of California, County of San Diego on January 25, 2017. The complaint alleged causes of action on behalf of Plaintiff and those similarly situated hourly/non-exempt employees for failure to pay all straight time wages, failure to pay overtime, failure to provide meal periods, failure to authorize and permit rest periods, knowing and intentional failure to comply with itemized employee wage statement provisions, failure to pay all wages due at the time of termination of employment, and violation of the California Unfair Competition Law (Business & Professions Code § 17200 *et seq.*).
- B.** Defendant Answered the Complaint on July 5, 2017. In its answer Defendant affirmatively denied generally and specifically all claims raised in the complaint.
- C.** Plaintiff propounded two rounds of special interrogatories and one set of demands for production of documents to which Defendant responded. Defendant propounded two rounds of requests for production of documents and

one set of form interrogatories to which Plaintiff responded. Thereafter, Plaintiff conducted the deposition of two of Defendant's People Most Qualified to testify on designated subject areas related to the allegations in the complaint. Defendant also took the deposition of Plaintiff.

- D. In addition, Class Counsel reviewed a substantial amount of data and documents relating to the size and scope of the class that permitted an evaluation of the class-wide claims.
- E. The parties attended a full day mediation with Jeff Krivis on January 22, 2018. The matter did not settle at the mediation.
- F. On May 3, 2019, Plaintiff filed his Motion for Class Certification. Defendant opposed this motion. The Court held a hearing on Plaintiff's motion on July 12, 2019, and the Court issued an order granting Plaintiff's Motion for Class Certification. The Court granted a class comprised of all drivers who are or were employed by Defendant in the state of California at any time from January 25, 2013 to the date of the Court's order. The Court also granted five subclasses: unlawful on-duty meal break subclass, untimely or no first meal break subclass, untimely or no second meal break subclass, unlawful on-duty rest break subclass, and no third rest break subclass.
- G. On November 6, 2019, Defendant filed its Motion for Summary Judgment or, in the alternative, Motion for Summary Adjudication arguing that the certified class claims were preempted by the Federal Motor Carrier Safety Administration's ("FMCSA") hours of service regulations and the Pipeline and Hazardous Materials Safety Administration's ("PHMSA") administrative determination that California's meal period rules are preempted, in addition to arguing that Plaintiff's individual claims failed as a matter of law.
- H. The parties continued to negotiate at arms-length in the following months and, on January 14, 2020, the parties reached an agreement in principle to settle the case, the terms of which are reflected herein.
- I. **Benefits of Settlement to Class Members.** Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary to continue the litigation against Defendant through trial and through any possible appeals, including the possibility of Defendant's Motion for Summary Judgment succeeding. Plaintiff and Class Counsel also have taken into account the uncertainty and risk of further litigation, the potential outcome, and the difficulties and delays inherent in such litigation. Plaintiff and Class Counsel have conducted extensive settlement negotiations. Based on the foregoing, Plaintiff and Class Counsel believe the Settlement set forth in this Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of the Class Members.

- J. Defendant's Reasons for Settlement.** Defendant recognizes that the defense of this litigation will be protracted and expensive. Substantial amounts of time, energy, and resources of Defendant has been and, unless this Settlement is made, will continue to be devoted to the defense of the claims asserted by Plaintiff. Defendant, therefore, has agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the Released Claims.
- K. Defendant's Denial of Wrongdoing.** Defendant generally and specifically denies any and all liability or wrongdoing of any sort with regard to any of the claims alleged, makes no concessions or admissions of liability of any sort, and contends that for any purpose other than settlement, the Action is not appropriate for class treatment. Defendant asserts a number of defenses to the claims, some of which are included in its Motion for Summary Judgment, and has denied any wrongdoing or liability arising out of any of the alleged facts or conduct in the Action. Neither this Agreement, nor any document referred to or contemplated herein, nor any action taken to carry out this Agreement, is or may be construed as, or may be used as an admission, concession, or indication by or against Defendant or any of the Released Parties of any fault, wrongdoing, or liability whatsoever. There has been no final determination by any court as to the merits of the claims asserted by Plaintiff against Defendant.
- L. Plaintiff's Claims.** Plaintiff asserts that Defendant's defenses are without merit. Neither this Agreement nor any documents referred to or contemplated herein, nor any action taken to carry out this Agreement is, may be construed as, or may be used as an admission, concession or indication by or against Plaintiff, Class Members, or Class Counsel as to the merits of any claims or defenses asserted, or lack thereof, in the Action. However, in the event that this Settlement is finally approved by the Court, the Plaintiff, Class Members, and Class Counsel will not oppose Defendant's efforts to use this Agreement to prove that Plaintiff and Class Members have resolved and are forever barred from re-litigating the Released Claims.

III. SETTLEMENT TERMS AND CONDITIONS

- A. Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the maximum GSA, that Defendant is obligated to pay under this Settlement Agreement is One Hundred Fifty Thousand Dollars and Zero Cents (\$150,000).
- B. Class Certification.** Solely for the purposes of this Settlement, the Parties stipulate and agree to certification of all claims asserted or that could have been asserted on behalf of Class Members in the Action. As such, the Parties stipulate and agree that in order for this Settlement to occur, the Court must certify the Class as defined in this Agreement. The Parties agree that the Court's Order Granting Plaintiff's Motion for Class Certification, entered on September 27,

2019, will have no effect on Plaintiff or the Class Members' ability to participate in this settlement.

- C. Conditional Nature of Stipulation for Certification.** The Parties stipulate and agree to the certification of all claims asserted or that could have been asserted on behalf of Plaintiff and Class Members for purposes of this Settlement only. If the Settlement does not become effective, the fact that the Parties were willing to stipulate to certification as part of the Settlement shall not be admissible or used in any way in connection with, the question of whether the Court should certify any claims in a non-settlement context in this Action or in any other lawsuit. If the Settlement does not become effective, Defendant reserves the right to contest any issues relating to class certification and liability.
- D. Appointment of Class Representative.** Solely for the purposes of this Settlement, the Parties stipulate and agree Plaintiff Miguel Hernandez shall be appointed as representative for the Class.
- E. Appointment of Class Counsel.** Solely for the purpose of this Settlement, the Parties stipulate and agree that the Court appoint Class Counsel to represent the Class.
- F. Individual Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay an Individual Settlement Share from the Net Settlement Amount to each Participating Class Member.

1. Calculation.

- a. Individual Settlement Share Calculation.** Each Participating Class Member will receive a proportionate share of the Net Settlement Amount that is equal to (i) the number of weeks he or she worked for Defendant in California based on the Class data provided by Defendant, divided by (ii) the total number of weeks worked by all Participating Class Members based on the same Class data, which is then multiplied by the Net Settlement Amount. One day worked in a given week will be credited as a week for purposes of this calculation. Therefore, the value of each Class Member's Individual Settlement Share ties directly to the amount of weeks that he or she worked.
- 2. Tax Withholdings.** Each putative class member's gross settlement award will be apportioned as follows: 33 1/3% wages, 33 1/3% interest, and 33 1/3% penalties. The amounts paid as wages shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported by W-2 forms. Payment of all amounts will be made subject to backup withholding unless a duly executed W-9 form is received from the payee(s). The amounts paid

as penalties and interest shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms.

