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Attorneys for Plaintiff Phillip Batista, individually,
and on behalf of all others similarly situated.

[Additional counsel listed on following page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

PHILLIP BATISTA, individually and on behalf
of all others similarly situated,

Plaintiff,

vs.

RAILSERVE, INC.; and DOES 1 through 20,
inclusive,

Defendants.

Case No.: 20CV366688

Assigned for all purposes to:

Hon. Sunil R. Kulkarni

Dept.: 1

JOINT STIPULATION OF SETTLEMENT

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9 Attorneys for Defendant
RAILSERVE, INC.
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1 It is stipulated and agreed by and among the undersigned Parties, subject to the approval of
2 the Court pursuant to the California Rules of Court, that the Settlement of this Action shall be
3 effectuated upon and subject to the following terms and conditions. Capitalized terms used herein
4 shall have the meanings set forth in Article I or as defined elsewhere in this Joint Stipulation of
5 Settlement (“Agreement” or “Settlement”).

6 This Agreement is made by and between Named Plaintiff Phillip Batista (“Named Plaintiff”) and the Class Members, on the one hand, and Defendant Railserve, Inc. (“Railserve” or
7 “Defendant”), on the other hand. Named Plaintiff and Defendant collectively are referred to in this
8 Agreement as “the Parties.”

9 The Parties agree that the Action shall be, and hereby is, ended, settled, resolved, and
10 concluded by agreement of Defendant to pay the settlement amount of Three Hundred Four Thousand
11 Six Hundred Twenty Three Dollars (\$304,623.00) as provided in Section 3.06(a) below (“Gross
12 Settlement Amount”) pursuant to the terms and conditions of this Agreement and for the
13 consideration set forth herein, including but not limited to, a release of all claims by Named Plaintiff
14 and the Class Members as set forth herein.

15 **ARTICLE I**

16 **DEFINITIONS**

17 Unless otherwise defined herein, the following terms used in this Agreement shall have the
18 meanings ascribed to them as set forth below:

19 a. “Action” means the action described as follows: *Phillip Batista, individually and on*
20 *behalf of all others similarly situated v. Railserve, Inc.*; and DOES 1 through 20, inclusive,” Case
21 No. 20CV366688, commenced on May 22, 2020, in the Superior Court of the State of California for
22 the County of Santa Clara.

23 b. “Agreement” means this Joint Stipulation of Settlement, including the attached
24 Exhibit(s).

25 c. “Class” means all current and former non-exempt employees who are or were
26 employed by Defendant in California at any time during the Class Period.

27 d. “Class Counsel” means the attorneys for the Class and the Class Members, who are:

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Samuel A. Wong
Jessica L. Campbell
Alexander G.L. Davies
Giovanni Chavez
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e. “Class List” means a list based on Defendant’s business records that identifies each Class Member’s name, last known home or mailing address, Social Security number or, as applicable, other taxpayer identification number, dates of employment, and the number of Qualifying Workweeks worked during the Class Period.

f. “Class Member(s)” means all members of the Class.

g. “Class Period” means April 8, 2016 through April 14, 2021.

h. “Court” means the California Superior Court for the County of Santa Clara, where the Action is currently pending.

i. “Defendant” means Defendant Railserve, Inc.

j. “Defense Counsel” means counsel for Defendant:

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k. “Disposition” means the method by which the Court approves the terms of the Settlement and retains jurisdiction over its enforcement, implementation, construction, administration, and interpretation.

1 l. “Effective Date” means the latter of following: (a) the Court’s final approval of the
2 settlement, if no objections by or on behalf of the Class Members are filed and not withdrawn; (b)
3 the time for appeal expires if an objection is filed and no appeal is filed or withdrawn; or (c) the final
4 resolution of any appeal filed.

5 m. “Final Order Approving Settlement of Class Action” or “Final Order” means the final
6 formal court order signed by the Court following the Final Fairness and Approval Hearing in
7 accordance with the terms herein, approving this Agreement.

8 n. “Gross Settlement Amount” means Three Hundred Four Thousand Six Hundred
9 Twenty Three Dollars and Zero Cents (\$304,623.00) to be paid by Defendant within thirty (30) days
10 of the Effective Date, as provided by this Agreement to settle this Action. All claims of the Class
11 and all administration costs, attorney’s fees and costs, and Incentive Awards, pursuant to Section
12 3.07(a) below, shall be paid out of the Gross Settlement Amount. The employer’s share of payroll
13 taxes arising from the payments made under this settlement shall be paid by Defendant separate from
14 and in addition to the Gross Settlement Amount. The Gross Settlement Amount is subject to a pro
15 rata increase pursuant to Section 3.04(e) below. No part of the Gross Settlement Amount shall revert
16 to Defendant.

17 o. “Incentive Award” means a monetary amount of up to Seven Thousand Five Hundred
18 Dollars (\$7,500.00) for the Named Plaintiff, subject to Court approval, in recognition of their effort
19 and work in prosecuting the Action on behalf of Class Members, and for their general release of
20 claims.

21 p. “Individual Settlement Payment(s)” means each Participating Class Member’s
22 respective share of the Net Settlement Amount. Individual Settlement Payments will be determined
23 by the calculations provided in this Agreement.

24 q. “LWDA” means The State of California Labor and Workforce Development Agency.

25 r. “LWDA Payment” means 75% of the \$24,000 allocated to the settlement of PAGA
26 claims which, subject to Court approval, will be paid to the LWDA pursuant to Section 3.07(e) of
27 this Agreement, as provided for below.

1 s. "Motion for Final Approval" means Plaintiff's submission of a written motion,
2 including any evidence as may be required for the Court to conduct an inquiry into the fairness of
3 the Settlement as set forth in this Agreement, to conduct a Final Fairness and Approval Hearing, and
4 to enter a Final Order in this Action.

5 t. "Motion for Preliminary Approval" means Plaintiff's submission of a written motion,
6 including any evidence as may be required for the Court to grant preliminary approval of the
7 Settlement as required by Rule 3.769 of the California Rules of Court.

8 u. "Named Plaintiff" means Phillip Batista.

9 v. "Net Settlement Amount" means the Gross Settlement Amount less Court-approved
10 administration costs, Class Counsels' attorney's fees and costs, Incentive Awards, and LWDA
11 Payment, pursuant to Section 3.07(a)-(f) below.

