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Attorneys for Plaintiff and Aggrieved Employees

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

RENALDO GONZALES, as an individual
and on behalf of all others similarly
situated,

Plaintiff,

vs.

DURHAM SCHOOL SERVICES, L.P.;
NATIONAL EXPRESS TRANSIT; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: CIVDS2009070

[Assigned for all purposes to the Hon. David Cohn,
Dept. S-26]

**DECLARATION OF KRISTEN M. AGNEW IN
SUPPORT OF PLAINTIFF'S MOTION TO
APPROVE SETTLEMENT AGREEMENT
PURSUANT TO THE PRIVATE ATTORNEYS
GENERAL ACT**

Date: April 21, 2021
Time: 10:00 a.m.
Dept: S-26

1 **DECLARATION OF KRISTEN M. AGNEW**

2 I, Kristen M. Agnew, declare as follows:

3 1. I am an attorney at law, duly licensed to practice before all Courts in the State of
4 California, and am with the law firm Diversity Law Group, P.C., counsel of record for Plaintiff
5 Renaldo Gonzales (“Plaintiff”). I have personal knowledge of the facts set forth below and if
6 called to testify I could and would do so competently.

7 **PROCEDURAL HISTORY**

8 2. From the inception of the case, Plaintiff’s counsel has zealously represented the
9 interests of the Aggrieved Employees.

10 3. On March 11, 2020, Plaintiff submitted written notice under Labor Code section
11 2699.3 (the “PAGA Notice”) to the California Labor and Workforce Development Agency
12 (“LWDA”) and Defendants Durham School Services, L.P. and National Express Transit (herein
13 collectively referred to as “Defendants”), alleging that Defendants violated Labor Code section
14 24. Pursuant to Labor Code section 204(d), all earned wages must be paid by the seventh day
15 following the close of the pay period. Plaintiff contends that Defendants had a consistent policy
16 of paying wages to exempt employees on the eighth day following the close of the pay period.

17 4. On May 29, 2020, Plaintiff initiated the instant representative PAGA Action
18 against Defendants in the Superior Court of California, County of San Bernardino. Plaintiff
19 asserts a single cause of action for violation of the PAGA, predicated on Defendants’ alleged
20 violation of Labor Code section 204. As alleged in the Complaint, Plaintiff seeks PAGA
21 penalties on behalf of exempt employees only.

22 5. On August 10, 2020, Plaintiff filed a First Amended Class and Representative
23 Action Complaint. The First Amended Complaint expanded the scope of the alleged aggrieved
24 employees to include both exempt and non-exempt employees and added a class-wide claim
25 predicated on Defendants’ alleged violation of Labor Code section 226(a).

26 6. On August 18, 2020, I met and conferred with defense counsel to discuss
27 threshold matters, including the existence of previously-filed and pending class actions that
28 overlap with and completely subsume the class-claim and the claims of the non-exempt

1 aggrieved employees alleged in the First Amended Complaint. As result of those discussions, the
2 Parties entered into a stipulation to allow Plaintiff to further amend his complaint to pursue a
3 representative PAGA cause of action predicated on Labor Code section 204, on behalf of exempt
4 employees.

5 7. On September 30, 2020, Plaintiff filed the Second Amended Representative
6 Action Complaint (“Second Amended Complaint”). The Second Amended Complaint alleges a
7 single cause of action for violation of the PAGA, predicated on Defendants’ alleged violation of
8 Labor Code section 204. Plaintiff seeks PAGA penalties on behalf of exempt employees only.
9 The Second Amended Complaint is the operative complaint.

10 8. On or about October 29, 2020, Defendants filed an Answer. Defendants dispute
11 and deny Plaintiff’s allegations and claims asserted in the operative complaint.

12 **DISCOVERY AND INVESTIGATION**

13 9. In light of the narrow claims at issue, the Parties agreed to redirect their resource
14 to exploring the possibility of an early settlement though direct settlement negotiations. The
15 Parties engaged in arm’s length negotiations over the course of several months.

16 10. On October 14, 2020, Defendants produced a copy of the pertinent payroll
17 policies, data related to the number of aggrieved employees, and data related to the number of
18 pay periods in which each aggrieved employee was paid on or after the eighth day following the
19 close of the pay period. Defendants further represented that, as of July 12, 2020, Defendants
20 implemented new payroll policies and procedures that required wages to be paid in compliance
21 with Labor Code section 204. Defendants provided confirmatory discovery, including wage
22 statements and revised payroll policies, to substantiate the change in policy.

23 11. Defendants confirmed that there were 49 aggrieved employees who received
24 approximately 971 wage statements from the start of the PAGA liability period on March 11,
25 2019 through July 11, 2020. Using the data provided by Defendants, I performed a
26 comprehensive damages analysis.

27 12. On or about February 16, 2021, the Parties reached a settlement of the entire
28 action. The Settlement was obtained for the benefit of the aggrieved employees, as opposed to

1 the individual Plaintiff.

2 **SUMMARY OF THE PROPOSED SETTLEMENT**

3 13. Attached hereto as **Exhibit A** is true and correct copy of the Joint Stipulation of
4 Settlement and Release under the Private Attorneys General Act (“Agreement” or “Settlement”)

5 14. As defined by the Settlement, “Aggrieved Employees” means “all current and
6 former California employees of National Express Transit Corp., Inc. who were classified as
7 exempt and were paid wages by Defendants any time from March 11, 2019 to July 11, 2020.”
8 (Settlement Agreement § B-2.) Based upon Defendants’ records, there are 49 Aggrieved
9 Employees who received approximately 971 wage statements reflecting the payment of wages
10 from the start of the PAGA liability period on March 11, 2019 through July 11, 2020. (*Id.*)

11 15. The Settlement Agreement requires Defendants to pay the gross amount of Fifty-
12 Five Thousand Dollars (\$55,000.00) (the “Maximum Settlement Amount”). (Settlement
13 Agreement §§ B-9, C-1.) The balance of the Maximum Settlement Amount remaining after
14 deduction of the approved Enhancement Payment to Plaintiff, Attorneys’ Fees and Costs and the
15 Settlement Administrator’s costs (the “PAGA Penalties Fund”), will be available for distribution
16 to the LWDA and Aggrieved Employees. (*Id.* at §§ B-10, C-4.) Seventy-Five percent of the
17 PAGA Penalties Fund will be paid to the LWDA for PAGA penalties. (*Id.* at § C-4.) The
18 remaining twenty-five percent will be distributed to Aggrieved Employees. (*Id.*)

19 16. As part of the Settlement Agreement, Defendants do not object to Plaintiff’s
20 Counsel’s request for attorneys’ fees of approximately one-third of the Maximum Settlement
21 Amount, *i.e.* Eighteen Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents
22 (\$18,333.33), plus up to Three Thousand Five Hundred Dollars (\$3,500.00) for reimbursement
23 of litigation costs, subject to the Court finally approving this Settlement. (Settlement Agreement
24 §C-9.) Plaintiff’s Counsel’s anticipated actual litigation costs total \$2,584.73.

25 17. Defendants have also agreed to not object to Plaintiff’s request for an
26 Enhancement Payment of Five Thousand Dollars (\$5,000). (Settlement Agreement § C-8.)

27 18. Finally, the Settlement Agreement provides for the payment of the fees and
28 expenses reasonably incurred by the Settlement Administrator. (Settlement Agreement § C-10.)

1 The Parties have agreed to utilize Phoenix Settlement Administrators to administer the
2 settlement, with the administration costs estimated to be \$1,000.00. (*Id.* at §§ B-17, C-10.) The
3 Parties believe that the administration fee is reasonable and should be approved.