G. Constituents of GSA Disbursement. Subject to the terms and conditions of this Agreement, the Settlement Administrator shall disburse the GSA as directed later on herein to the following:

- 1. To the Named Plaintiff:** In addition to his Individual Settlement Share, and subject to the Court's approval, the named Plaintiff, Miguel Hernandez, will receive up to Ten Thousand Dollars and Zero Cents (\$10,000). The Settlement Administrator will pay the Class Representative Enhancement Payment out of the GSA. Payroll tax withholdings and deductions will not be taken from the Class Representative Enhancement Payment. An IRS Form 1099 will be issued to the Plaintiff with respect to his Class Representative Enhancement Payment.
- 2. To Class Counsel.** Class Counsel will apply to the Court for, and Defendant agrees not to oppose, a total Attorney Fee Award not to exceed one-third (33 1/3%) or \$50,000 of the GSA and a Cost Award not to exceed \$15,000. The Settlement Administrator will pay the court-approved amounts for the Attorney Fee Award and Cost Award out of the Gross Settlement Fund. Payroll tax withholding and deductions will not be taken from the Attorney Fee Award or the Cost Award. IRS Forms 1099 will be issued to Class Counsel with respect to the Attorney Fee Award. In the event the Court does not approve the entirety of the application for the Attorney Fee Award and/or Cost Award, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendant nor the Settlement Administrator shall be responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Class Counsel for the Attorney Fee Award and/or Cost Award, the difference shall become part of the NSA and be available for distribution to Participating Class Members.
- 3. To the Responsible Tax Authorities.** The Settlement Administrator will pay the amount of the Class Members' portion of normal payroll withholding taxes out of each person's Individual Settlement Share. The Settlement Administrator will calculate the amount of the Class Members' portion of payroll withholding taxes and forward those amounts to the appropriate taxing authorities. The Settlement Administrator will also calculate and forward Defendant's share of taxes payable on the wage portion of each person's Individual Settlement Share, which shall be paid from the NSA. The payment of employee and employer side taxes on the portion of the settlement shares earmarked as wages shall be paid out of the Net Settlement Amount.

4. **To the Settlement Administrator.** The Settlement Administrator will pay to itself Administration Costs (reasonable fees and expenses) approved by the Court not to exceed \$7,500. This will be paid out of the GSA. If the actual amount of Administration Costs is less than the amount estimated and/or requested, the difference shall become part of the NSA and be available for distribution to Participating Class Members.
5. **To the LWDA.** The Settlement Administrator will pay \$5,000 of the GSA allocated to satisfy the PAGA penalties claim as alleged in the First Amended complaint. Seventy-five percent (75%) of the PAGA Payment shall be paid to the LWDA, and twenty-five percent (25%) of the PAGA Payment shall be part of the NSA distributed to Participating Class Members.
6. **To Class Members.** The Settlement Administrator will pay Participating Class Members according to the Individual Settlement Share calculations set forth above.

H. Appointment of Settlement Administrator. Solely for the purposes of this Settlement, the Parties stipulate and agree to the appointment of the Settlement Administrator. The Settlement Administrator shall be responsible for preparing, printing, and mailing the Notice to the Class Members; keeping track of any objections or requests for exclusion (opt-outs) from Class Members; performing skip traces and remailing Notices and Individual Settlement Shares to Class Members; calculating any and all payroll tax deductions as required by law; calculating each Class Member's Individual Settlement Share; providing weekly status reports to Defendant's Counsel and Class Counsel, which is to include updates on any objections or requests for exclusion (opt-outs) that have been received; providing a due diligence declaration for submission to the Court no later than thirty (30) calendar days prior to the Final Approval hearing; mailing Individual Settlement Shares to Participating Class Members; calculating and mailing the PAGA Payment to the LWDA; distributing the Attorney Fee Award and Cost Award to Class Counsel; calculating and paying amounts owed to the appropriate tax authorities; printing and providing Class Members and Plaintiff with W-2s and 1099 forms as required under this Agreement and applicable law; providing a due diligence declaration for submission to the Superior Court upon the completion of the Settlement; providing any funds remaining in the QSF as a result of uncashed checks to the State of California, in the amounts directed per this Settlement, including the administration of related tax reimbursements; and for such other tasks as the Parties mutually agree. The Parties each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

I. Procedure for Approving Settlement.

1. Amending the Complaint.

- a.** Prior to filing Plaintiff's Motion for Preliminary Approval, the Parties agree to stipulate to permit Plaintiffs leave to file their First Amended Complaint. This stipulation will also request that the Court deem the First Amended Complaint responded to via Defendant's Answer on file.

2. Motion for Preliminary Approval and Conditional Certification.

- a.** Plaintiff will move for an order conditionally certifying the Class on all claims that were alleged or that could have been alleged in the Action for settlement purposes only, giving Preliminary Approval of the Settlement, setting a date for the Final Approval hearing, and approving the Class Notice.
- b.** At the Preliminary Approval hearing, the Plaintiff will appear, support the granting of the motion, and submit a proposed order granting conditional certification of the Class on all claims that were alleged or that could have been alleged in the Action and Preliminary Approval of the Settlement; appointing the Class Representatives, Class Counsel, and Settlement Administrator; approving the Class Notice; and setting the Final Approval hearing.
- c. Effect of Denial of Preliminary Approval.** Should the Court decline to conditionally certify the Class on all claims that were alleged or that could have been alleged in the Action or to Preliminarily Approve all material aspects of the Settlement, the Settlement will be null and void, and the Parties will have no further obligations under it. Provided, however, that the amounts of the Attorney Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement Payment shall be determined by the Court, and the Court's determination on these amounts shall be final and binding, and that the Court's approval or denial of any amount requested for these items are not conditions of this Settlement Agreement, and are to be considered separate and apart from the fairness, reasonableness, and adequacy of the Settlement. Any order or proceeding relating to an application for the Attorney Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement Payment shall not operate to terminate or cancel this Settlement Agreement. Nothing in this Agreement shall limit Plaintiff's or Class Counsel's ability to appeal any decision by the Court to

award less than the requested Attorney Fee Award, Cost Award, Administration Costs, and Class Representative Enhancements.

3. Notice to Class Members. After the Court enters its Preliminary Approval Order, every Class Member will be provided with the Class Notice in accordance with the following procedure:

- a. Class Data.** Within seven (7) business days after entry of the Preliminary Approval Order, Defendant shall deliver to the Settlement Administrator an electronic database, which will list for each Class Member: (1) first and last name; (2) last known mailing address; (3) social security number; (4) hire and termination dates; (5) last known email address; and (6) the total number of weeks during which the Class Member performed any actual work during the Class Period as a member of the Class (“Database”). If any or all of this information is unavailable to Defendant, Defendant will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon how to deal with the unavailable information. The Settlement Administrator will conduct a skip trace for the address of all Class Members who are former employees of Defendant. The Database shall be based on Defendant’s payroll, personnel, and other business records. The Settlement Administrator shall maintain the Database and all data contained within the Database as private and confidential.
- b. Notice Mailing.** Within fourteen (14) business days after entry of the Preliminary Approval Order, the Settlement Administrator will mail the Class Notice to all identified Class Members via first-class regular U.S. Mail, using the mailing address information provided by Defendant and the results of the skip trace performed on all former Defendant employee Class Members.
- c. Returned Notices.** If a Class Notice is returned because of an incorrect address, within five (5) business days from receipt of the returned Notice, the Settlement Administrator will conduct a search for a more current address for the Class Member and re-mail the Class Notice to the Class Member. The Settlement Administrator will use the National Change of Address Database and skip traces to attempt to find the current address. The Settlement Administrator will be responsible for taking reasonable steps to trace the mailing address of any Class Member for whom a Class Notice is returned by U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to

Class Members for whom new addresses are found. The Settlement Administrator is unable to locate a better address, the Class Notice shall be re-mailed to the original address. If the Class Notice is re-mailed, the Settlement Administrator will note for its own records the date and address of each re-mailing.