12 w. "Non-Participating Class Member(s)" means any Class Member(s) who submit to the
13 Settlement Administrator a valid and timely written request to be excluded from the Class pursuant
14 to Section 3.04(b) below.

15 x. "Notice Packet" means the Notice of Proposed Class Action Settlement in a form
16 substantially similar to the Notice Packet attached hereto as **Exhibit A**, subject to Court approval.

17 y. "PAGA" means the California Private Attorneys General Act of 2004, which is
18 codified in California Labor Code §§ 2698 *et seq.*

19 z. "PAGA Settlement Amount" means the portion of the Gross Settlement Amount
20 allocated to the resolution of PAGA Group Members' claims arising under PAGA. The Parties have
21 agreed that the PAGA Settlement Amount is Twenty Four Thousand Dollars (\$24,000), subject to
22 Court approval. Of the PAGA Settlement Amount, 75% will be considered the LWDA Payment,
23 and the remaining 25% will be added to the Net Settlement Amount and distributed to PAGA Group
24 Members.

25 aa. "PAGA Group Members" means all Class Members employed by Defendant at any
26 time between April 8, 2019 through April 14, 2021 ("PAGA Period").

27 bb. "Participating Class Member(s)" is defined as a Class Member who does not timely
28 exclude himself or herself from the Settlement and will therefore receive his or her share of the Net

1 Settlement Amount automatically without the need to return a claim form. Each Participating Class
2 Member will be paid his/her Individual Settlement Payment.

3 cc. "Preliminary Approval Date" means the date the Court preliminarily approves the
4 Settlement embodied in this Agreement.

5 dd. "Qualified Settlement Fund" or "QSF" means a fund within the meaning of Treasury
6 Regulation § 1.468B-1, 26 CFR § 1.468B-1 *et seq.*, that is established by the Settlement
7 Administrator for the benefit of Participating Class Members.

8 ee. "Qualifying Workweeks" means the number of weeks that Class Members worked
9 for Defendant as non-exempt employees during the Class Period.

10 ff. "Released Parties" means Defendant and its past and present officers, directors,
11 shareholders, unit holders, managers, employees, agents, principals, heirs, representatives,
12 accountants, auditors, consultants, and its respective successors and predecessors in interest,
13 subsidiaries, affiliates, parents, and attorneys.

14 gg. "Response Deadline" means the deadline by which Class Members must postmark or
15 fax to the Settlement Administrator requests for exclusion or written notices of objection. The
16 Response Deadline will be sixty (60) calendar days after the initial mailing of the Notice Packet by
17 the Settlement Administrator, unless the sixtieth (60th) calendar day falls on a Sunday or federal
18 holiday, in which case the Response Deadline will be extended to the next day on which the U.S.
19 Postal Service is open. The Response Deadline will be extended as set forth herein if there is a re-
20 mailing.

21 hh. "Settlement Administration Costs" means all costs incurred by the Settlement
22 Administrator in administration of the Settlement, including, but not limited to, mailing of notice to
23 the class, calculation of Individual Settlement Payments, generation of Individual Settlement
24 Payment checks and related tax reporting forms, administration of unclaimed checks, and generation
25 of checks to Class Counsel for attorneys' fees and costs, to Named Plaintiff for his Incentive Award,
26 and to the LWDA. The Settlement Administration Costs shall be paid from the Gross Settlement
27 Amount.

CONTINGENT NATURE OF THE AGREEMENT

7 Because the Parties have stipulated to the certification of the Class with respect to all causes
8 of action alleged in the Action for settlement purposes only, this Agreement requires preliminary and
9 final approval by the Court. Accordingly, the Parties enter into this Agreement on a conditional basis.
0 This Agreement is contingent upon the approval and certification by the Court. If the Effective Date
1 does not occur, the fact that the Parties were willing to stipulate for the purposes of this Agreement
2 to a Class shall have no bearing on, nor be admissible in connection with, the issue of certification
3 of the Class with respect to any causes of action alleged in the Action. Defendant does not consent
4 to certification of the Class for any purpose other than to effectuate settlement of the Action. If the
5 Effective Date does not occur, or if Disposition of this Action is not effectuated, any certification of
6 the Class as to Defendant will be vacated and Named Plaintiff, Defendant, and the Class will be
7 returned to their positions with respect to the Action as if the Agreement had not been entered into.
8 In the event that the Effective Date does not occur: (a) any Court orders preliminarily or finally
9 approving certification of any class contemplated by this Agreement shall be null, void, and vacated,
0 and shall not be used or cited thereafter by any person or entity; and (b) the fact of the settlement
1 reflected in this Agreement, the fact that Defendant did not oppose the certification of a Class under
2 this Agreement, or that the Court preliminarily approved the certification of the Class, shall not be
3 used or cited thereafter by any person or entity, including in any manner whatsoever, including
4 without limitation any contested proceeding relating to the certification of any class. If the Effective
5 Date does not occur, this Agreement shall be deemed null and void, shall be of no force or effect
6 whatsoever, and shall not be referred to or used for any purpose whatsoever. Defendant expressly
7 reserves the right to challenge the propriety of class certification in the Action for any purpose, if the
8 Effective Date does not occur.

1 The Parties and their respective counsel shall take all steps that may be requested by the Court
2 relating to the approval and implementation of this Agreement and shall otherwise use their
3 respective best efforts to obtain Court approval and implement this Agreement. If the Court does not
4 grant the Motion for Preliminary Approval and/or the Motion for Final Approval, the Parties agree
5 to meet and confer to address the Court's concerns. If the Parties are unable to agree upon a
6 resolution, the Parties agree to seek the assistance of mediator Marc Feder, Esq. to resolve the dispute.

7 **ARTICLE III**

8 **PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF THE SETTLEMENT**

9 The procedure for obtaining Court approval of and implementing this Agreement shall be as
10 follows:

11 **Section 3.01: Motion for Conditional Class Certification and Preliminary Approval**

12 Named Plaintiff will bring a motion before the Court for an order conditionally certifying the
13 Class to include all claims pled in the Action based on the preliminary approval of this Agreement.
14 The date that the Court grants preliminary approval of this Agreement will be the "Preliminary
15 Approval Date."