4 **PAYMENTS TO AGGRIEVED EMPLOYEES AND THE LWDA**

5 19. Assuming that the Court approves the Enhancement Payment to Plaintiff
6 (\$5,000), attorney's fees (\$18,333.33), actual litigation costs (\$2,584.73) and the Settlement
7 Administrator's costs (\$1,000), I estimate that the PAGA Penalties Fund will total \$28,081.94.
8 Seventy-Five percent of the PAGA Penalties Fund, or approximately \$21,061.45, will be paid to
9 the LWDA for PAGA penalties. The remaining twenty-five percent, or approximately \$7,020.49
10 will be distributed to Aggrieved Employees.

11 20. The Individual Settlement Payment to each Aggrieved Employee will be based on
12 the total number of number of wage statements reflecting the payment of wages that the
13 employee received employee during the period of March 11, 2019 through July 11, 2020.
14 (Settlement Agreement § C-5.) This is fair, as it directly allocates greater penalties to individual
15 Aggrieved Employees who have allegedly suffered greater harm.

16 21. Based on the number of Aggrieved Employees, employees will be entitled to
17 recover, on average, up to approximately \$143.27 each. The amount any particular Aggrieved
18 Employee will be entitled to recover will be greater or lower than this average depending on the
19 number of wage statements the employee received, with some entitled to receive more, and
20 others less.

21 **POTENTIAL CIVIL PENALTIES**

22 22. The maximum potential PAGA penalties are \$97,100. There are 971 pay periods
23 during the relevant time period. I applied the \$100 penalty per violation, given that there had
24 been no prior finding that Defendants' practices had caused a violation of the Labor Code.

25 23. However, in order to recover any PAGA penalties, Plaintiff would be required at
26 trial to prove each of the underlying Labor Code violations. Here, Plaintiff would need to prove
27 that each Aggrieved Employee suffered a violation for each period the employee worked in
28 relation to the failure to pay earned wages in a timely manner. Defendants, however, maintain

1 that Plaintiff and the Aggrieved Employees were properly compensated, and that they did not
2 violate the Labor Code. Defendants may have sought summary judgment on this issue or
3 proceeded to trial. Should Defendants have prevailed, the State of California and Aggrieved
4 Employees would have been left with zero recovery.

5 24. Assuming that Plaintiff prevailed on liability, under the facts of this case, I
6 appreciate the substantial risk that the Court could exercise its discretion under PAGA to reduce
7 the maximum allowable PAGA penalties or decide not to award PAGA penalties at all.
8 Defendants, for example, have argued that even if the Court ultimately found that their payroll
9 practices violate Labor Code section 204, the alleged violation is a technical one and did not
10 result in the underpayment of wages.

11 25. I am also aware that Courts routinely award far less than the statutory maximum
12 amount of civil penalties, even where an underlying violation of the Labor Code is found. For
13 example, as shown in the Court of Appeal's decision in *Carrington v. Starbucks Corp.*, while the
14 plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum PAGA
15 penalty amount by 90%, citing the employer's good faith attempt at complying with the law. 30
16 Cal. App. 5th 504, 517 (2018). Similarly, in the matter of *Magadia v. Wal-Mart Assocs. et al.*,
17 2019 U.S. Dist. Lexis 91792, while the trial court imposed substantial PAGA penalties upon the
18 defendant, such amount still represented reductions of 67% and 80% of the potential PAGA
19 penalties at issue. *Id.* at *87-*100. Moreover, this was only after the plaintiff in *Magadia* had
20 prevailed after trial.

21 26. I strongly believe that Plaintiff can prevail at trial. However, after taking into
22 account sharply disputed factual and legal issues involved in this litigation, the risks attending
23 further prosecution, and the substantial benefits to be received pursuant to the compromise and
24 settlement of the litigation, I have concluded that settlement on the terms set forth in the
25 Settlement Agreement is appropriate and in the best interests of Plaintiff and the Aggrieved
26 Employees.

27 **ATTORNEY EXPERIENCE**

28 27. My firm has a great deal of experience in wage and hour class action litigation

1 and has been approved as class counsel in a number of class actions.

2 28. My qualifications are as follows: I was the 2003 recipient of the Spelman
3 Presidential Scholarship to Emory University School of Law. During law school, I was a summer
4 associate at the law firm of Sonnenschein, Nath and Rosenthal, and clerked with the Atlanta
5 office of the Equal Employment Opportunity Commission. I received my J.D. from Emory
6 University in 2006 and was admitted to the California Bar in December 2006. Following law
7 school, I was an associate at Sonnenschein from September 2006 to May 2009.

8 29. Since 2009, my primary area of practice has been employment litigation. I have
9 practiced law at two preeminent employment defense firms. From May 2009 to June 2011, I was
10 an associate at Ogletree, Deakins, Nash, Smoak & Stewart, P.C. I was also an associate, and then
11 senior associate, in the labor and employment practice group of Seyfarth Shaw, LLP from June
12 2011 to May 2016. At both Ogletree and Seyfarth, I represented a wide array of fortune 500
13 companies in employment litigation in both state and federal courts, as well as before
14 government agencies, including the California Department of Labor. My practice included the
15 defense of single plaintiff and multi-plaintiff lawsuits involving claims under the California Fair
16 Employment and Housing Act, the California Labor Code and the Fair Labor Standards Act. I
17 also handled a number of wage and hour class actions.

18 30. In June 2016, I joined Diversity Law Group, P.C. where I spend most of my time
19 handling employment cases. I primarily represent employees.

20 31. I served as the lead associate on a number of wage and hour class actions,
21 including *Martha Cardenas v. Gold's Gym*, Los Angeles County Superior Court Case No.
22 BC445112; *Nathaniel Werner v. Crown Equipment Corporation*, Los Angeles County Superior
23 Court Case No. BC439428; *Christopher Williams v. Allstate Insurance Co.*, Los Angeles County
24 Superior Court Case No. BC382577; *Hwang v. Caltech*, Los Angeles County Superior Court
25 Case No. BC464894; *Melissa Roberts v. Zale Delaware, Inc.*, Los Angeles Superior Court Case
26 No. BC523610; *Michael Oliver v. Konica Minolta Business Solutions U.S.A., Inc.*, Santa Clara
27 County Superior Court Case No. 114-CV-263183; *Tessa Hodge v. Zale Delaware, Inc., d/b/a*
28 *Piercing Pagoda*, San Bernardino Superior Court Case No CIVVS1301632; *Warren v. Paychex*,

1 *Inc.*, N.D. Cal. Case No. 3:10-cv-02006; *Tapia v. Zale Delaware Inc. et al*, S.D. Cal. Case No.
2 3:13-cv-01565; and *Benjamin Burgess et al v. Tesoro Refining and Marketing Company et al*,
3 C.D. Cal. Case No. 2:10-cv-05870.

4 32. I have been approved as class counsel in a number of class actions by the Superior
5 Courts of California and United States District Courts, including: *Antonio Becerra-Mata v. PSC*
6 *Industrial Outsourcing, LP*, San Benito County Superior Court Case No. CU-15-00030; *Andrew*
7 *Vasquez v. Earthbound Farm, LLC*, San Benito County Superior Court Case No. CU-17-00171;
8 *Fransisco Pulido v. Westrock Services, Inc.*, San Benito County Superior Court Case No. CU-18-
9 00074; *Kosal So v. Owens-Brockway Glass Container, Inc.*, Los Angeles County Superior Court
10 Case No. BC608609; *John Obiols v. Lockheed Martin Corporation*, Santa Clara County Superior
11 Court Case No. 17CV314178; and *Eric Chavez v. Converse, Inc.*, N.D. Cal. Case No. 15-cv-
12 03746-NC.