- d. Weekly Status Reports.** The Settlement Administrator shall provide a weekly status report to the Parties. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defendant's Counsel of the number of Notices mailed and emailed (if applicable), the number of Notices returned as undeliverable, the number of Notices re-mailed, and the number of requests for exclusion (opt-outs) or objections received.
- e. Settlement Administrator's Declaration.** No later than fourteen (14) calendar days after the Response Deadline or at the request of the Parties, whichever comes first, the Settlement Administrator will provide the Parties a declaration of due diligence setting forth its compliance with its obligations under this Agreement. The declaration from the Settlement Administrator shall also be filed with the Court by Class Counsel at the time the Motion for Final Approval is filed. Before the Final Approval Hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

4. Objections to Settlement. The Class Notice will provide the method and timing for objections to the Settlement.

- a. Timing.** The objection must be submitted to the Settlement Administrator by mail, postmarked by the Response Deadline.
- b. Format.** Any Objections shall state: (a) the case name (e.g. *Hernandez v. MJ Tank Lines*) and case number (37-2017-00003218-CU-OE-CTL); (b) the objecting person's or his/her attorney's full name, address, and telephone number; (c) the words "Notice of Objection" or "Formal Objection;" (d) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (e) list identifying witness(es) the objector may call to testify at the Final Approval Hearing; (f) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval Hearing; and (g) state whether the objection applies only to the objector, to a specific subset of the Class, or to the entire Class.

- c. **Notice of Intent to Appear.** Class Members who timely submit valid objections to the Settlement may (though are not required to) appear at the Final Approval Hearing, either in person or through the objector's own counsel provided the objector has first notified the Settlement Administrator by sending his/her written objections to the Settlement Administrator, postmarked no later than the Response Deadline. If a Class Member objects to the Settlement, the Class Member will remain a Participating Class Member and if the Court approves this Settlement, the objecting Class Member will be deemed a Participating Class Member and be bound by the terms of the Settlement and Final Approval in the same way and to the same extent as a Class Member who does not object. The Court retains final authority with respect to the consideration and admissibility of any Class Member objections.

- 5. **Request for Exclusion from the Settlement ("Opt-Out").** The Class Notice will provide that Class Members who wish to exclude themselves from the Settlement must mail to the Settlement Administrator a written request for exclusion by the Response Deadline. The written request for exclusion must: (a) state the Class Member's name, address, telephone number, and social security number or employee identification number; (b) state the Class Member's intention to exclude themselves from or opt-out of the Settlement (*e.g.* "I want to exclude myself from this settlement. I also understand that I retain all rights to sue the Defendant for the claims asserted in this lawsuit."); (c) be addressed to the Settlement Administrator; (d) be signed by the Class Member or his or her lawful representative; and (e) be postmarked no later than the Response Deadline. If a class member previously opted out in response to the "Notice of Pendency of Class Action" mailed on November 4, 2019, this has no effect on the class member's ability to recover fully for their meal and rest period claims in addition to all other claims encompassed by this settlement. If a class member did not opt out in response to the "Notice of Pendency of Class Action" mailed on November 4, 2019, this has no effect on the class member's ability to opt out of this settlement in its entirety and become free to pursue his or her individual claims for meal periods, rest periods, and all other claims asserted in the Lawsuit.

- a. **Effect of "Opt-Out."** Any Class Member who returns a timely, valid, and executed request for exclusion will not participate in or be bound by the Settlement and subsequent judgment and will not receive an Individual Settlement Share or any benefit of this Settlement.
- b. **Failure to "Opt-Out."** A Class Member who does not complete and mail a timely request for exclusion will automatically be included in the Settlement, will receive an Individual Settlement

Share, and be bound by all terms and conditions of the Settlement, if the Settlement is approved by the Court, and by the subsequent judgment, regardless of whether he or she has objected to the Settlement.

- c. **Confirmation of Authenticity.** If there is a question about the authenticity of a signed request for exclusion, the Settlement Administrator may demand additional proof of the Class Member's identity.
 - d. **Report.** No later than five (5) business days after the Response Deadline, the Settlement Administrator will provide the Parties with a complete and accurate accounting of the number of Notices mailed to Class Members, the number of Notices returned as undeliverable, the number of Notices re-mailed to Class Members, the number of re-mailed Notices returned as undeliverable, the number of Class Members who objected to the Settlement and copies of their submitted objections, the number of Class Members who returned valid requests for exclusion, and the number of Class Members who returned invalid requests for exclusion.
6. **No Solicitation of Objections or Requests for Exclusion.** Neither the Parties nor their respective counsel have or will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, request exclusion from the Settlement, or appeal from the Judgment. If a Class Member requests to be excluded from the Settlement, Class Counsel will not solicit, represent, or otherwise encourage that Class Member to participate in separate litigation against Defendant.
7. **Class Member Disputes.** If a Class Member disputes the basis for the calculation of their Individual Settlement Share, the Class Member must provide notice, in writing, to the Settlement Administrator before the Response Deadline. Any such challenge shall include the reasons supporting the challenge, as well as any documentation supporting his or her contention that the Individual Settlement Share calculation is incorrect. In the absence of such evidence, the Database will be controlling. The Settlement Administrator will consult with the Parties about how to resolve the challenge, evaluate the information provided, and will make a final and unappealable decision as to the outcome of the challenge. If the Individual Settlement Share calculation is adjusted following a challenge, then the Settlement Administrator shall notify the Class Member of the adjustment.
8. **Motion for Final Approval.**

- a. Class Counsel will file unopposed motions and memorandums in support thereof for Final Approval of the Settlement and the following payments in accord with the terms of the Settlement: (1) the Attorney Fee Award; (2) the Cost Award; (3) Administrative Costs; (4) the Class Representative Enhancement Payment; and (5) PAGA Payment. Class Counsel will also move the Court for an order of Final Approval (and associated entry of Judgment) releasing and barring any Released Claims of the Participating Class Members.
 - b. **Denial or Appeal of Final Approval.** If the Court does not grant Final Approval of the Settlement, or if the Court's Final Approval of the Settlement is reversed or materially modified on appellate review, then this Settlement will become null and void. If that occurs, the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the GSA or any amounts that otherwise would have been owed under this Agreement. Further, should this occur, the Parties agree they shall be equally responsible for the Settlement Administrator's Administration Costs through that date. An award by the Court of a lesser amount than sought by Plaintiff and Class Counsel for the Class Representative Enhancement Payment, Attorney Fee Award, Cost Award, will not constitute a material modification to the Settlement within the meaning of this paragraph.
 - c. **Proposed Order and Judgment.** Upon Final Approval of the Settlement, the Parties shall present to the Court a proposed Final Approval Order, approving of the Settlement and entering Judgment in accordance therewith. After entry of Judgment, the Court shall have continuing jurisdiction over the Action for purposes of: (1) enforcing this Settlement Agreement; (2) addressing settlement administration matters; and (3) addressing such post-Judgment matters as may be appropriate under Court rules and applicable law.
9. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms and conditions of this Agreement, if Class Members do not timely object to the Settlement, then the Parties and their respective counsel waive any and all rights to appeal from the Judgment, including, but not limited to, all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate or set aside judgment, and any extraordinary writ, and the Judgment will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceeding, or post-judgment proceeding.

10. Vacating, Reversing, or Modifying Judgment on Appeal. If, after a notice of appeal, the reviewing court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement, and that court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher court, then this Settlement will become null and void and the Parties will have no further obligations under it. A material modification would include, but not necessarily be limited to, any alteration of the GSA, an alteration in the calculation of the Net Settlement Amount, and any change to the calculation of the Individual Settlement Share.

11. Disbursement of Settlement Shares and Payments. Subject to the Court finally approving the Settlement, the Settlement Administrator shall distribute funds pursuant to the terms of this Agreement and the Court's Final Approval Order and Judgment. The maximum amount Defendant can be required to pay under this Settlement for any purpose is the GSA. The Settlement Administrator shall keep Defendant's Counsel and Class Counsel apprised of all distributions from the GSA. The Settlement Administrator shall respond to questions from Defendant's Counsel and Class Counsel. No person shall have any claim against Defendant, Defendant's Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on the distributions and payments made in accordance with this Agreement.