16 **Section 3.02: The Settlement Administrator**

17 The Parties have chosen Simpluris, Inc. to administer this Settlement and to act as the
18 Settlement Administrator, including but not limited to distributing and responding to inquiries about
19 the Notice Packet, determining the validity of exclusions/opt-outs, calculating the Net Settlement
20 Amount and the Individual Settlement Payments, issuing the Individual Settlement Payment checks
21 and distributing them to Participating Class Members, establishing and maintaining the QSF, and
22 issuing the payment to Class Counsel for attorneys' fees and costs, the Incentive Award check to
23 Named Plaintiff, the LWDA Payment, and the employer payroll taxes to the appropriate taxing
24 authorities. The Settlement Administrator shall expressly agree to all of the terms and conditions of
25 this Agreement.

26 All costs of administering the Settlement, including but not limited to all costs and fees
27 associated with preparing, issuing and mailing any and all notices to Class Members and/or
28 Participating Class Members, all costs and fees associated with computing, processing, reviewing,

1 and mailing the Individual Settlement Payments, all costs and fees associated with preparing any tax
2 returns and any other filings required by any governmental taxing authority or agency, all costs and
3 fees associated with preparing any other checks, notices, reports, or filings to be prepared in the
4 course of administering disbursements from the Net Settlement Amount, and any other costs and fees
5 incurred and/or charged by the Settlement Administrator in connection with the execution of its
6 duties under this Agreement (“Settlement Administration Costs”), shall be paid to the Settlement
7 Administrator from the Gross Settlement Amount.

8 **Section 3.03: Notice to Class Members**

9 No later than thirty (30) days after the Preliminary Approval Date, Defendant will provide
10 the Settlement Administrator with a “Class List” in electronic format based on its business records,
11 identifying the names of the Class Members, their last known home addresses, Social Security
12 numbers or, as applicable, other taxpayer identification number, their dates of employment and weeks
13 worked during the Class Period.

14 Within ten (10) business days of receiving a Class List from Defendant, the Settlement
15 Administrator will send Class Members, by first-class mail, at their last known address, the Court
16 approved Notice Packet, including notice of this Settlement and of the opportunity to opt out of the
17 Settlement Class. The Notice Packet will include a calculation of the Class Member’s approximate
18 share of the Net Settlement Amount. Class Members will have sixty (60) days from the date of
19 mailing in which to postmark objections or requests for exclusion. Prior to the initial mailing, the
20 Settlement Administrator will check all Class Member addresses against the National Change of
21 Address database and shall update any addresses before mailing. The Settlement Administrator will
22 skip trace and re-mail all returned, undelivered mail within five (5) days of receiving notice that a
23 Notice Packet was undeliverable. If a Class Member’s notice is re-mailed, the Class Member shall
24 have fifteen (15) calendar days from the re-mailing, or sixty (60) calendar days from the date of the
25 initial mailing, whichever is later, in which to postmark objections or requests for exclusion. Class
26 Members are not required to submit claim forms to receive a proportional share of the Net Settlement
27 Amount.

1 If the Notice Packet is returned with a forwarding address, the Settlement Administrator shall
2 re-mail the Notice Packet to the forwarding address. With respect to those Class Members whose
3 Notice Packet is returned to the Settlement Administrator as undeliverable, the Settlement
4 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or
5 mass search on LexisNexis or comparable databases based on set criteria and, if another address is
6 identified, shall mail the Notice Packet to the newly identified address. It is the intent of the Parties
7 that the Settlement Administrator use reasonable means to locate Class Members and use discretion
8 to take steps to facilitate notice of the Settlement and delivery of the Individual Settlement Payments
9 to all Participating Class Members.

10 If the Notice Packet is re-mailed, the Settlement Administrator will note for its own records
11 and notify Class Counsel and Defense Counsel of the date of each such re-mailing as part of a weekly
12 status report provided to the Parties.

13 In the event a Class Member's Notice Packet remains undeliverable sixty (60) calendar days
14 after the Notice Packet was initially mailed, the Settlement Administrator will not mail the Class
15 Member's Individual Settlement Payment. The Settlement Administrator will hold the Class
16 Member's Individual Settlement Payment during the check cashing period on behalf of the Class
17 Member. If at the conclusion of the check cashing period the Class Member's Notice Packet and
18 Individual Settlement Payment remain undeliverable and/or unclaimed and uncashed, the Settlement
19 Administrator will distribute the funds from unclaimed/uncashed checks in accordance with the
20 procedures set forth in Section 3.07(g) below.

21 No later than twenty (20) court days prior to the Final Fairness and Approval Hearing, the
22 Settlement Administrator shall provide Defense Counsel and Class Counsel with a declaration
23 attesting to completion of the notice process, including any attempts to obtain valid mailing addresses
24 for and re-sending of any returned Notice Packets, as well as the number of valid requests for
25 exclusion and objections that the Settlement Administrator received.

Section 3.04: Responses to Notice

a. Class Member Disputes

If any Class Member disagrees with Defendant's records as to the Class Member's Qualifying Workweeks during the Class Period as reflected in the Notice Packet, the Class Member shall set forth in writing the Qualifying Workweeks the Class Member claims to have worked during the Class Period and submit such writing to the Settlement Administrator by the Response Deadline, along with any supporting documentation. The Notice will also provide a method for the Class Member to challenge the employment data on which his or her Individual Settlement Payment is based. The Settlement Administrator shall contact the Parties regarding the dispute and the Parties will work in good faith to resolve it. If the Parties are unable to resolve the dispute, the Settlement Administrator is the final arbiter of the Qualifying Workweeks for each Class Member during the Class Period based on information provided by the Class Member and Defendant.

b. Requests for Exclusion from Class

Valid exclusion of a Class Member from the Class and Settlement (i.e., to validly opt out), the Class Member or the Class Member's authorized representative must send the Settlement Administrator a written request for exclusion signed by the Class Member or the Class Member's authorized representative, postmarked no later than the Response Deadline (or fifteen (15) days after the Settlement Administrator re-mails the Notice to the Class Member, whichever is later). The Notice Packet shall contain instructions on how to validly exclude the Class Member from the Class and this Settlement (i.e., opt out), including the language to be used in a request for exclusion. The date of the initial mailing of the Notice Packet, and the date the signed request for exclusion is postmarked, shall be conclusively determined according to the records of the Settlement Administrator. Any Class Member who timely and validly requests exclusion from the Class and this Settlement is not entitled to any Individual Settlement Payment, is not bound by the terms and conditions of this Agreement, and does not have any right to object, appeal, or comment thereon.