13 33. I also second chaired two jury trials where I represented the prevailing defendant.
14 Both cases involved employees who brought claims against their former employers pursuant to
15 the Fair Employment & Housing Act. The cases are: *Jeff Cowell v. Eaton Aerospace LLC et al*,
16 Los Angeles County Superior Court Case No. BC401543; and *Richard Gulden v. Pratt &*
17 *Whitney Rocketdyne Inc. et al.*, Los Angeles County Superior Court Case No. BC468909.

18 **ATTORNEYS' FEES AND LITIGATION COSTS**

19 34. At the time the Parties negotiated the Settlement Agreement, I did not have a final
20 tally of the litigation costs incurred to date. As such, the Parties included a maximum amount
21 that could be attributed to costs under the settlement.

22 35. To date, Diversity Law Group has incurred costs in the amount of \$2,584.73 for
23 litigation related expenses, including filing fees, postage, copying and court reporter fees.
24 Attached hereto as **Exhibit B** is a true and correct copy of the cost report.

25 36. To date, I have incurred approximately 40.30 hours in connection with the
26 litigation of this lawsuit. Attached hereto as **Exhibit C** is a summary of the hours I have incurred
27 to date. I also anticipate spending an additional two hours conferring and reviewing e-mails and
28 other written communications with counsel for Defendant, the Settlement Administrator, and

1 Aggrieved Employees regarding post final approval matters, including payments and related
2 issues. Thus, I anticipate spending approximately 42.30 hours on this matter through its
3 conclusion.

4 37. The total lodestar for my hours will be approximately \$29,610 based on an hourly
5 rate of \$700.00 per hour. Since at least 2017, I have been approved at an hourly rate of \$650.00
6 per hour by various Courts, in a number of matters, including: *Antonio Becerra-Mata v. PSC*
7 *Industrial Outsourcing, LP*, San Benito County Superior Court Case No. CU-15-00030; *Kosal*
8 *So v. Owens-Brockway Glass Container, Inc.*, Los Angeles County Superior Court Case No.
9 BC608609; *Sarah Rodriguez v. Manpower, Inc.*, Santa Clara County Superior Court Case No. 1-
10 16-CV-294904; *Shannon Sanchez v. American Para Professional Systems, Inc.*, Santa Clara
11 County Superior Court Case No. 17CV306751. More recently, I have been approved at an hourly
12 rate of \$700.00 per hour by the following courts: *Foaad Hanna v. Equinix, LLC*, Santa Clara
13 County Superior Court Case No. 18CV339365; *Alicia Harris v. 24 Seven LLC*, Los Angeles
14 County Superior Court Case No. BC720144; *Mary Della Maggiora v. Watsonville Community*
15 *Hospital*, Santa Cruz Superior Court Case No. 18CV00191; and *Michael Randolph v. Pacific*
16 *Racing Association*, Alameda County Superior Court Case No. RG18908139.

17 **NOTICE TO LWDA**

18 38. Concurrent with the filing of the Motion to Approve PAGA Settlement, my office
19 uploaded the Motion, Settlement Agreement, and proposed order to the LWDA's website. In
20 addition, my office shall submit to the LWDA a copy of the Court's judgment and order
21 approving the Settlement Agreement within ten (10) days after entry of judgment or order.

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

24 Executed on this 22nd day of February, 2021, at Los Angeles, California.

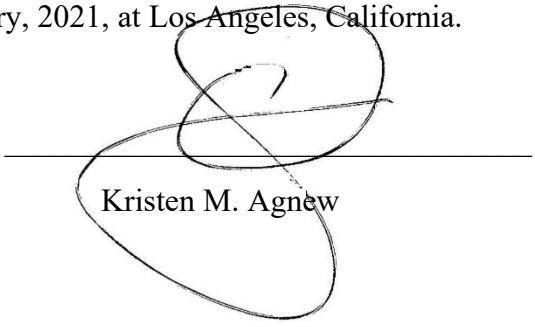
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Kristen M. Agnew

EXHIBIT A

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DOES 1 through 50, inclusive,

Defendants.

Case No.: CIVDS2009070

[Assigned for all purposes to the Hon. David
Cohn, Dept. S-26]

**JOINT STIPULATION OF SETTLEMENT
AND RELEASE UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE § 2698, ET
SEQ.**

Complaint Filed: May 29, 2020
FAC Filed: August 10, 2020
SAC Filed: September 30, 2020

1 This Joint Stipulation of Settlement and Release (“Agreement” or “Settlement”) under
2 the Private Attorneys General Act, California Labor Code section 2698 *et seq.* (“PAGA”), is
3 made by and between Renaldo Gonzales (“Gonzales” or “Plaintiff”), individually and as
4 representative on behalf of Aggrieved Employees as further defined herein and the State of
5 California, and Durham School Services, L. P. and National Express Transit Corp., along with
6 their parent companies, sister companies, affiliated entities, subsidiaries, officers, and agents
7 (collectively, the “Company” or “Defendants”). Gonzales and Defendants are collectively
8 referred to herein as the “Parties” and may be individually referred to as a “Party.”

9 **A. FACTUAL BACKGROUND**

10 1. This Settlement is made and entered into by and between Plaintiff and Defendants,
11 and is subject to the terms and conditions hereof, and to the Court’s approval. The Parties
12 expressly acknowledge that this Agreement is entered into solely for the purpose of
13 compromising significantly disputed claims and that nothing herein is an admission of liability
14 or wrongdoing by Defendants. Defendants deny that the Company is liable to Plaintiff or the
15 Aggrieved Employees and denies that the Company has violated any law.

16 2. On March 11, 2020, Plaintiff filed a notice with the Labor & Workforce
17 Development Agency (“LWDA”) alleging that Defendants violated Labor Code section 204
18 pursuant to Labor Code section 2699.

19 3. On May 29, 2020, Plaintiff initiated this Action in the Superior Court of California,
20 County of San Bernardino. The complaint alleges a single cause of action for violation of Labor
21 Code § 2698, *et seq.* (“PAGA”). Plaintiff amended his Complaint for the second time on or about
22 September 30, 2020. The Second Amended Representative Action Complaint (“Complaint”) is
23 the operative complaint.

24 4. As alleged in the Complaint, Plaintiff contends that Defendants failed in their
25 affirmative obligation to make timely payments of wages to Aggrieved Employees according to
26 the terms of Labor Code section 204. Specifically, Plaintiff alleges that Defendants, as a matter
27 of policy and practice, paid the wages of Aggrieved Employees beyond the time periods as
28 allowed pursuant to Labor Code section 204.

1 5. On October 29, 2020, Defendants filed an Answer denying all allegations in the
2 Action and all claims of any wrongdoing whatsoever by any of the Company's parents,
3 subsidiaries, affiliates, divisions, agents, servants or employees for any claims.

4 6. Shortly after the filing of the Complaint, the Parties agreed to explore the
5 possibility of settlement and engage in direct settlement negotiations. In connection therewith,
6 Defendants produced data relating to the number of Aggrieved Employees and wage statements
7 issued to each Aggrieved Employee, which allowed Plaintiff's counsel to conduct a full damage
8 analysis. After extended negotiations conducted at arm's length, Plaintiff and Defendants
9 reached the present settlement. The Parties recognize the risk, expense, and delay in continuing
10 the Action, and therefore believe the Settlement to be fair, reasonable, and adequate.

11 **B. DEFINITIONS**

12 1. "Action" means *Renaldo Gonzales v. Durham School Services, L. P.; National*
13 *Express Transit*, filed on May 29, 2020 in the Superior Court of California, County of San
14 Bernardino, Case No. CIVDS2009070.

15 2. "Aggrieved Employees" means all current and former California employees of
16 National Express Transit Corp., Inc. who were classified as exempt and were paid wages by
17 Defendants any time from March 11, 2019 to July 11, 2020. Defendants have determined that
18 there are 49 Aggrieved Employees who received approximately 971 wage statements from
19 March 11, 2019 through July 11, 2020.