- a. **Funding the Settlement:** Defendant shall wire to the Settlement Administrator the GSA in three installments: (1) the First Installment shall be comprised of \$50,000 and shall be funded and wired to the Settlement Administrator fifteen (15) days after the Effective Final Settlement Date; (2) the Second Installment shall be comprised of \$50,000 and shall be funded no later than ninety (90) days after funding the First Installment; and (3) the Third Installment shall be comprised of \$50,000 and shall be funded no later than ninety (90) days after funding the Second Installment.
- b. **Disbursement:** The Settlement Administrator will disburse the GSA in two installments. First, within ten (10) days after funding of the Second Installment as instructed herein, the Settlement Administrator shall disburse: (1) the Net Settlement Amount to be paid to Participating Class Members (the payment of employee and employer side taxes on the portion of the settlement shares earmarked as wages shall be paid out of the Net Settlement Amount. Thus, the individual settlement shares that are paid out of the Net Settlement Amount shall be reduced by the employee and employer's tax liability for the share); (2) the Cost Award to Class Counsel for attorneys' costs, as approved by the Court; (3) the Class Representative Enhancement Payment paid to the Class

Representative, as approved by the Court; (4) the Administration Costs, as approved by the Court; and (5) the PAGA Payment to the LWDA and to Participating Class Members, as approved by the Court. Second, within five (5) days after funding of the Third Installment as instructed herein, the Settlement Administrator shall disburse the Attorney Fee Award to Class Counsel for attorneys' fees, as approved by the Court.

12. Final Report by Settlement Administrator. Within ten (10) business days after the disbursement of all funds, the Settlement Administrator will serve on the Parties a declaration providing a final report on the disbursements of all funds.

13. Uncashed Checks. Participating Class Members must cash or deposit their Individual Settlement Share checks within one hundred and eighty (180) calendar days after the checks are mailed to them.

a. Reminder Postcard. If any checks are not redeemed or deposited within ninety (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard indicating that unless the check is redeemed or deposited in the next ninety (90) days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced.

b. Unclaimed Funds. If any checks remain uncashed or not deposited by the expiration of the 90-day period after mailing the reminder notice, the Settlement Administrator will, within two hundred (200) calendar days after the checks are mailed, cancel the checks. All funds associated with the Individual Settlement Share checks returned as undeliverable and funds associated with those Individual Settlement Share checks remaining un-cashed, shall escheat to the State of California unclaimed property fund in the name of the Class Member.

14. Defendant's Legal Fees. Defendant is responsible for paying for all of Defendant's own legal fees, costs, and expenses incurred in this Action outside of the Gross Settlement Fund.

J. Release of Claims. As of the Effective Final Settlement Date, Class Members who do not submit a timely and valid request for exclusion, release the Released Parties from the Released Claims. Participating Class Members agree not to sue or otherwise make a claim against any of the Released Parties for any of the Released Claims.

K. Plaintiff's Release of Claims and General Release. In exchange for the Class Representative Enhancement Payment to the named Plaintiff in an amount not to

exceed \$10,000.00 (Ten Thousand Dollars and No Cents), Plaintiff shall, irrevocably and unconditionally release, acquit and forever discharge the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses (including attorney's fees and costs actually incurred) of any nature whatsoever, known or unknown, suspected or unsuspected, filed or unfiled, in connection with the Action, Plaintiff's employment with Defendant, and/or including but not limited to, employment claims, rights arising out of alleged violations of any contracts, express or implied, any covenant of good faith and fair dealing, express or implied, or any tort including defamation, or any legal restrictions on Defendant's right to hire, refusal to hire or terminate its employees, or any federal, state or other governmental statute, regulation or ordinance, including, without limitation: (1) the Civil Rights Act of 1964, as amended; (2) 42 U.S.C. § 1981; (3) the California Fair Employment and Housing Act (which Acts prohibit discrimination based upon race, religion, sex, sexual orientation, age, color, national origin, disability, medical condition and marital status); (4) Section 503 of the Rehabilitation Act of 1973; (5) The Fair Labor Standards Act (including Equal Pay Act); (6) the California and the United States Constitution; (7) The California Labor Code and the Private Attorney General Act pursuant to *Labor Code* Section 2699, et seq; (including any and all provisions authorizing [Plaintiff/Employee] to seek civil penalties against [Defendant/Employer] for wage-hour violations and/or relief under California Labor Code section 132(a)); (8) the California Business and Professions Code Section 17200, *et. seq.*; (9) the Employee Retirement Income Security Act, as amended; (10) the Family and Medical Leave Act; (11) the California Family Rights Act; (12) the Americans with Disabilities Act; (13) The California Pregnancy Discrimination Act; (14) the Worker Adjustment and Retraining Notification Act; (15) The National Labor Relations Act; (16) the Immigration Reform and Control Act; (17) the California Government Code; (18) The California Wage Orders, and; (19) California's Occupational Safety and Health Act, or the Federal equivalent (hereinafter collectively referred to as "Claim" or "Claims"), which Plaintiff now has, owns or holds, or claims to have, own or hold, or which Plaintiff at any time heretofore had, owned or held, or claimed to have, own or hold against any of the Releasees up to and including, as of the Effective Final Settlement Date. Plaintiff's Release of Claims also includes a waiver of 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.

This release excludes any release of any claims not permitted to be released by law.

L. Miscellaneous Terms

- 1. No Admission of Liability.** Defendant makes no admission of liability or wrongdoing by virtue of entering into this Agreement. Additionally, Defendant reserves the right to contest any issues relating to class certification and liability if the Settlement is not approved. Defendant denies that it has engaged in any unlawful activity, has failed to comply with the law in any respect, has any liability to anyone under the claims asserted in the Action, or that but for the Settlement, a Class should be certified in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant of liability or wrongdoing. This Settlement and Plaintiff's and Defendant's willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with this Settlement).
- 2. No Effect on Employee Benefits.** The Class Representative Enhancement Payment and/or Individual Settlement Shares paid to Plaintiff and Participating Class Members shall not be deemed to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (*e.g.*, vacation, holiday pay, retirement plans, etc.) of Plaintiff or the Participating Class Members. The Parties agree that any Class Representative Enhancement Payment and/or Individual Settlement Share paid to Plaintiff or the Participating Class Members under the terms of this Agreement do not represent any modification of Plaintiff's or Participating Class Members' previously credited hours of service or other eligibility criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by Defendant. Further, any Class Representative Enhancement Payment shall not be considered "compensation" in any year for purposes of determining eligibility for, or benefit accrual within, an employee pension benefit plan or employee welfare benefit plan sponsored by Defendant.
- 3. Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire Agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any party concerning this Agreement or its exhibits, other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.
- 4. Authorization to Enter Into Settlement Agreement.** Class Counsel and Defendant's Counsel warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties under this Agreement to effectuate

its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement this Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court, and in all cases, all such documents, supplemental provisions, and assistance of the Court will be consistent with this Agreement.

5. **Exhibits and Headings.** The terms of this Agreement include the terms set forth in the attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibits to this Agreement are an integral part of the Settlement and must be approved substantially as written. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.
6. **Interim Stay of Proceedings.** The Parties agree to stay and hold all proceedings in the Action in abeyance, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the Superior Court.
7. **Amendment or Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by counsel for all Parties or their successors-in-interest.
8. **Agreement Binding on Successors and Assigns.** This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Parties, as previously defined.
9. **No Prior Assignment.** Plaintiff hereby represents, covenants, and warrants that he has 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.
10. **Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.
11. **Fair, Adequate, and Reasonable Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this

Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.