Any Class Member who fails to timely submit a request for exclusion is automatically a Class Member whose rights and claims with respect to the issues raised in the Action are determined by the Court's Final Order Approving Settlement of Class Action, and by the other rulings in the Action.

Thus, said Class Member's rights to pursue any claims covered by the Action and/or released in this Agreement are extinguished.

c. Objections to Settlement

For any Class Member to object to this Agreement, or any term of it, the person making the objection must not submit a request for exclusion (*i.e.*, must not opt out), and should send to the Settlement Administrator, postmarked or faxed no later than the Response Deadline (or fifteen (15) days after the Settlement Administrator re-mails the Notice to the Class Member, whichever is later), a written statement of the grounds of objection, signed by the objecting Class Member or the Class Member's attorney, along with all supporting papers. The date of the initial mailing of the Notice Packet, and the date the signed objection was postmarked, shall be conclusively determined according to the records of the Settlement Administrator. The Settlement Administrator shall send any objections it receives to Defense Counsel and Class Counsel within three (3) business days of receipt. Class Members may also appear at the final approval hearing to object. The Court retains final authority with respect to the consideration and admissibility of any Class Member objections.

d. Encouragement of Class Members

The Parties to this Agreement and the counsel representing such Parties shall not, directly or indirectly, through any person, encourage or solicit any Class Member to exclude him or herself from this Settlement (opt out), or to object to it. Class Counsel may respond to inquiries from Class Members.

e. Right of Plaintiff to Adjust Gross Settlement Amount

Defendant has estimated the number of Class Members as 75 and the number of workweeks as 5,973. If the number of Class Members or workweeks increases by more than 10% (which is more than 83 Class Members or 6,570) as of the end of the Class Period, then the Gross Settlement Amount will include a proportional pro rata adjustment for any workweeks in excess of the 10% (*i.e.*, if there is a 12% increase in the number of workweeks during the Class Period, Defendant would increase the Gross Settlement Amount by 2%).

f. Right of Defendant to Withdraw

1 If 5% or more of the Class Members exercise their rights to exclude themselves and opt out,
2 Defendant may, in its sole discretion, unilaterally withdraw from and terminate the Settlement. In the
3 event of Defendant's withdraw, neither Plaintiff nor Defendant may, for any reason, use the fact that
4 the Parties agreed to resolution. If Defendant withdraws from the Settlement, Defendant shall pay
5 the incurred administration costs as of the date of the voiding of this Agreement, in addition to the
6 costs associated with notifying the Class Members.

7 **Section 3.05: Final Fairness and Approval Hearing**

8 On the date set forth in the Order for Preliminary Approval and Notice Packet, a Final
9 Fairness and Approval Hearing shall be held before the Court to (1) review this Agreement and
10 determine whether the Court should give it final approval, and (2) consider any objections made and
11 all responses by the Parties to such objections. At the Final Fairness and Approval Hearing, the
12 Parties shall ask the Court to grant final approval to this Agreement and shall submit to the Court a
13 Proposed Final Order Approving Settlement of Class Action.

14 **Section 3.06: Settlement Payment Procedures**

15 **a. Settlement Amount**

16 In exchange for the Released Claims set forth in this Agreement, Defendant agrees to pay the
17 Gross Settlement Amount in the amount of Three Hundred Four Thousand Six Hundred and Twenty
18 Three Dollars (\$304,623.00), subject to a pro rata increase under the condition set forth in Section
19 3.04(e). The Gross Settlement Amount includes all Individual Settlement Amounts to Participating
20 Class Members, all administration costs, Class Counsel's attorney's fees and costs, PAGA Settlement
21 Amount, and the Incentive Award.

22 Within thirty (30) calendar days of the Effective Date, Defendant shall transfer the Gross
23 Settlement Amount plus Defendant's share of employer-side payroll taxes, as set forth herein, into a
24 QSF established by the Settlement Administrator either directly or by sending the funds to the
25 Settlement Administrator for deposit and distribution. The Settlement Administrator will use these
26 funds to fund payment of the Individual Settlement Payments to Participating Class Members, Class
27 Counsel's attorneys' fees and costs, the Incentive Award, the LWDA Payment, and the Settlement
28 Administration Costs.

1 Within ten (10) court days after receiving Defendants' final payment, funding the Gross
2 Settlement Amount in full, the Settlement Administrator will pay the Individual Settlement Payments
3 to Participating Class Members, Class Counsel's attorneys' fees and costs, LWDA Payment, the
4 Incentive Awards, and employer and employee tax withholdings applicable to the Net Settlement
5 Amount allocated to wages. Prior to this distribution, the Settlement Administrator will perform a
6 search based on the National Change of Address Database to update and correct for any known or
7 identifiable address changes.

8 **b. Payment of Attorneys' Fees and Costs**

9 Class Counsel shall submit an application for an award of attorneys' fees of up to one-third
10 of the Gross Settlement Amount, which, based on the current Gross Settlement Amount, is One
11 Hundred One Thousand Five Hundred and Forty-One Dollars and Zero Cents (\$101,541.00). Class
12 Counsel shall submit an application for an award of costs not to exceed Ten Thousand Dollars
13 (\$10,000.00). Such application for attorneys' fees and costs shall be heard by the Court at the Final
14 Fairness and Approval Hearing. Defendant shall not object to or oppose any such application in these
15 amounts. Class Counsel shall serve Defendant with copies of all documents submitted in support of
16 their application for an award of attorneys' fees and costs.

17 Any attorneys' fees and costs awarded to Class Counsel by the Court shall be paid from the
18 Gross Settlement Amount and shall not constitute payment to any Class Member(s). The attorneys'
19 fees and costs for Class Counsel approved by the Court shall encompass all work performed, costs,
20 and expenses related to the investigation, prosecution, and settlement of the Action incurred through
21 the Effective Date. To the extent that the Court approves less than the amount of attorney's fees
22 and/or costs that Class Counsel requests, the difference between the requested and awarded amounts
23 will be reallocated to the Net Settlement Amount.