20 3. "Plaintiff's Counsel" means Diversity Law Group, P.C.

21 4. "Complaint" means the Second Amended Representative Action Complaint filed
22 by Plaintiff in this Action.

23 5. "Defendants" or the "Company" mean Durham School Services, L. P. and
24 National Express Transit Corp. along with their parent companies, sister companies, affiliated
25 entities, subsidiaries, officers, and agents

26 6. "Effective Date" means five business days after the Superior Court or any party
27 hereto serves notice of the Superior Court's order and judgment approving the PAGA Settlement
28 and entering judgment.

1 7. “Enhancement Payment” means the amount that the Court authorizes to be paid to
2 Plaintiff, in addition to his Individual Settlement Payment, in recognition of his efforts and risks
3 in assisting with the prosecution of the Action. Subject to the Court granting approval of the
4 Settlement, the Parties agree that Plaintiff shall be paid up to Five Thousand Dollars (\$5,000.00)
5 from the Maximum Settlement Amount. It is understood by Plaintiff that the Court has final
6 discretion in any Enhancement Payment.

7 8. “Individual Settlement Payment” means the amount payable from the Net PAGA
8 Payment to each Aggrieved Employee.

9 9. “Maximum Settlement Amount” means the maximum settlement amount of Fifty-
10 Five Thousand Dollars (\$55,000.00) to be paid by Defendants as a result of this Agreement. The
11 Maximum Settlement Amount includes all Individual Settlement Payments to Aggrieved
12 Employees, payment to the LWDA, the Enhancement Payment to Plaintiff, Settlement
13 Administration Costs and Attorneys Fees and Costs.

14 10. “PAGA Penalties Fund” means the balance of the Maximum Settlement Amount
15 remaining after deduction of the approved Enhancement Payment to Plaintiff, Attorneys’ Fees
16 and Costs and Settlement Administration Costs.

17 11. “PAGA Period” means the period of March 11, 2019 to the date the Court
18 approves the Parties’ Settlement.

19 12. “Parties” means Plaintiff and Defendants as defined herein, together.

20 13. “Plaintiff” means Renaldo Gonzales.

21 14. “Released Parties” means Defendants and/or any other entity or individual which
22 could be liable for the acts or omissions of Defendants in relation to the Released Claims.

23 15. “Released Claims” means all claims for penalties under the California Private
24 Attorneys’ General Act, including costs and attorneys’ fees related thereto, predicated on the
25 violation of Labor Code section 204 arising from or reasonably related to the facts alleged in the
26 Complaint that accrued during the PAGA Period. It is understood and agreed that this Agreement
27 neither releases the Released Parties from liability, if any, to Aggrieved Employees for violations
28 of any predicate statutes other than PAGA, nor effects a waiver of claims by Aggrieved

1 Employees against the Released Parties for any individual wage and hour claims. As to Plaintiff
2 himself, the term “Released Claims” also includes the released claims referenced in section
3 E-8, which includes individual wage and hour claims. However, nothing in this Agreement
4 prohibits Defendant from asserting that the PAGA penalties paid as a result of this Settlement
5 may limit the recovery of PAGA penalties by any Aggrieved Employee covered by this
6 Agreement in a subsequent representative PAGA action. Similarly, nothing in this Settlement
7 Agreement precludes an Aggrieved Employee from challenging this assertion.

8 16. “Settlement Administration Costs” means the fees and expenses reasonably
9 incurred by the Settlement Administrator as a result of the procedures and processes expressly
10 required by this Agreement, which are estimated at One Thousand Dollars (\$1,000.00). Any
11 portion of the Settlement Administration Costs not used or approved by the Court shall be added
12 to the PAGA Penalties Fund.

13 17. “Settlement Administrator” means Phoenix Settlement Administrators.

14 **C. PAYMENT OF CONSIDERATION**

15 1. Settlement Consideration. Defendants shall pay the sum of the Maximum
16 Settlement Amount as specified in this Agreement, which shall be used to pay: (1) Individual
17 Settlement Payments; (2) Attorneys’ Fees and Costs; (3) Enhancement Payment; (4) Settlement
18 Administration Costs; and (5) payment to the LWDA. The Parties agree that this is a non-
19 reversionary Settlement and that no portion of the Maximum Settlement Amount shall revert to
20 Defendant.

21 2. Escalator Clause. The Maximum Settlement Amount was calculated with, and is
22 premised on, Defendants’ representation that there are 49 Aggrieved Employees, and that said
23 Aggrieved Employees received 971 wage statements reflecting the payment of wages from
24 March 11, 2019 through July 11, 2020. Should the number of wage statements exceed this
25 amount by more than fifteen 15 percent (i.e., 1,116 or more wage statements), Defendants shall
26 have the option to increase the amount of the Maximum Settlement Amount in proportion to the
27 increase in wage statements above 15 percent only. Should Defendants elect not to exercise its
28 option to increase the Maximum Settlement Amount, Plaintiff shall have the unilateral right to

1 rescind the Settlement within the later of thirty (30) calendar days of the Effective Date or fifteen
2 (15) calendar days of Defendant's delivery of the Aggrieved Employee list and data, referenced
3 in Section D-3. If Plaintiff exercises the option to rescind, Plaintiff and Defendant shall share
4 equally in paying all Settlement Administration Costs incurred by the Settlement Administrator
5 up to the date of Plaintiff's notice to rescind. In the event the Settlement is terminated, the Parties
6 shall proceed in all respects as if this Agreement had not been executed.

7 3. Funding of the Maximum Settlement Amount. Within thirty (30) calendar days
8 after the Effective Date, Defendants shall deposit the Maximum Settlement Amount with the
9 Settlement Administrator who shall place that sum into a Qualified Settlement Fund ("QSF").

10 The QSF shall be an interest-bearing account at a federally-insured bank that is
11 established by the Settlement Administrator. The QSF shall be an interest-bearing account at a
12 federally-insured bank that is mutually acceptable to the Parties and the Settlement
13 Administrator. The funds in the QSF shall be invested either in short-term U.S. Treasury
14 securities with maturity dates of less than 90 days at the time of deposit, or in an SEC-registered
15 money market fund investing exclusively in U.S. Treasury securities with average maturities of
16 less than 90 days and rated AAA by Standard & Poor's. The Parties agree that the QSF is
17 intended to be a "Qualified Settlement Fund" under Section 468B of the Internal Revenue Code
18 and Treas. Reg. § 1.468B-1, 26 C.F.R. § 1.468B-1, et seq., and will be administered by the
19 Settlement Administrator as such. With respect to the QSF, the Settlement Administrator shall:
20 (1) open and administer the Settlement Account in such a manner as to qualify and maintain the
21 qualification of the QSF as a "Qualified Settlement Fund" under Section 468B of the Internal
22 Revenue Code and Treas. Reg. § 1.468B-1; (2) satisfy all federal, state and local and income
23 and other tax reporting, return, and filing requirements with respect to the QSF and any interest
24 or other income earned by the QSF, and (3) satisfy out of the QSF all (i) taxes (including any
25 estimated taxes, interest, or penalties) with respect to the interest or other interest earned by the
26 QSF, and (ii) fees, expenses and costs incurred in connection with the opening and
27 administration of the QSF and the performance of its duties and functions as described in this
28 Agreement. The aforementioned taxes, fees, costs and expenses shall be treated as and included

1 in the costs of administering the QSF and as Claims Administration Expenses. The Parties and
2 the Settlement Administrator shall treat the QSF as coming into existence as a Qualified
3 Settlement Fund on the earliest date permitted as set forth in 26 C.F.R. § 1.468B-1(j)(2)(i), and
4 such election statement shall be attached to the appropriate returns as required by 26 C.F.R. §
5 1.468B-1(j)(e)(ii). The Parties agree to cooperate with the Settlement Administrator and one
6 another to the extent reasonably necessary to carry out the provisions of this Section.