- 12. No Tax or Legal Advice.** The Parties understand and agree that the Parties are neither providing tax or legal advice, nor making representations regarding tax obligations or consequences, if any, related to this Agreement, and that Class Members will assume any such tax obligations or consequences that may arise from this Agreement, and that Class Members shall not seek any indemnification from the Parties or any of the Released Parties in this regard. The Parties agree that, in the event that any taxing body determines that additional taxes are due from any Class Member, such Class Member assumes all responsibility for the payment of such taxes.
- 13. Jurisdiction of the Court.** The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgment entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all orders and judgments in connection therewith.
- 14. Invalidity of Any Provision; Severability.** Before declaring any provision of this Agreement invalid, the Parties request that the Superior Court first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable. In the event any provision of this Agreement shall be found unenforceable, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.
- 15. Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 16. Execution in Counterpart.** This Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile or PDF signatures will be accepted. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel execute this Agreement.

Dated: 4/22/2020

MIGUEL HERNANDEZ

Miguel Hernandez
Plaintiff

Dated: _____

MJ INDUSTRIES, INC. DBA MJ TANK LINES

Defendant
Name:
Title:

Dated: _____

MARA LAW FIRM, PC

David Mara, Esq.
Matthew Crawford, Esq.
Attorneys for Plaintiff

Dated: _____

FISHER & PHILLIPS LLP

Christine D. Baran, Esq.
Colin P. Calvert, Esq.
Attorneys for Defendant

Dated: _____

MIGUEL HERNANDEZ

Plaintiff

Dated: _____

MJ INDUSTRIES, INC. DBA MJ TANK LINES

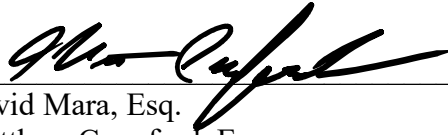
Defendant

Name:

Title:

Dated: April 23, 2020

MARA LAW FIRM, PC



David Mara, Esq.

Matthew Crawford, Esq.

Attorneys for Plaintiff

Dated: _____

FISHER & PHILLIPS LLP

Christine D. Baran, Esq.

Colin P. Calvert, Esq.

Attorneys for Defendant

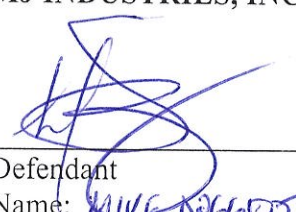
Dated: _____

MIGUEL HERNANDEZ

Plaintiff

Dated: 4/13/2020

MJ INDUSTRIES, INC. DBA MJ TANK LINES



Defendant

Name: MIKE DUGGETT

Title: PRESIDENT

Dated: _____

MARA LAW FIRM, PC

David Mara, Esq.

Matthew Crawford, Esq.

Attorneys for Plaintiff

Dated: _____

FISHER & PHILLIPS LLP

Christine D. Baran, Esq.

Colin P. Calvert, Esq.

Attorneys for Defendant

Dated: _____

MARA LAW FIRM, PC

David Mara, Esq.
Matthew Crawford, Esq.
Attorneys for Plaintiff

Dated: __5/4/20_____

FISHER & PHILLIPS LLP



Christine D. Baran, Esq.
Colin P. Calvert, Esq.
Attorneys for Defendant

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

Miguel Hernandez, on behalf of himself, all others similarly situated, and on behalf of the general public v. MJ Industries, Inc.; MJ Tank Lines and Does 1-100
Case No. 37-2017-00003218-CU-OE-CTL

NOTICE OF CLASS ACTION SETTLEMENT

*A court authorized this notice. This is not a solicitation.
This is not a lawsuit against you and you are not being sued.
However, your legal rights are affected by whether you act or don't act.*

TO: All individuals employed by Defendant MJ Industries, Inc. dba MJ Tank Lines as drivers at any time between January 25, 2013, through [preliminary approval of the settlement]. (“Class”).

The Superior Court of California, County of San Diego has granted preliminary approval to a proposed settlement (“Settlement”) of the above-captioned lawsuit (“Action”). Because your rights may be affected by this Settlement, it is important that you read this Notice of Class Action Settlement (“Notice”) carefully.

The Court has certified the following class for settlement purposes (“Class” or “Class Members”):

All individuals employed by Defendant as drivers at any time between January 25, 2013, through [preliminary approval of the settlement].

The purpose of this Notice is to provide a brief description of the claims alleged in the Action, the key terms of the Settlement, and your rights and options with respect to the Settlement.

YOU MAY BE ENTITLED TO MONEY UNDER THE PROPOSED CLASS ACTION SETTLEMENT. PLEASE READ THIS NOTICE CAREFULLY; IT INFORMS YOU ABOUT YOUR LEGAL RIGHTS.

WHAT INFORMATION IS IN THIS NOTICE

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1. *Why Have I Received This Notice?*

Defendant's records indicate that you may be a Class Member. The Settlement will resolve all Class Members' Released Claims, as described below, from January 25, 2013, through [preliminary approval of the settlement] (the "Class Period").

A Preliminary Approval Hearing was held on [the date of Preliminary Approval], in the Superior Court of California, County of San Diego. The Court conditionally certified the Class for settlement purposes only and directed that you receive this Notice.

The Court will hold a Final Approval Hearing concerning the proposed settlement on [the date of final approval hearing], 2020 at [time a.m./p.m.], before the Honorable Ronald L. Styn in Department C-74, located at 330 West Broadway, San Diego, California 92101.

2. *What Is This Case About?*

The Action was commenced on January 25, 2017 in the San Diego County Superior Court (Case Number 37-2017-00003218-CU-OE-CTL). This action was brought against Defendant seeking damages, restitution, penalties, interests, costs and attorney's fees and other relief based on the following alleged causes of action: 1) failure to pay all straight time or overtime wages including time shaving; 2) failure to pay compensation for all time worked; 3) failure to provide meal periods; 4) failure to authorize and permit rest periods; 5) knowing and intentional failure to comply with itemized employee wage statement provisions; 6) waiting time penalties; and 7) violation of the Unfair Competition Law. The Action was later amended to allege a cause of action under the Labor Code Private Attorneys General Act of 2004 ("PAGA").

The Court has not determined whether any laws have been violated, nor has it decided in favor of Plaintiff or Defendant; instead, both sides agreed to resolve the lawsuit with no decision or admission of who is right or wrong. By agreeing to resolve the lawsuit, all parties avoid the risks and cost of a trial. Defendant expressly denies that it did anything wrong or that it violated the law and further denies any liability whatsoever to Plaintiff or to Class Members.

3. *Am I A Class Member?*

You are a Class Member if you are employed or were employed by Defendant in California as a driver for the period of January 25, 2013 through [preliminary approval of the settlement].

4. *How Does This Class Action Settlement Work?*

Plaintiff brings this action on behalf of himself and all other similarly situated employees who are or were employed by Defendant in California as a driver for the period of January 25, 2013, through [preliminary approval of the settlement]. Plaintiff and these other current and former employees comprise a "Class" and are "Class Members." The settlement of this Action resolves the Released Claims of all Class Members, except for those who exclude themselves from the Class by requesting to be excluded in the manner set forth below.

Plaintiff and Class Counsel believe the settlement is fair and reasonable. The Court must also review the terms of the Settlement and determine if it is fair and reasonable to the Class. The Court file has the settlement documents,

which explain the settlement in greater detail. If you would like copies of the settlement documents, you can contact the Settlement Administrator or Class Counsel.