24 **c. Payment of Settlement Administration Costs**

25 The Settlement Administration Costs shall be paid out of the Gross Settlement Amount and
26 shall not constitute payment to any Participating Class Member(s). The amount shall not exceed Four
27 Thousand Two Hundred Dollars (\$4,200.00).
28

d. Payment of Incentive Award to Named Plaintiff

Subject to Court approval, the Named Plaintiff shall receive an Incentive Award of up to Seven Thousand Five Hundred Dollars (\$7,500.00), the request for which Defendant will not object to or oppose. The Incentive Awards shall be paid out of the Gross Settlement Amount and shall not constitute payment to any Participating Class Member(s) other than Named Plaintiff. To the extent that the Court approves less than the amount of incentive award that Class Counsel request, the difference between the requested and awarded amounts will be reallocated to the Net Settlement Amount.

Because it is the intent of the Parties that the Incentive Award represents payment to Named Plaintiff for his service to the Class Members, and not wages, the Settlement Administrator will not withhold any taxes from the Incentive Awards. The Incentive Awards will be reported on a Form 1099, which the Settlement Administrator will provide to Named Plaintiff and to the pertinent taxing authorities as required by law.

e. Payment to the Labor and Workforce Development Agency

In consideration of claims made under PAGA, Class Counsel will request that the Court approve allocation of Twenty Four Thousand Dollars (\$24,000) of the Gross Settlement Amount to these claims. Seventy-five percent (75%) of this payment will be paid to the California Labor and Workforce Development Agency ("LWDA Payment"), and twenty-five percent (25%) will be paid to the Net Settlement Amount for distribution to PAGA Group Members. Defendant will not oppose this request. The entire PAGA Settlement Amount will be paid out of the Gross Settlement Amount. The Court's adjustment, if any, of the amount allocated to Named Plaintiff's PAGA claim in the Action, will not invalidate this Agreement or affect the Gross Settlement Amount.

f. Payment of Individual Settlement Payments to Participating Class Members

The Parties agree that the Net Settlement Amount shall be used to fund Individual Settlement Payments. The Parties agree that the Net Settlement Amount shall be divided between all Participating Class Members in proportion to the number of individual Qualifying Workweeks for each Class Member. To calculate the minimum amount each Class Member will receive based on their individual Qualifying Workweeks, the Net Settlement Amount will be divided by the total

number of Qualifying Workweeks by all Class Members during the Class Period and then allocated on a pro rata basis. Qualifying Workweeks will be rounded up to the next whole integer. Each Class Member's approximate Individual Settlement Payment amount will be included in his or her Notice Packet. After final approval by the Court, the Net Settlement Amount will be dispersed to Participating Class Members (those who did not exclude themselves) on a pro rata basis based on the individual Qualifying Workweeks worked during the Class Period by each Participating Class Member.

Each Individual Settlement Payment will represent wages and penalties allocated using the following formula: 30% allocated to wages; 70% allocated to interest and 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. The employer-side taxes will be paid separate from and in addition to the Gross Settlement Amount. 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.

No later than ten (10) business days after receiving the Gross Settlement Amount from Defendant, the Settlement Administrator shall prepare and mail the checks for the Individual Settlement Payments to Participating Class Members. Individual Settlement Payments paid from the Net Settlement Amount allocated to wages will be reduced by applicable employer and employee tax withholdings, and the Settlement Administrator will issue a Form W-2 for the wage portion of the Individual Settlement Payments. The Settlement Administrator will issue a Form 1099 to the extent required by law for the interest and penalty portions of the Individual Settlement Payments. Participating Class Members shall have 180 days from the date their Individual Settlement Payment checks are dated to cash their Settlement checks. Any checks that are not cashed upon the expiration of that 180-day period are void, and uncashed funds paid to the State Controller Unclaimed Property Fund in the name of the Class Member for whom the funds are designated.

If a check is returned to the Settlement Administrator as undeliverable, the Settlement Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or

1 a mass search on LexisNexis or comparable database based on set criteria and, if another address is
2 identified, the Settlement Administrator shall mail the check to the newly identified address. If the
3 Settlement Administrator is unable to obtain a valid mailing address through this process, the
4 Settlement Administrator will tender the funds from the undeliverable checks to the State Controller
5 Unclaimed Property Fund in the name of the Class Member for whom the funds are designated.

6 **g. Default on Payment.**

7 Defendant's failure to fund the Gross Settlement Amount within sixty (60) calendar days after
8 the date that the Court grants final approval of the Settlement shall be considered a default. In the
9 event Defendant fails to timely fund the Gross Settlement Amount, the Settlement Administrator will
10 provide notice to Class Counsel and Defendant's counsel within three (3) business days of the missed
11 payment. Thereafter, Defendant will have seven (7) days to cure the default and tender payment to
12 the Settlement Administrator. In the event Defendant fails to cure the default within the times set
13 forth herein, Named Plaintiff may elect to enter judgment against Defendant, on an ex parte basis,
14 for the balance of the unpaid Gross Settlement Amount to date, and Named Plaintiff is entitled to
15 interest at ten percent (10%) per year from the due date for such payment and reasonable attorneys'
16 fees and costs.

17 **h. No Credit Toward Benefit Plans.**

18 The Individual Settlement Payments made to Participating Class Members under this
19 Agreement, as well as any other payments made pursuant to this Agreement, will not be utilized to
20 calculate any additional benefits under any benefit plans to which any Class Members may be
21 eligible, including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase
22 plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties'
23 intention that this Agreement will not affect any rights, contributions, or amounts to which any Class
24 Members may be entitled under any benefit plans.

ARTICLE IV

LIMITATIONS ON USE OF THIS SETTLEMENT

Section 4.01: No Admission

Defendant disputes the allegations in the Action and disputes that, but for this Settlement, a Class should not have been certified in the Action. This Agreement is entered into solely for the purpose of settling highly disputed claims. Nothing in this Agreement is intended nor will be construed as an admission of liability or wrongdoing by Defendant.

Section 4.02: Non-Evidentiary Use

Whether or not the Effective Date occurs, neither this Agreement, nor any of its terms, nor the Settlement itself, will be: (a) construed as, offered, or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Defendant or any other of the Released Parties, including but not limited to, evidence of a presumption, concession, indication, or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or (b) disclosed, referred to, or offered in evidence against any of the Released Parties in any further proceeding in the Action, except for the purposes of effectuating the Settlement pursuant to this Agreement or for Defendant to establish that a Class Member has resolved any of his or her claims released through this Agreement.