7 4. Allocation of the PAGA Penalties Fund. The PAGA Penalties Fund shall be used
8 to satisfy Individual Settlement Payments to Aggrieved Employees and payment to the LWDA
9 in accordance with the terms of this Agreement. The PAGA Penalties Fund is the maximum
10 amount that will be available for distribution to the LWDA and Aggrieved Employees in full
11 satisfaction of all Released Claims. Pursuant to PAGA, seventy-five percent (75%) of the PAGA
12 Penalties Fund will be paid to the LWDA, and the remaining twenty-five percent (25%), will be
13 paid to all Aggrieved Employees (“Net PAGA Payment”).

14 5. Calculation of Individual Settlement Payment. The Settlement Administrator shall
15 calculate the Individual Settlement Payment by dividing the Net PAGA Amount by the total
16 number of wage statements reflecting the payment of wages issued to Aggrieved Employees
17 from March 11, 2019 through July 11, 2020. That value will then be multiplied by the number
18 of wage statements reflecting the payment of wages each respective Aggrieved Employee
19 received from March 11, 2019 through July 11, 2020. Collectively, the Aggrieved Employees
20 are entitled to 100% of the Net PAGA Payment.

21 6. Tax Treatment of Individual Settlement Payment. All Individual Settlement
22 Payments shall be allocated as 100% as penalties. The amount of payments shall be reported on
23 an IRS Form 1099 by the Settlement Administrator.

24 7. No Credit Toward Benefit Plans. Payments to Aggrieved Employees as
25 referenced herein will not be utilized to calculate any additional benefits under any benefit plans
26 to which any Aggrieved Employee may be eligible, including, but not limited to profit-sharing
27 plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO
28 plans, and any other benefit plan. Rather, it is the Parties’ intention that this Settlement

Agreement will not affect any rights, contributions, or amounts to which any Aggrieved Employee may be entitled under any benefit plans.

8. Enhancement Payment. Defendants agree not to oppose or impede any application or motion by Plaintiff for an Enhancement Payment of up to Five Thousand Dollars (\$5,000.00) to Plaintiff. The Enhancement Payment shall be paid from the Maximum Settlement Amount, and shall be paid in addition to Plaintiff's Individual Settlement Payment as an Aggrieved Employee. It is understood by Plaintiff that the Court has final discretion in any Enhancement Payment. The Settlement Administrator shall issue an IRS Form 1099 to Plaintiff reflecting the Enhancement Payment. Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on his Enhancement Payment and shall hold harmless Defendants from any claim or liability for taxes, penalties, or interest arising as a result of the Enhancement Payment. Any portion of the Enhancement Payment not awarded to Plaintiff shall be added to the PAGA Penalties Fund and shall be distributed to Aggrieved Employees as provided in this Agreement.

9. Attorneys' Fees and Costs: In full satisfaction of all claims Plaintiff may have for attorneys' fees, litigation costs, and expenses arising out of the Action, Defendants agree that Plaintiff's Counsel shall be paid a maximum amount of Eighteen Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$18,333.33) in attorneys' fees and Three Thousand Five Hundred Dollars (\$3,500.00) in litigation costs and expenses ("Attorneys' Fees and Costs"), which shall be paid from the Maximum Settlement Amount. The Settlement Administrator shall issue an IRS Form 1099 to Plaintiff's Counsel reflecting the awarded attorneys' fees, costs, and expenses.

10. Settlement Administration Costs. The Settlement Administrator shall be paid for the reasonable costs of administration of the Settlement from the Maximum Settlement Amount, currently estimated at One Thousand Dollars (\$1,000.00). These costs, which shall be paid from the Maximum Settlement Amount, shall include, *inter alia*, the required tax reporting on the Individual Settlement Payments, the issuing of 1099 IRS Forms, establishing a Qualified Settlement Fund, administering and distributing the Maximum Settlement Amount, and

1 providing necessary reports and declarations. Any portion of the Settlement Administration
2 Costs not allowed shall be added to the PAGA Penalties Fund and shall be distributed to
3 Aggrieved Employees as provided in this Agreement.

4 **D. ADMINISTRATION OF SETTLEMENT**

5 1. Approval of PAGA Settlement. Plaintiff will present this Settlement Agreement
6 to the Court and will request that the Court issue an Order and Judgment, approving and
7 incorporating by reference the terms and conditions of the Settlement Agreement, in substantial
8 conformity to Exhibit B. More specifically, Plaintiff's Counsel shall request the entry of an order
9 granting final approval, which shall include findings and orders: (i) approving the settlement,
10 (ii) adjudging the terms to be fair, reasonable, and adequate and binding on the State of
11 California, (iii) reciting the release terms, (iv) directing that the settlement's terms and provisions
12 be carried out; (v) entering final judgment in accordance with this Agreement and without further
13 fees or costs to any party except as expressly set forth in this Agreement; and (vi) retaining
14 jurisdiction to oversee administration and enforcement of the terms of this Agreement and the
15 Court's orders. Plaintiff's motion shall be unopposed by Defendants, unless Plaintiff's approval
16 motion seeks relief inconsistent with or not specified by this Agreement. In such event,
17 Defendants reserve the right to address any assertions that are not contained in this Agreement.

18 2. Settlement Administration. The Parties agree to cooperate in the administration of
19 the Settlement and to make all reasonable efforts to control and minimize the costs and expenses
20 incurred in the administration of the Settlement. The Settlement Administrator shall provide the
21 following services:

- 22 a. Establish and maintain a Qualified Settlement Fund account;
- 23 b. Calculate the Individual Settlement Payments to be paid to Aggrieved
24 Employees in accordance with the terms and provisions of this Agreement;
- 25 c. Print and issue Individual Settlement Payment checks;
- 26 d. Verify the last known address for each Aggrieved Employee through a
27 generally utilized, national address update database prior to mailing the Individual Settlement
28 Payment check;

1 e. Disburse any awards of costs and attorneys' fees and the Enhancement
2 Payment;

3 f. Prepare and issue 1099 Forms; and

4 g. Perform such other tasks necessary to effectuate the terms of this
5 Agreement or as the Parties mutually agree or the Court orders the Parties to perform.

6 3. Delivery of the Aggrieved Employee List and Data. Within fifteen (15) calendar
7 days after the Effective Date, Defendants shall provide the Settlement Administrator with a
8 Microsoft Office Excel spreadsheet and shall include each Aggrieved Employee's: full name;
9 employee number; most recent mailing address; social security number; and the number of wage
10 statements reflecting the payment of wages received during period March 11, 2019 through July
11 11, 2020.

12 4. Timing of Distribution. Within ten (10) calendar days after the payment of the
13 entire Maximum Settlement Amount, the Settlement Administrator will issue payments to: (a)
14 Aggrieved Employees; (b) the Labor and Workforce Development Agency; (c) Plaintiff; and (d)
15 Plaintiff's Counsel. The Settlement Administrator will issue the appropriate tax forms for all
16 payments issued under this Settlement.

17 5. Mailing of Individual Settlement Payments to Aggrieved Employees: The
18 Settlement Administrator will issue each Aggrieved Employee a check for his or her share of the
19 PAGA Penalties Fund along with an explanatory letter attached hereto as Exhibit A. Checks will
20 remain negotiable for 180 days. Any checks returned as non-deliverable on or before the check
21 cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding
22 address affixed thereto. Funds represented by settlement checks returned as undeliverable and
23 those settlement checks remaining un-cashed for more than 180 days after issuance will be
24 redistributed to the LWDA.

25 **E. RELEASE OF CLAIMS**

26 1. Release of Claims by Aggrieved Employees. Upon the Effective Date, each of the
27 Aggrieved Employees, including Plaintiff, fully release and forever discharge any and all of the
28 Released Parties of and from any and all Released Claims.