5. *Who Are the Attorneys Representing the Parties?*

Class Counsel (Attorneys for Plaintiff and the Class)	Attorneys for Defendants
MARA LAW FIRM, PC David Mara Matthew Crawford 2650 Camino Del Rio North, Suite 205 San Diego, California 92108 Telephone: (619) 234-2833 Facsimile: (619) 234-4048	FISHER & PHILLIPS LLP Christine D. Baran Colin P. Calvert Ashton M. Riley 2050 Main Street, Suite 1000 Irvine, California 92614 Telephone: (949) 851-2424 Facsimile: (949) 851-0152

The Court has decided that Mara Law Firm, PC is qualified to represent you and all other Class Members simultaneously.

You do not need to hire your own attorney because Class Counsel is working on your behalf. But, if you want your own attorney, you may hire one at your own cost.

6. *What Are My Options?*

The purpose of this Notice is to inform you of the proposed settlement and of your options. Each option has its consequences, which you should understand before making your decision. Your rights regarding each option, and the steps you must take to select each option, are summarized below and explained in more detail in this Notice.

Important Note: Defendant will not retaliate against you in any way for either participating or not participating in this Settlement.

- **DO NOTHING:** If you do nothing and the Court grants final approval of the Settlement, you will become part of this lawsuit and may receive a payment from the Settlement. You will be bound to the release of the Released Claims as defined in the Settlement Agreement and the Final Judgment. You will also give up your right to pursue the Released Claims as defined in Section No. 9 below.
- **OPT OUT:** If you do not want to participate as a Class Member, you may “opt out,” which will remove you from the Class and this Action. If the Court grants final approval of the settlement, you will not receive an Individual Settlement Share payment and you will not give up the right to sue Defendant and the Released Parties for the Released Claims as defined in Section No. 9 below.

- **OBJECT:** You may file a legal objection to the proposed Settlement. If you would like to object, you may not opt out of this Settlement.

The procedures for opting out and objecting are set forth below in the sections entitled “How Do I Opt Out or Exclude Myself From This Settlement” and “How Do I Object To The Settlement?”

7. *How Do I Opt Out Or Exclude Myself From This Settlement?*

If you do not want to take part in the Settlement, you must mail a written Request for Exclusion to the Settlement Administrator. The written request for exclusion must: (a) state your name, address, telephone number, and social security number or employee identification number; (b) state your intention to exclude yourself from or opt-out of the Settlement; (c) be addressed to the Settlement Administrator at [address]; (d) be signed by you or your lawful representative; and (e) be postmarked no later than [the Response Deadline].

The Final Judgment entered, following Final Approval of the Settlement by the Court, will bind all Class Members who do not request exclusion from the Settlement.

8. *How Do I Object To The Settlement?*

If you are a Class Member who does not opt out of the Settlement, you may object to the Settlement, personally or through an attorney, by submitting your objection in writing, signed, dated, and mailed to the Settlement Administrator postmarked no later than [the Response Deadline]. The objection must state: (a) the case name (e.g. *Hernandez v. MJ Tank Lines*) and case number (37-2017-00003218-CU-OE-CTL); (b) your full name, address, and telephone number; (c) the words “Notice of Objection” or “Formal Objection;” (d) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (e) list identifying witness(es) the objector may call to testify at the Final Approval hearing; (f) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval hearing; and (g) state whether the objection applies only to the objector, to a specific subset of the Class, or to the entire Class.

Class Members who timely file valid objections to the Settlement may appear at the Final Approval hearing, either in person or through the objector’s own counsel, provided the objector has first notified the Settlement Administrator by sending his/her written objections to the Settlement Administrator, postmarked no later than [the Response Deadline].

If the Court rejects your objection, you will receive a settlement payment and will be bound by the terms of the Settlement.

9. *How Does This Settlement Affect My Rights? What are the Released Claims?*

If the proposed Settlement is approved by the Court, a Final Judgment will be entered by the Court. All Class Members who do not opt out of the Settlement will be bound by the Court’s Final Judgment and will release Defendant and the Released Parties¹ from the Released Claims. The Released Claims are as follows:

¹ “Released Parties” means Defendant and its past, present and/or future, direct and/or indirect, officers, directors, members, employees, representatives, administrators, attorneys, agents, parent companies, subsidiaries and

Class Members who do not opt out of the settlement will release all known and unknown state law claims that were alleged or that could have been alleged based on the facts of the complaints filed in the matter, including for meal and rest breaks, unpaid wages, including minimum wages, regular wages, overtime and double time wages, wage statement violations; separation pay violations; unfair business practices; failure to timely pay wages; failure to keep accurate payroll records including itemized employee wage statements; and PAGA. The release will be as to the Released Parties. The release only applies to periods of time when Class Members were members of the Class (i.e., excluding periods of time in an exempt position).

10. *How Much Can I Expect to Receive From This Settlement?*

The total maximum amount that Defendant could be required to pay under this Settlement is no more than \$150,000 (“Gross Settlement Amount” or “GSA”).

The “Net Settlement Amount” or “NSA” means the portion of the GSA available for distribution to Class Members after the deduction of (1) the Class Representative Enhancement Payment to Plaintiff in an amount not to exceed \$10,000, for prosecution of the Action, risks undertaken for the payment of attorneys’ fees and costs, and a general release of all claims; (2) the Settlement Administration Costs to the Settlement Administrator in an amount estimated not to exceed \$7,500; (3) a payment of \$3,750 (75% of \$5,000 allocated to the Labor Code Private Attorneys General Act of 2004 claims) to the California Labor Workforce Development Agency (“LWDA”) (4) payment to Class Counsel in an amount not to exceed \$50,000 (1/3 of the GSA) for attorneys’ fees and an amount not to exceed \$15,000.00 for litigation costs; and (5) Defendant’s employer payroll taxes. All of these payments are subject to court approval.

A. How Your Payment Is Calculated.

After deducting the above-referenced items, the remaining NSA, will be proportionately distributed amongst all Class Members who have not opted out. The Settlement Administrator will assign to each Participating Class Member² a settlement share which shall be calculated as follows: (i) the number of weeks he or she worked for Defendant in California based on the Class data provided by Defendant, divided by (ii) the total number of weeks worked by all Participating Class Members based on the same Class data, which is then multiplied by the Net Settlement Amount. One day worked in a given week will be credited as a week for purposes of this calculation. Therefore, the value of each Class Member’s Individual Settlement Share ties directly to the amount of weeks that he or she worked.

B. Your Estimated Settlement Payment.

Your exact share of the NSA cannot be precisely calculated until after the time during which individuals may object or opt out of the Settlement concludes. However, based upon the calculation above, your *estimated* share of the Net Settlement Amount is: \$ [REDACTED], less taxes. This is based on Defendant’s records which shows you worked [REDACTED] workweeks during the Class Period.

affiliated corporations and entities, consultants, shareholders, joint ventures, predecessors, successors, and/or assigns.

² A Participating Class Member is a Class Member who does not exclude themselves (opt out) from the Settlement.

C. Tax Treatment

One-third (1/3) of each Individual Settlement Share is intended to settle each Class Member's claims for unpaid wages (the "Wage Portion"). The Wage Portion will be reduced by applicable payroll tax withholdings and deductions. Defendant's share of legally required payroll taxes for the Wage Portion will be calculated by the Settlement Administrator and will also be paid out of the GSA. The Settlement Administrator will issue an IRS Form W-2 to each Participating Class Member with respect to the Wage Portion of his/her Individual Settlement Share.

One-third (1/3) of the Individual Settlement Share is intended to settle each Class Member's claims for interest and one-third (1/3) of the Individual Settlement Share is intended to settle each Class Member's claim for penalties (collectively, the "Non-Wage Portion"). The Non-Wage Portion will not be reduced by payroll tax withholding and deductions. The Settlement Administrator will issue to each Participating Class Member an IRS Form 1099 with respect to the Non-Wage Portion of his/her Individual Settlement Share.