Section 4.03: Nullification

The Parties have agreed to the certification of the Class encompassing all claims alleged in the Action for the sole purpose of effectuating this Agreement. If (a) the Court should for any reason fail to certify this Class for settlement, or (b) the Court should for any reason fail to approve this Settlement, or (c) the Court should for any reason fail to enter the Final Order, or (d) the Final Order is reversed, or declared or rendered void, or (e) the Court should for any reason fail to dispose of the Action in its entirety, then (i) this Agreement shall be considered null and void; (ii) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect; (iii) all Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had been neither entered into nor filed with the Court; and (iv) the fact that the Parties were willing to stipulate to class certification of all causes of action pled in the Action as part of the Settlement will

1 have no bearing on, and will not be admissible in connection with, the issue of whether the Class
2 should be certified by the Court in a non-settlement context in this Action or any other action, and in
3 any of those events, Defendant expressly reserves the right to oppose certification of the Class.

4 In the event of a timely appeal from the Final Order, the Final Order shall be stayed and the
5 Gross Settlement Amount shall not be distributed pending the completion of the appeal.

6 **Section 4.04: Confidentiality and Non-Publicity Provision**

7 The Parties and their attorneys shall keep the settlement confidential through preliminary
8 approval, except for purposes of enforcement. No Party will issue any press release nor other public
9 or non-public representation regarding the settlement at any time, other than as necessary to obtain
10 Court approval and effectuate the terms of the settlement. The Parties and their counsel agree that
11 they will not initiate or have any contact with the press, respond to any press inquiry, or have any
12 communication with the press about this case. For the limited purpose of allowing Plaintiff's Counsel
13 to argue adequacy as counsel in other actions or for purposes of seeking approval of an unrelated
14 settlement, Plaintiff's Counsel may refer to any information in the public record regarding this
15 settlement for such purposes.

16 **ARTICLE V**

17 **RELEASES**

18 **Section 5.01: Released Claims by Class Members**

19 Upon the date Defendant transfers the Gross Settlement Amount to the Settlement
20 Administrator, Named Plaintiff and Participating Class Members who do not opt out of the
21 Settlement, release the Released Parties from any and all claims, demands, rights, liabilities, and
22 causes of action alleged or that could have been alleged in Named Plaintiff's Operative Complaint
23 based on the facts alleged, which arose during the Class Period, including but not limited to (1) failure
24 to pay minimum wages (2) failure to pay overtime and/or double time wages (3) failure to provide
25 meal periods (4) failure to authorize or permit rest periods (5) failure to provide accurate itemized
26 wage statements (6) failure to pay wages upon separation of employment and within the required
27 time (7) violation of California Business and Professions Code §§17200, *et seq.* and (8) any claims
28 asserted under the Private Attorney General Act, based on the preceding claims ("Released Claims").

1 **Section 5.02: Released Claims by PAGA Group Members**

2 Upon the date Defendant transfers the Gross Settlement Amount to the Settlement
3 Administrator, the State of California and PAGA Group Members release the Released Parties from
4 all claims exhausted in Plaintiff's notice(s) sent to the LWDA and alleged in the operative complaint,
5 which arose during the PAGA Period, regardless of whether PAGA Group Members opt out of the
6 Class Settlement.

7 **Section 5.03: Named Plaintiff's Release of Unknown Claims**

8 Upon the date Defendant transfers the Gross Settlement Amount to the Settlement
9 Administrator, Named Plaintiff, waives, releases, acquits, and forever discharges the Released
10 Parties from any and all claims, demands, rights, liabilities, and causes of action, of any nature arising
11 from Named Plaintiff's employment with Defendant, whether known or unknown, which exist or
12 may exist as of the Parties' execution of this Agreement, except as prohibited by law, such as claims
13 for workers' compensation benefits.

14 Section 1542 of the California Civil Code provides as follows:

15 *"A general release does not extend to claims which the creditor does not*
16 *know or suspect to exist in his or her favor at the time of executing the*
17 *release, which if known by him or her must have materially affected his*
18 *or her settlement with the debtor."*

19 Plaintiff's general release provided herein is made with an express waiver and relinquishment
20 of any claim, right, or benefit under California Civil Code § 1542.

21 **ARTICLE VI**

22 **MISCELLANEOUS PROVISIONS**

23 **Section 6.01: Amendments or Modification**

24 The terms and provisions of this Agreement may be amended or modified only by an express
25 written agreement that is signed by all the Parties (or their successors-in-interest) and their counsel.

26 **Section 6.02: Assignment**

27 None of the rights, commitments, or obligations recognized under this Agreement may be
28 assigned by any Party, Class Member, Class Counsel, or Defense Counsel without the express written

consent of each other Party and their respective counsel. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under this Agreement and shall not be construed to confer any right or to avail any remedy to any other person.

Section 6.03: Governing Law

This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California, without regard to conflicts of laws.

Section 6.04: Entire Agreement

This Agreement, including the Exhibits referred to herein, which form an integral part hereof, contains the entire understanding of the Parties with respect to the subject matter contained herein. In case of any conflict between text contained in Articles I through VI of this Agreement and text contained in the Exhibits to this Agreement, the former (*i.e.*, Articles I through VI) control, unless the Exhibits are changed by or in response to a Court order. There are no restrictions, promises, representations, warranties, covenants, or undertakings governing the subject matter of this Agreement other than those expressly set forth or referred to herein. This Agreement supersedes all prior agreements and understandings among the Parties with respect to the settlement of the Action, including correspondence between Class Counsel and Defense Counsel and drafts of prior agreements or proposals.

Section 6.05: Waiver of Compliance

Any failure of any Party, Defense Counsel, or Class Counsel hereto to comply with any obligation, covenant, agreement, or condition set forth in this Agreement is expressly waivable in writing, to the extent permitted under applicable law, by the Party or Parties and their respective counsel entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

Section 6.06: Counterparts and Fax/PDF Signatures

This Agreement, and any amendments hereto, may be executed in any number of counterparts and any Party and/or their respective counsel may execute any such counterpart, each of which when

1 executed and delivered shall be deemed to be an original. All counterparts taken together shall
2 constitute one instrument. A fax or PDF signature on this Agreement shall be as valid as an original
3 signature.