2. No Right to Opt-Out. The Parties agree there is no statutory right for any Aggrieved Employee to opt out or otherwise exclude himself or herself from the Settlement.

3. General Release and Waiver of Claims by Plaintiff. As a condition to obtaining the Enhancement Payment provided for herein, Plaintiff (on behalf of himself and his spouse, heirs, executors, administrators, trustees, and/or permitted assigns) also agrees to a general release of any and all claims against Defendants—which shall include without limitation any and all claims which in any way relate to his employment with Defendants, under State or Federal law, in tort, common law, statute, contract, or equity, whether pled in the Complaint or not, including but not limited to any claims under the FLSA, Title VII, ADA, FEHA, ADEA, PAGA, California Labor Code, or any Industrial Welfare Commission Wage Order—now existing or arising in the future, based on any act, omission, event, occurrence, or nonoccurrence from the beginning of time to the date of execution hereof. Plaintiff further expressly waives and relinquishes, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, which provides: **“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”**

F. MISCELLANEOUS

1. Tax Liability. Defendants, Defendants' counsel, the Settlement Administrator, and Plaintiff's Counsel make no representation as to the tax treatment or legal effect of the payments called for hereunder, and Plaintiff and Aggrieved Employees are not relying on any statement, representation, or calculation by Defendants, Defendants' counsel, Plaintiff's Counsel, or by the Settlement Administrator in this regard. Plaintiff and Aggrieved Employees understand and agree that they will be solely responsible for the payment of any and all taxes and penalties assessed on their respective payments described herein and will defend, indemnify, and hold Defendants, Defendants' counsel, Plaintiff's Counsel and the Settlement Administrator free and harmless from and against any claims resulting from treatment of such payments as non-taxable penalties/damages.

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

25 3. No Prior Assignments. The Parties and their counsel represent, covenant, and
26 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported
27 to assign, transfer, or encumber to any person or entity any portion of any liability, claim,
28 demand, action, cause of action or right herein released and discharged.

1 4. Nullification of Settlement Agreement. In the event that: (i) the Court does not
2 approve the Settlement as provided herein; or (ii) the Settlement does not become final for any
3 other reason, then this Settlement Agreement, and any documents generated to bring it into
4 effect, will be null and void, and the Parties will be returned to their original respective positions.

5 5. Continued Jurisdiction. After entry of the judgment, the Court will have
6 continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement
7 of the terms of the Settlement, (ii) settlement administration matters, and (iii) such post-Court
8 Approval matters as may be appropriate under court rules or as set forth in this Settlement.

9 6. Entire Agreement. This Settlement Agreement constitutes the entirety of the
10 Parties' settlement terms. No other prior or contemporaneous written or oral agreements may
11 be deemed binding on the Parties.

12 7. Amendment or Modification. This Settlement Agreement may be amended or
13 modified only by a written instrument, signed by either the Parties or their successors-in-interest
14 or counsel for all Parties.

15 8. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant
16 and represent they are expressly authorized by the Parties whom they represent to negotiate this
17 Settlement Agreement and to take all appropriate action required or permitted to be taken by
18 such Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any
19 other documents required to effectuate the terms of this Settlement Agreement. The Parties and
20 their counsel will cooperate with each other and use their best efforts to effect the
21 implementation of the Settlement. If the Parties are unable to reach agreement on the form or
22 content of any document needed to implement the Settlement, or on any supplemental provisions
23 that may become necessary to effectuate the terms of this Settlement, the Parties may seek the
24 assistance of the Court to resolve such disagreement.

25 9. Binding on Successors and Assigns. This Settlement Agreement will be binding
26 upon, and inure to the benefit of, the successors or assigns of the Parties hereto.

27 10. California Law Governs. All terms of this Settlement Agreement and Exhibit A
28 will be governed by and interpreted according to the laws of the State of California.

1 11. Execution and Counterparts. This Settlement Agreement is subject only to the
2 execution of all Parties. However, the Settlement Agreement may be executed in one or more
3 counterparts. All executed counterparts and each of them, including facsimile and scanned
4 copies of the signature page, will be deemed to be one and the same instrument provided that
5 counsel for the Parties will exchange among themselves original signed counterparts.

6 12. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe
7 this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have
8 arrived at this Settlement after arm's-length negotiations. The Parties further acknowledge that
9 they are each represented by competent counsel and that they have had an opportunity to consult
10 with their counsel regarding the fairness and reasonableness of this Settlement.

11 13. Invalidity of Any Provision. Before declaring any provision of this Settlement
12 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest
13 extent possible consistent with applicable precedents so as to define all provisions of this
14 Settlement Agreement valid and enforceable. If any provision of this Settlement Agreement is
15 or becomes invalid or unenforceable in any respect, the validity and enforceability of the
16 remaining provisions contained herein shall not be affected.

17 14. Captions. The captions and section numbers in this Settlement Agreement are
18 inserted for the reader's convenience, and in no way define, limit, construe or describe the scope
19 or intent of the provisions of this Settlement Agreement.

20 15. Waiver. No waiver of any condition or covenant contained in this Settlement
21 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered
22 to imply or constitute a further waiver by such party of the same or any other condition, covenant,
23 right or remedy.

24 16. Enforcement Action. In the event that one or more of the Parties institutes any
25 legal action or other proceeding against any other Party or Parties to enforce the provisions of
26 this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful
27 Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in
28 connection with any enforcement actions.

1 17. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms
2 and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not
3 be construed more strictly against one party than another merely by virtue of the fact that it may
4 have been prepared by counsel for one of the Parties, it being recognized that, because of the
5 arms-length negotiations between the Parties, all Parties have contributed to the preparation of
6 this Settlement Agreement.

7 18. Representation By Counsel. The Parties acknowledge that they have been
8 represented by counsel throughout all negotiations that preceded the execution of this Settlement
9 Agreement, and that this Settlement Agreement has been executed with the consent and advice
10 of counsel, and reviewed in full.

11 19. Binding Agreement. The Parties warrant that they understand and have full
12 authority to enter into this Settlement, and further intend that this Settlement Agreement will be
13 fully enforceable and binding on all parties, and agree that it will be admissible and subject to
14 disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality
15 provisions that otherwise might apply under federal or state law.

16 20. Denial of Liability. The Parties expressly recognize that the making of this
17 agreement does not in any way constitute an admission or concession of wrongdoing on the part
18 of Defendant. Nothing in this Settlement, nor any action taken in implementation thereof, nor
19 any statements, discussions or communications, nor any materials prepared, exchanged, issued
20 or used during the course of this Action, is intended by the Parties to, nor will any of the
21 foregoing constitute, be introduced, be used or be admissible in any way in any other judicial,
22 arbitral, administrative, investigative or other forum or proceeding, as evidence of any violation
23 of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any
24 obligation or duty at law or in equity. Notwithstanding the foregoing, this agreement may be
25 used in any proceeding in the Court that has as its purpose the interpretation, implementation, or
26 enforcement of the Settlement or any orders or judgments of the Court entered into in connection
27 therewith.