D. What Happens If I Don't Cash My Check?

It is strongly recommended that upon receipt of your Individual Settlement Share check, you immediately cash it or deposit it before the 180-day void date shown on each check. If any checks remain uncashed or not deposited by the expiration of the 180-day period, the uncashed amounts will be sent to the California State Controller's Office – Unclaimed Property Fund in your name, where you will be able to claim your settlement payment at a future date.

11. *How Will Class Counsel Be Paid?*

Subject to Court approval, Class Counsel (the attorneys for Plaintiff and the Class) shall be paid an amount not to exceed one-third (1/3) of the GSA (\$50,000) for attorney fees and up to \$15,000.00 for litigation costs. Subject to Court approval, Plaintiff will be paid an amount not to exceed \$10,000.00, for the initiation of and prosecution of this case, the risks undertaken for the payment of costs in the event this case had been lost, and risks of being blacklisted from future employment.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at the telephone number listed below, toll free. Please refer to the MJ Tank Lines Class Action Settlement.

This Notice does not contain all of the terms of the proposed settlement or all of the details of these proceedings. For more detailed information, you may refer to the underlying documents and papers on file with the Court at 330 West Broadway, San Diego, California 92101. You may also contact Class Counsel, whose contact information is above, and they will provide you with a copy of the settlement documents or case documents free of charge.

PLEASE DO NOT TELEPHONE THE COURT OR COURT'S CLERK FOR INFORMATION ABOUT THIS SETTLEMENT.

Exhibit 2

David Mara
Grace Campbell
Jamie Serb
Taylor Hanks
Jill Vecchi
Joann B. Gerrity
Matthew Crawford
Tony Roberts
Nikki Trenner



2650 Camino Del Rio North
Suite 205, San Diego, CA 92108
Phone: (619) 234-2833
Fax: (619) 234-4048

MaraLawFirm.com

February 14, 2020

Via Upload to the LWDA Website and U.S. Certified Mail

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

TO: California Labor and Workforce Development Agency and MJ Industries, Inc. dba MJ Tank Lines

Miguel Hernandez, on behalf of himself, others similarly situated, and the general public v. MJ Industries, Inc. dba MJ Tank Lines

Factual Statement and Theories of Labor Code Violations

Miguel Hernandez was employed by MJ Industries, Inc. dba MJ Tank Lines ("MJ Tank Lines") as driver in California.

Mr. Hernandez gives notice of his intent to file a lawsuit for violation of the Private Attorneys General Act of 2004 ("PAGA") for MJ Tank Lines' failure to comply with California's wage and hour requirements on behalf of himself and similarly aggrieved employees.

I. MJ Tank Lines Failed to Pay All Straight Time Wages Owed

It is fundamental that an employer must pay its employees for all time worked. *California Labor Code* sections 218 and 218.5 provides a right of action for nonpayment of wages. *California Labor Code* section 222 prohibits the withholding of part of a wage. *California Labor Code* section 223 prohibits the payment of less than a statutory or contractual wage scale. *California Labor Code* section 1197 prohibits the payment of less than the minimum wage. *California Labor Code* section 1194 states that an employee receiving less than the legal minimum wage is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage. *California Labor Code* section 1194.2 states that an employee receiving less than the legal minimum wage is entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon. *California Labor Code* section 224 only permits deductions from wages when the employer is required or empowered to do so by state or federal law or when the deduction is expressly authorized in writing by the employee for specified purposes that do not have the effect of reducing the agreed upon wage.

MJ Tank Lines has a continuous policy of not paying Mr. Hernandez and similarly aggrieved

employees for all hours worked. MJ Tank Lines has not paid for all the time Mr. Hernandez and similarly aggrieved employees worked throughout the day, including, but not limited to rounding, before “shifts” start, after “shifts” end, and/or any other time in the day when the employees were performing work tasks, subject to the control of MJ Tank Lines and/or otherwise had work duties.

MJ Tank Lines committed the acts alleged herein knowingly and willfully, with the wrongful and deliberate intention of injuring Mr. Hernandez and the aggrieved employees. MJ Tank Lines acted with malice or in conscious disregard of Mr. Hernandez’s and the aggrieved employees’ rights.

These claims are for Mr. Hernandez and all drivers of MJ Tank Lines in California.

Mr. Hernandez, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement (DLSE). This includes each of the following, as set forth in *Labor Code* section 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: sections 510 and 1194.

II. MJ Tank Lines Failed to Pay Employees the Applicable Minimum Wage

Section 1197.1 of the *California Labor Code* states “[a]ny employer or other person acting individually as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties pursuant to Section 203.”

Industrial Welfare Commission Order No. 9-2001 section 4(B) states “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period.”

Mr. Hernandez and the aggrieved employees who were employed by MJ Tank Lines during the last year were entitled to be paid the minimum wage for all time worked. By failing to pay for all work performed, MJ Tank Lines’ compensation to Mr. Hernandez and the aggrieved employees fell below the applicable minimum wage.

Mr. Hernandez and the aggrieved employees have suffered, and continue to suffer, substantial unpaid wages, and lost interest on such wages, and expenses.

These claims are for Mr. Hernandez and all drivers of MJ Tank Lines in California.

Mr. Hernandez, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement (DLSE) for violations of *California Labor Code* section 1197.1, 1199, and Industrial Welfare Commission Order No. 9-2001 section 4(B).

III. MJ Tank Lines Failed to Pay Overtime

It is fundamental that an employer must pay its employees for all time worked. *California Labor Code* section 510 states that eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.

California Labor Code section 510 dictates that any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

MJ Tank Lines failed to pay overtime when Mr. Hernandez and the aggrieved employees worked over eight (8) hours per day and when employees worked over 40 hours per week. MJ Tank Lines failed to pay Mr. Hernandez and the aggrieved employees for all hours worked, including hours worked over eight (8) hours in a day and 40 hours in a week. Additionally, MJ Tank Lines failed to pay twice the regular rate of pay when Mr. Hernandez and the aggrieved employees worked over twelve (12) hours per day and when employees worked over eight (8) hours on the seventh (7) day of a workweek.

Mr. Hernandez and the aggrieved employees have suffered, and continue to suffer, substantial unpaid wages, and lost interest on such wages, and expenses.

These claims are for Mr. Hernandez and all drivers of MJ Tank Lines in California.

Mr. Hernandez, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement (DLSE) for violations of *California Labor Code* section 510.

IV. MJ Tank Lines Failed to Provide Meal Periods

Under *California Labor Code* section 512 no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes. During this meal period of not less than thirty (30) minutes, the employee is to be completely free of the employer's control and must not perform any work for the employer. If the employee does perform work for the employer during the thirty (30) minute meal period, the employee has not been provided a meal period in accordance with the law. Also, the employee is to be compensated for any work performed during the thirty (30) minute meal period.

In addition, an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with another meal period of not less than thirty (30) minutes.

MJ Tank Lines breached the legal duty to provide meal periods to employees by imposing a continuous and consistent policy requiring Mr. Hernandez and the aggrieved employees to work

through their meal periods to satisfy the demanding workload duties imposed by MJ Tank Lines, thereby denying Mr. Hernandez and the aggrieved employees of the right to a full thirty (30) minute meal periods.

By failing to provide meal periods, and by failing to provide compensation for unprovided meal periods, as alleged above, MJ Tank Lines willfully violated the provisions of *Labor Code* sections 226.7 and 512.

These claims are for Mr. Hernandez and all drivers of MJ Tank Lines in California.

Mr. Hernandez, as a non-exempt employee who unlawfully was deprived of first and second meal periods, is an aggrieved employee with standing to bring an action under the PAGA. Mr. Hernandez has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *Labor Code* section 2699.5 for violations of *Labor Code* sections 226.7 and 512.