4 **Section 6.07: Meet and Confer Regarding Disputes**

5 Should any dispute arise among the Parties or their respective counsel regarding the
6 implementation or interpretation of this Agreement, a representative of Class Counsel and a
7 representative of Defense Counsel shall meet and confer to attempt resolution of such disputes prior
8 to submitting such disputes to the Court.

9 **Section 6.08: Agreement Binding on Successors**

10 This Agreement is binding upon, and inures to the benefit of, the successors in interest of
11 each of the Parties.

12 **Section 6.09: Cooperation in Drafting**

13 The Parties have cooperated in the negotiation and preparation of this Agreement. This
14 Agreement will not be construed against any Party on the basis that the Party, or the Party's counsel,
15 was the drafter or participated in the drafting of this Agreement.

16 **Section 6.10: Fair and Reasonable Settlement**

17 The Parties believe that this Agreement reflects a fair, reasonable, and adequate settlement of
18 the Action and have arrived at this Agreement through arm's-length negotiation and in the context
19 of adversarial litigation, accounting for all relevant factors, current and potential. The Parties further
20 believe that the Settlement is and is consistent with public policy, and fully complies with applicable
21 law.

22 **Section 6.11: Headings**

23 The descriptive heading of any section or paragraph of this Agreement is for convenience of
24 reference only and does not constitute a part of this Agreement and shall not be considered in
25 interpreting this Agreement.

26 **Section 6.12: Notice**

27 Except as otherwise expressly provided in the Agreement, all notices, demands, and other
28 communications under this Agreement must be in writing and addressed as follows:

To Named Plaintiff and the Class:

Kashif Haque
Samuel A. Wong
Jessica L. Campbell
Alexander G.L. Davies
Giovanni Chavez
AEGIS LAW FIRM, PC
9811 Irvine Center Drive, Suite 100
Irvine, California 92618
Telephone: (949) 379-6250
Facsimile: (949) 379-6251

And

To Defendant:

Andrew J. Hoag
E-Mail ahoag@fisherphillips.com
FISHER & PHILLIPS LLP
444 South Flower Street, Suite 1500
Los Angeles, California 90071
Telephone: (213) 330-4500
Facsimile: (213) 330-4501

Philip J. Smith
E-Mail psmith@fisherphillips.com
One Embarcadero Center, Suite 250
San Francisco, California 94111
Telephone: (415) 490-9000
Facsimile: (415) 490-9001

Section 6.13: Enforcement of Settlement and Continuing Court Jurisdiction

To the extent consistent with class action procedure, this Agreement is enforceable by the Court pursuant to California Code of Civil Procedure section 664.6 and California Rule of Court 3.769(h). The Final Order entered by the Court will not adjudicate the merits of the Action or the liability of the Parties resulting from the allegations of the Action. Its sole purpose is to adopt the terms of the Settlement and to retain jurisdiction over its enforcement. To that end, the Court shall retain continuing jurisdiction over this Action and over all Parties and Class Members, fully to enforce and effectuate the terms and intent of this Agreement. If one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement, the successful Party or Parties is entitled to recover from the unsuccessful Party or

1 Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection
2 with any enforcement actions.

3 **Section 6.14: Mutual Full Cooperation**

4 The Parties agree to cooperate fully with each other to accomplish the terms of this
5 Agreement, including but not limited to the execution of such documents, and the taking of such
6 other action, as reasonably necessary to implement the terms of this Agreement. The Parties to this
7 Agreement shall use their best efforts, to effectuate and implement this Agreement and its terms. In
8 the event the Parties are unable to reach agreement on the form or content of any document needed
9 to implement the Settlement, or on any supplemental provisions necessary to effectuate the terms of
10 the Settlement, the Parties agree to seek Court assistance.

11 **Section 6.15: Authorization to Act**

12 Class Counsel warrants and represents that they are authorized by Named Plaintiff, and
13 Defense Counsel warrants that they are authorized by Defendant, to take all appropriate action
14 required to effectuate the terms of this Agreement, except for signing documents, including but not
15 limited to this Agreement, requiring signature of their respective Party. Defendant represents and
16 warrants that the individual executing this Agreement on its behalf has the full right, power, and
17 authority to enter into this Agreement and to carry out the transactions contemplated herein.

18 **Section 6.16: No Reliance on Representations**

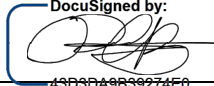
19 The Parties have made such investigation of the facts and the law pertaining to the matters
20 described herein and to this Agreement as they deem necessary, and have not relied, and do not rely,
21 on any statement, promise, or representation of fact or law, made by any of the other parties, or any
22 of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted
23 rights, or with regard to the advisability of entering into and executing this Agreement, or with respect
24 to any other matters. No representations, warranties, or inducements, except as expressly set forth
25 herein, have been made to any party concerning this Agreement.

EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated: 8/30/2021

PHILLIP BATISTA

By: 
Named Plaintiff

Dated: _____

RAILSERVE, INC.

By: _____
(Signature)

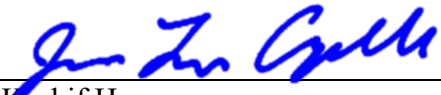
(Printed Name)

(Title)

APPROVED AS TO FORM ONLY:

Dated: August 30, 2021

AEGIS LAW FIRM, PC

By: 
Kashif Haque
Jessica L. Campbell
Alexander G.L. Davies

Attorneys for Named Plaintiff Phillip Batista

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EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated: _____

PHILLIP BATISTA

By: _____
Named Plaintiff

Dated: _____

RAILSERVE, INC.

By:  _____
Digitally signed by Chris Hagge
Date: 2021-08-31 09:37:05:00

(Printed Name)

(Title)

APPROVED AS TO FORM ONLY:

Dated: _____

AEGIS LAW FIRM, PC

By: _____
Kashif Haque
Jessica L. Campbell
Alexander G.L. Davies

Attorneys for Named Plaintiff Phillip Batista

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Dated: September 8, 2021

FISHER & PHILLIPS LLP

By: _____
Andrew J. Hoag
Philip J. Smith
Attorneys for Defendant

EXHIBIT A

THIS IS AN IMPORTANT COURT-APPROVED NOTICE. READ CAREFULLY.

Batista v. Railserve, Inc.
Santa Clara County Superior Court
Case No. 20CV366688

If you worked as a non-exempt employee in California for Railserve, Inc. (“Railserve”) at any time from April 8, 2016 through April 14, 2021, a class action lawsuit may affect your rights.