1 21. Knowing and Voluntary Agreement. By signing this Agreement, Plaintiff
2 acknowledges that:

3 Plaintiff has had a full twenty one (21) days within which to consider this Agreement
4 before executing it or has freely and knowingly waived the right to consider this Agreement for
5 a full 21 days by executing the Agreement before the expiration of the 21-day period;

6 Plaintiff has carefully read and fully understands all provisions of this Agreement;

7 Plaintiff knowingly and voluntarily agrees to all the terms set forth in this Agreement
8 and agrees to be legally bound by all of the terms set forth in this Agreement;

9 Plaintiff has been and hereby is advised in writing to consider the terms of this
10 Agreement and to consult with an attorney;

11 Prior to signing this Agreement, Plaintiff has had the opportunity to consult with counsel
12 of Plaintiff's choice concerning the terms and conditions of this Agreement and has done so;

13 Plaintiff has a full seven (7) days following the execution of this Agreement to revoke
14 this Agreement. To revoke, Plaintiff must send a written statement of revocation to Ellen
15 Bronchetti, Partner, McDermott Will & Emery 415 Mission Street, Suite 5600, San Francisco
16 California 94105, email address ebronchetti@mwe.com. If Plaintiff revokes within seven (7)
17 days, Plaintiff will receive no benefits under this Agreement. In the event Plaintiff does not
18 exercise Plaintiff's right to revoke this Agreement, the Agreement shall become effective on the
19 date immediately following the seven-day (7) waiting period described above;

20 Plaintiff expressly understands that among the various rights and claims being waived
21 by this Agreement are those arising under the Age Discrimination in Employment Act of 1967
22 (29 U.S.C. § 621, et seq.), but that any such claims that arise after the date of this Agreement are
23 not waived; and

24 Although Plaintiff is releasing claims that Plaintiff may have under the Older Workers
25 Benefit Protection Act (OWBPA) and ADEA, Plaintiff understands that Plaintiff may challenge
26 the knowing and voluntary nature of his release in this Agreement before a court, the Equal
27

1 Employment Opportunity Commission (EEOC), NLRB, or any other federal, state or local
2 agency charged with the enforcement of such employment laws.

3 **IN WITNESS WHEREOF**, the undersigned Settling Parties and their duly authorized
4 representatives accept and agree to the terms of this Agreement and hereby execute it voluntarily
5 and with a full understanding of its consequences.

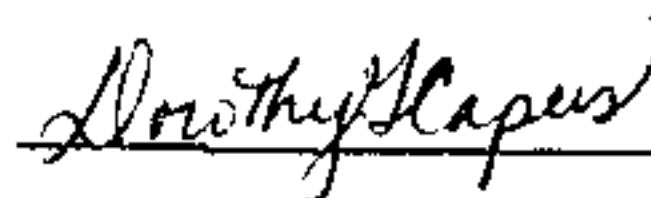
6
7 DATED: 02/18/2021

PLAINTIFF RENALDO GONZALES

8 
9 _____
10 Plaintiff Renaldo Gonzales

11 DATED: 02/18/2021

**DEFENDANT DURHAM SCHOOL
SERVICES, L. P.**

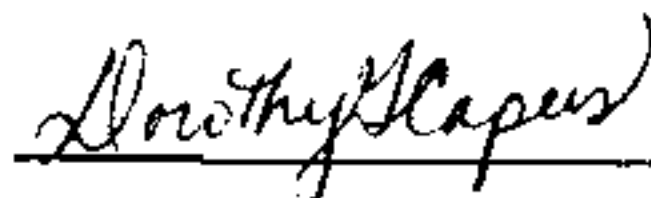
12
13 
14 _____

Dorothy G. Capers

15 Please Print Name of Authorized Signatory

16
17 DATED: 02/18/2021

**DEFENDANT NATIONAL EXPRESS
TRANSIT CORP.**

18
19 
20 _____

Dorothy G. Capers

21 Please Print Name of Authorized Signatory

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24 //

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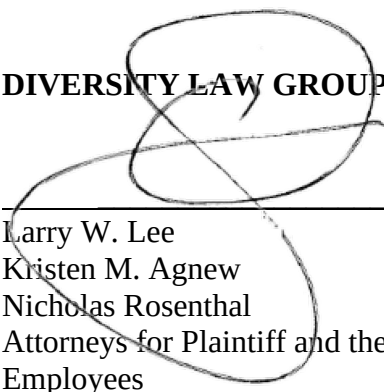
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1 **APPROVED AND ACKNOWLEDGED**

2
3 DATED: February 19, 2021

DIVERSITY LAW GROUP, P.C.

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6 
7 _____
8 Larry W. Lee
9 Kristen M. Agnew
10 Nicholas Rosenthal
11 Attorneys for Plaintiff and the Aggrieved
12 Employees

13 DATED: February 18, 2021

MCDERMOTT WILL & EMERY LLP

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15
16 
17 _____
18 Ellen Bronchetti
19 Attorneys for Defendants
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EXHIBIT A

<<DATE>>

<<FIRST NAME>> <<LAST NAME>>
<<ADDRESS>>

Re: *Renaldo Gonzales v. Durham School Services, L. P.; National Express Transit*

Dear <<FIRST NAME>> <<LAST NAME>>:

Enclosed you will find a check made payable to you. This is your payment from the settlement of the lawsuit entitled *Renaldo Gonzales v. Durham School Services, L. P.; National Express Transit*, San Bernardino County Superior Court Case No. CIVDS2009070 (the "Action").

The Action was filed against Durham School Services, L.P. and National Express Transit Corp. ("Defendants") pursuant to the California Private Attorneys General Act of 2004, California Labor Code section 2698 *et seq.* ("PAGA"). The claim was brought by a former exempt employee of Defendants on behalf of the State of California and all exempt employees who were paid wages by Defendants and who were on Defendant's California pay cycle any time from March 11, 2019 onward. You have been identified as one of the individuals on whose behalf the case was brought.

The plaintiff in the Action claimed that Defendants paid wages beyond the time period allowed by Labor Code section 204. Defendants deny all such allegations.

National Express Transit Corp. and Durham School Services, LP deny that it violated the law and contends its pay practices complied with California law. The Court has not ruled on the merits of the lawsuit, but it has approved the settlement amount the parties agreed to. A portion of the settlement amount goes to the State of California's Labor and Workforce Development Agency. Another portion of the settlement amount goes to the exempt employees who were on Defendant's California pay cycle and who worked for Defendants during the period of March 11, 2019 to July 11, 2020.

Pursuant to the settlement, enclosed is a check for your share of a portion of the civil penalties. You are not a party to this lawsuit, but you and the government will be bound by the judgment in this matter as to civil penalties.

Sincerely,

[NAME AND TITLE OF SIGNATORY]

EXHIBIT B

Larry W. Lee (State Bar No. 228175)
Kristen M. Agnew (State Bar No. 247656)
Nicholas Rosenthal (State Bar No. 268297)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile

Attorneys for Plaintiff and Aggrieved Employees

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

RENALDO GONZALES, as an individual
and on behalf of all others similarly
situated,

Plaintiff,

vs.

DURHAM SCHOOL SERVICES, L.P.;
NATIONAL EXPRESS TRANSIT; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: CIVDS2009070

[Assigned for all purposes to the Hon. David Cohn,
Dept. S-26]

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION TO APPROVE
SETTLEMENT AGREEMENT PURSUANT
TO THE PRIVATE ATTORNEYS GENERAL
ACT**

Date: April 21, 2121
Time: 10:00 a.m.
Dept: S-26

1 **[PROPOSED] ORDER**

2 On April 21, 2021, a hearing was held on Plaintiff Renaldo Gonzales' ("Plaintiff")
3 Motion to Approve Settlement Agreement Pursuant to the Private Attorneys General Act, Labor
4 Code section 2698, *et seq.* Appearing at the hearing were Kristen M. Agnew and Nicholas
5 Rosenthal of Diversity Law Group for Plaintiff and Ellen Bronchetti of McDermott Will &
6 Emery LLP for Defendants Durham School Services, L.P. and National Express Transit
7 (collectively, "Defendants").

8 The Court has considered the Joint Stipulation of Settlement and Release Under the
9 Private Attorneys General Act ("Settlement Agreement") and all other papers filed in this action.