V. MJ Tank Lines Failed to Provide Rest Periods

MJ Tank Lines has had a consistent policy and/or practice of not providing duty free ten (10) minute paid rest periods for every four (4) hours worked, or a major fraction thereof, to Mr. Hernandez and the aggrieved employees.

Industrial Welfare Commission Order No. 9-2001 section 12(A) states "[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 week 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."

MJ Tank Lines has had a consistent policy and/or practice of not providing rest periods to Mr. Hernandez and all aggrieved employees and/or providing compensation in lieu thereof. MJ Tank Lines breached the legal duty to provide rest periods to employees by imposing a continuous and consistent policy requiring Mr. Hernandez and the aggrieved employees to work through their rest periods to satisfy the demanding workload duties imposed by MJ Tank Lines, thereby denying Mr. Hernandez and the aggrieved employees of ten (10) minutes of rest time.

By failing to provide rest periods for every four (4) hours or major fraction thereof worked per day by non-exempt employees, and by failing to provide compensation for these unprovided periods, as alleged above, MJ Tank Lines willfully violated the provisions of *Labor Code* section 226.7 and Industrial Welfare Commission Order No. 9-2001 section 12(A).

These claims are for Mr. Hernandez and all drivers of MJ Tank Lines in California.

Mr. Hernandez, as a non-exempt employee who was unlawfully deprived of paid ten (10)-minute rest periods, is an aggrieved employee with standing to bring an action under the PAGA. Mr. Hernandez has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *Labor Code* section 2699.5 and

Industrial Welfare Commission Order No. 9-2001 section 20 for violations of *Labor Code* section 226.7 and Industrial Welfare Commission Order No. 9-2001 section 12(A).

VI. MJ Tank Lines Failed to Pay Wages Due at Termination and During Employment

MJ Tank Lines willfully failed to pay, in a timely manner, wages owed to Mr. Hernandez and the aggrieved employees who left MJ Tank Lines' employ or who were terminated.

Mr. Hernandez and/or the aggrieved employees who ended their employment with MJ Tank Lines during the last year were entitled to be promptly paid all lawful compensation, and other premiums, as required by *Labor Code* sections 201 through 203.

At all relevant times, *California Labor Code* sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable no later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

During the relevant time period, MJ Tank Lines intentionally and willfully failed to pay Mr. Hernandez and the aggrieved employees who are no longer employed by MJ Tank Lines their wages, that were earned and unpaid, within seventy-two (72) hours of their leaving MJ Tank Lines' employ.

MJ Tank Lines' failure to pay Mr. Hernandez and the aggrieved employees who are no longer employed by MJ Tank Lines their wages, that were earned and unpaid, within seventy-two (72) hours of their leaving MJ Tank Lines' employ, is in violation of *California Labor Code* sections 201 and 202.

California Labor Code section 203 provides that when an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until action is commenced; but the wages shall not continue for more than thirty (30) days.

These claims are for Mr. Hernandez and all drivers of MJ Tank Lines in California.

Mr. Hernandez, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement ("DLSE"). This includes each of the following, as set forth in *Labor Code* section 2699.5 for violations of sections 201 through 203.

VII. MJ Tank Lines' Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions

Section 226(a) of the *California Labor Code* requires MJ Tank Lines to itemize in wage statements all deductions from payment of wages and to accurately report total hours worked by Mr.

Hernandez and the aggrieved employees.

Labor Code section 226 subdivision (a) requires that MJ Tank Lines, at the time of each payment of wages, “furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, 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 the social security number, (8) the name and address of the legal entity that is the employer...(9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate and the corresponding number of hours worked at each hourly rate by the employee...”

Labor Code section 226, subdivision (a) also requires that “deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California” to itemize in wage statements and to accurately report the total hours worked and total wages earned.

MJ Tank Lines has knowingly and intentionally failed to comply with *Labor Code* section 226(a) on each and every wage statement provided to Mr. Hernandez and the other aggrieved employees.

MJ Tank Lines knowingly and intentionally did not include the gross wages earned on wage statements. MJ Tank Lines therefore knowingly and intentionally failed to itemize the gross wages earned on Mr. Hernandez’s and the aggrieved employees’ wage statements.

In every pay period during the period of the relevant statute of limitations, MJ Tank Lines knowingly and intentionally did not itemize the total hours worked on wage statements as *Labor Code* section 226, subsection (a), requires. In every pay period during the period of the relevant statute of limitations, MJ Tank Lines knowingly and intentionally did not include the total hours worked on wage statements. MJ Tank Lines therefore knowingly and intentionally failed to itemize the total hours worked on Mr. Hernandez’s and the aggrieved employees’ wage statements.

MJ Tank Lines has a continuous policy of not paying Mr. Hernandez and similarly aggrieved employees for all hours worked. MJ Tank Lines has not paid for all the time Mr. Hernandez and similarly aggrieved employees worked throughout the day, including, but not limited to rounding, before “shifts” start, after “shifts” end, and/or any other time in the day when the employees were performing work tasks, subject to the control of MJ Tank Lines and/or otherwise had work duties. Thus, MJ Tank Lines shaves/steals earned wages from Mr. Hernandez and the aggrieved employees every day they work and have time deducted. As MJ Tank Lines knew or had reason to know Mr. Hernandez and the aggrieved employees were working during this time, MJ Tank Lines knowingly and intentionally failed to comply with *Labor Code* Section 226, subdivision (a).

MJ Tank Lines violated the Labor Code section 226, subdivision (a) requirement of itemizing all deductions from wages.

In every pay period during the period of the relevant statute of limitations, MJ Tank Lines knowingly and intentionally did not include the net wages earned on wage statements.

Throughout the statutory period, as a result of the knowing and intentional failure by MJ Tank Lines to comply with itemized employee wage statement provisions, Mr. Hernandez and the aggrieved employees have been able to reconstruct only a reasonable estimate of the hours worked and have, therefore, not received full compensation.

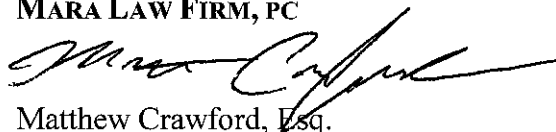
These claims are for Mr. Hernandez and all drivers of MJ Tank Lines in California.

Mr. Hernandez, as a non-exempt employee who MJ Tank Lines failed to provide accurate and itemized wage statements, is an aggrieved employee with standing to bring an action under the PAGA. Mr. Hernandez has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *Labor Code* section 2699.5 for violations of *Labor Code* section 226.

VIII. Conclusion

If after 65 days from the date of this letter, the LWDA does not take action or declines to intervene, Mr. Hernandez will file a complaint alleging PAGA violations, as described above.

Respectfully submitted,
MARA LAW FIRM, PC



Matthew Crawford, Esq.

Attn: PAGA Administrator
**California Labor and Workforce
Development Agency**
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
Via Web Submission and Certified Mail

Attn: MJ Tank Lines Service, Inc.
Christine D. Baran
Colin P. Calvert
FISHER & PHILLIPS LLP
2050 Main Street, Suite 1000
Irvine, CA 92614
Via Certified Mail

Exhibit 3

From: noreply@salesforce.com <noreply@salesforce.com> on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>

Sent: Friday, February 14, 2020 2:57:48 PM

To: Coley Hayes <chayes@maralawfirm.com>

Subject: Thank you for submission of your PAGA Case.

2/14/2020

LWDA Case No. LWDA-CM-773031-20

Law Firm : Mara Law Firm

Plaintiff Name : Miguel Hernandez

Employer: MJ Industries, Inc. dba MJ Tank Lines

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: [http://labor.ca.gov/Private Attorneys General Act.htm](http://labor.ca.gov/Private_Attorneys_General_Act.htm)