10 **NOW THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED AS**
11 **FOLLOWS:**

12 1. Pursuant to California Labor Code section 2699(l), Plaintiff's Motion to Approve
13 Settlement Agreement Pursuant to the Private Attorneys General Act is **GRANTED**. The Court
14 finds that the Settlement is in all respects adequate considering the purposes and provisions of
15 the California Labor Code Private Attorneys General Act, California Labor Code section 2698,
16 *et seq.* The Court finds that the Settlement has been reached as a result of informed and non-
17 collusive arm's-length negotiations. The Court further finds that the Parties were able to
18 reasonably evaluate their respective positions. The Court has reviewed the monetary recovery
19 being provided by the Settlement and recognizes the value accorded to the State of California
20 and Aggrieved Employees.

21 2. Pursuant to Labor Code section 2699(i), the gross settlement amount of
22 \$55,000.00 shall be distributed as follows:

- 23 a. Seventy-Five percent of the PAGA Penalties Fund, totaling Twenty-One
24 Thousand Sixty-One Dollars and Forty-Five Cents (\$21,061.45), to the
25 LWDA for PAGA penalties.
- 26 b. Twenty-Five percent of the PAGA Penalties Fund, totaling Seven Thousand
27 Twenty Dollars and Forty-Nine Cents (\$7,020.49), to Aggrieved Employees.
- 28 c. Eighteen Thousand Three Hundred Thirty-Three Dollars and Thirty-Three

Cents (\$18,333.33) to Plaintiff's Counsel as Attorneys' Fees;

d. Two Thousand Five Hundred Eighty-Four Dollars and Seventy-Three Cents (\$2,584.73) to Plaintiff's Counsel as Costs;

e. Five Thousand Dollars (\$5,000) to Plaintiff as an enhancement; and

f. One Thousand Dollars (\$1,000.00) to the Settlement Administrator.

3. Upon the Effective Date, the Released Claims in the Settlement are deemed to have been conclusively released by all Aggrieved Employees against the Released Parties.

4. Plaintiff and Defendants are ordered to carry out the terms of the settlement in accordance with the terms of the PAGA Settlement Agreement.

5. Judgment shall be entered through the filing of this order and judgment. (Code Civ. Proc. § 668.5.) Plaintiff shall take from his complaint only the relief set forth in the Settlement Agreement and this Order and Judgment. Without affecting the finality of the Settlement or this Judgment in any way, the Court shall retain jurisdiction over the Parties for purposes of enforcing and interpreting the Settlement, this Order, and this Judgment.

6. The Settlement does not constitute an admission by Defendant of liability to Plaintiff or any Aggrieved Employee, nor does this Order constitute a finding by the Court of the validity of any of the claims alleged in this Action, or any liability of Defendant or any of the Released Parties.

IT IS SO ORDERED.

DATED: _____

HON. DAVID COHN
SUPERIOR COURT OF CALIFORNIA

EXHIBIT B

2/19/2021
10:31 AM

DIVERSITY LAW GROUP
Slip Listing

Page 1

Selection Criteria

Slip Classification Open
Client (hand select) Include: Gonzales, Renaldo v. National
Slip Transaction Ty 2 - 2

Rate Info - identifies rate source and level

Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
61853	EXP	Olympia	1	7.40	7.40
2/28/2020		Postage			
WIP		Gonzales, Renaldo v. Nation			
Postage					
61769	EXP	Olympia	1	75.00	75.00
3/13/2020		Court fees			
WIP		Gonzales, Renaldo v. Nation			
LWDA					
62812	EXP	Olympia	1	1656.06	1656.06
5/15/2020		Atty Service			
WIP		Gonzales, Renaldo v. Nation			
Attorney Service - Complaint					
63136	EXP	Olympia	1	67.00	67.00
6/23/2020		Atty Service			
WIP		Gonzales, Renaldo v. Nation			
Attorney Service - Complaint Service					
63137	EXP	Olympia	1	43.75	43.75
6/23/2020		Atty Service			
WIP		Gonzales, Renaldo v. Nation			
Attorney Service - Complaint Service					
63473	EXP	Olympia	1	65.20	65.20
7/9/2020		Atty Service			
WIP		Gonzales, Renaldo v. Nation			
Attorney Service - POS of Summons					
63904	EXP	Olympia	1	77.06	77.06
8/10/2020		Atty Service			
WIP		Gonzales, Renaldo v. Nation			
Attorney Service - FAC					
63999	EXP	Olympia	1	14.45	14.45
8/31/2020		Postage			
WIP		Gonzales, Renaldo v. Nation			
Postage					

2/19/2021
10:31 AM

DIVERSITY LAW GROUP
Slip Listing

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Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
63998	EXP	Olympia	10	0.25	2.50
8/31/2020		Photocopies			
WIP		Gonzales, Renaldo v. Nation			
Photocopies					
64329	EXP	Olympia	1	102.71	102.71
9/9/2020		Atty Service			
WIP		Gonzales, Renaldo v. Nation			
Attorney Service - Stip for Leave to File SAC					
64169	EXP	Kristen Agnew	1	94.00	94.00
9/29/2020		Court fees			
WIP		Gonzales, Renaldo v. Nation			
Courtcall					
64376	EXP	Olympia	1	65.20	65.20
9/29/2020		Atty Service			
WIP		Gonzales, Renaldo v. Nation			
Attorney Service - Notice of Entry of Orde					
64516	EXP	Olympia	46	0.25	11.50
9/30/2020		Photocopies			
WIP		Gonzales, Renaldo v. Nation			
Photocopies					
64517	EXP	Olympia	1	2.90	2.90
9/30/2020		Postage			
WIP		Gonzales, Renaldo v. Nation			
Postage					
66233	EXP	Olympia	1	200.00	200.00
2/19/2021		Court fees			
WIP		Gonzales, Renaldo v. Nation			
Filing Fees					
66234	EXP	Olympia	1	100.00	100.00
2/19/2021		Court fees			
WIP		Gonzales, Renaldo v. Nation			
Courtcall					
Grand Total					
		Billable	0.00		2584.73
		Unbillable	0.00		0.00
		Total	0.00		2584.73

EXHIBIT C

Renaldo Gonzales v. Durham School Services, L.P
Kristen Agnew Time and Task Chart

Hours	Description of Work
3.40	Review client intake notes; analysis and research re theories of liability; prepare memorandum to file re same; conference with co-counsel re same
2.80	Prepare PAGA Notice and Representative Action Complaint; review same with client.
1.30	Meet and confer with defense counsel re initial case management conference order.
2.20	Prepare First Amended Class and Representative Action Complaint; review same with client.
1.50	Meet and confer with defense counsel re FAC and related-pending class actions filed on behalf of non-exempt employees; review and respond to correspondence re same.
1.40	Prepare stipulation to file Second Amended Representative Action Complaint; prepare SAC; confer with client re same.
1.80	Meet and confer with defense counsel re August 27, 2020 case management conference; prepare joint report re status of litigation and discovery plan; review and respond to correspondence with defense counsel re revisions to joint report; prepare stipulation to continue August 27, 2020 case management conference.
2.60	Analysis, strategy, and research re information required from defendant to negotiate settlement; prepare data requests for mediation; confer with co-counsel re same.
3.70	Analyze and review policies and data provided by Defendant to evaluate liability; research re settlement ranges for Labor Code section 204 violations; prepare penalties calculations; confer with co-counsel re same.
1.10	Confer with defense counsel regarding settlement negotiations; review and respond to correspondence re same.
9.30	Prepare PAGA Settlement Agreement; review and respond to correspondence with defense counsel re revisions to Settlement Agreement; meet and confer with defense counsel re same; conference with co-counsel regarding same.
1.00	Review terms of settlement agreement with client.
8.20	Prepare Motion for Approval of PAGA Settlement and supporting declarations.
40.30	TOTAL HOURS