This is a court-authorized notice. It is not a solicitation from a lawyer.

- You have been identified as a Class Member (as defined below) in a Lawsuit (as defined below) brought by a former Railserve employee.
- The Court has preliminarily approved a class action settlement with Railserve, in accordance with the terms of the Joint Stipulation of Settlement filed in the Lawsuit (the “Settlement”), which will affect all current and former hourly paid employees who are or were employed by Railserve in California from April 8, 2016 through April 14, 2021 (the “Class Period”).
- Your options are explained in this notice. To object to the Settlement or to ask for exclusion, you must act before [DATE].
- **Questions?** Contact the Settlement Administrator at [TELEPHONE].

WHAT THIS NOTICE CONTAINS

BASIC INFORMATIONPAGE - 3 -

1. Why did I get this notice?
2. What is the Lawsuit about?
3. What is a class action and who is involved?
4. Why is this Lawsuit a class action?
5. What are the terms of the proposed Settlement?

WHO IS IN THE CLASSPAGE - 5 -

6. Am I part of this Class?
7. I’m still not sure if I am included.

YOUR RIGHTS AND OPTIONSPAGE - 5 -

8. What is my approximate Individual Settlement Payment?
9. What rights am I releasing if I participate in the Settlement?
10. How do I object to the Settlement?
11. Why would I ask to be excluded?
12. How do I ask to be excluded from the Class?

THE LAWYERS REPRESENTING YOUPAGE - 7 -

13. Do I have a lawyer in this case?

- 14. How will the lawyers be paid?
- 15. How will the Plaintiff be paid?

THE SETTLEMENT, APPROVAL, AND PAYMENT PROCESSPAGE - 7 -

- 16. Who is handling the settlement administration process?
- 17. When is the Final Approval Hearing and do I have to attend?

GETTING MORE INFORMATION.....PAGE - 8 -

- 18. Are more details available?

BASIC INFORMATION

1. Why did I get this notice?

Railserve's records show that you currently work, or previously worked for Railserve in California as a non-exempt, hourly paid employee. This notice explains that the Court has given preliminary approval to a Settlement in a conditionally certified class action lawsuit for settlement purposes only and directed that you receive this notice. The Court determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate, and reasonable. The Court will make a final determination of those issues at the final hearing. You have legal rights and options that you may exercise as part of this Settlement. Judge Sunil R. Kulkarni of the Superior Court of the State of California, County of Santa Clara, is presiding over this lawsuit. The lawsuit is known as *Batista v. Railserve, Inc.*, Case No. 20CV366688 (the "Lawsuit").

2. What is this Lawsuit about?

Plaintiff Phillip Batista ("Plaintiff") filed this action in the Superior Court of Santa Clara County, Case No. 20CV366688 on May 26, 2020 ("Lawsuit"). Plaintiff alleges that Railserve did not provide hourly paid employees with proper wages (including minimum and overtime wages), pay all wages to piece-rate workmeal periods, provide compliant meal periods at proper intervals, authorize rest breaks, pay all wages owed during and upon termination of employment, provide proper wage statements; and committed unfair business practices, and violated the Private Attorneys General Act of 2004 ("PAGA").

The Court has not made any determination as to whether the claims advanced by Plaintiff have any merit. In other words, the Court has not determined whether Railserve violated any law, nor has it decided in favor of Plaintiff or Railserve.

Railserve denies any liability or wrongdoing of any kind associated with the claims alleged in the Lawsuit and further denies that any of the claims are appropriate for class treatment. Railserve contends, among other things, that it has complied at all times with applicable law in connection with its compensation of Class Members.

3. What is a class action and who is involved?

In a class action lawsuit such as this, persons called "Class Representatives" sue on behalf of other people who may have similar claims. The people together are a "Class" and individually are "Class Members." The Class Representative (in this case, Phillip Batista) is called the Plaintiff. The company sued by the Plaintiff (in this case Railserve, Inc.) is called the Defendant. A class action allows one court to resolve all of the issues in the lawsuit for all of the class members who choose not to exclude themselves from the class.

4. Why is this Lawsuit a class action?

As part of the Settlement Plaintiff and Railserve agreed to conditionally certify the Class as a class action with respect to Plaintiff's allegation for settlement purposes only, and to ask the Court to approve the Settlement. The Court has not ruled on the merits of these claims, and the decision to

certify the Class for settlement purposes should not be viewed as a prediction or agreement that Plaintiff or the Class would ultimately prevail on the merits of the action.

5. What are the terms of the proposed Settlement?

The major terms of the Settlement are as follows:

1. Railserve has agreed to pay \$304,623.00 to settle the claims made in the Lawsuit. This amount is also known as the “Gross Settlement Amount.”
2. Plaintiff Philip Batista agreed to release all of his claims in the Lawsuit against Railserve, Inc.
3. Plaintiff seeks the following deductions from the \$304,623.00 Gross Settlement Amount:
 - a. One-third of the Gross Settlement Amount (which is currently equal to \$101,541.00) for Class Counsel’s attorneys’ fees.
 - b. Up to \$10,000 for reimbursement of Class Counsel’s litigation costs.
 - c. An enhancement award of \$7,500 for Plaintiff Phillip Batista for having filed this Lawsuit, work performed, risks undertaken, and a general release of claims.
 - d. Up to \$4,200.00 to cover the costs of the Settlement Administrator.
 - e. An allocation of \$24,000 in civil penalties, \$18,000.00 of which will be paid to the California Labor and Workforce Development Agency for release of Private Attorneys General Act of 2004 (“PAGA”) claims. The remaining \$6,000.00 will be distributed to Class Members who worked for Defendant at any time from April 8, 2019 through April 14, 2021.

If the Court approves each of the requested deductions from the Gross Settlement Amount, the Parties estimate there will be approximately \$156,582.00 remaining. The remaining funds will be referred to as the “Net Settlement Amount.” The Net Settlement Amount will be distributed to Class Members who do not request exclusion (the “Participating Class Members”) according to the following formula:

The Settlement Administrator will calculate the total Qualifying Workweeks for all Settlement Class Members. Qualifying Workweeks means the number of workweeks during which Class Members worked for Defendant during the Class Period (April 8, 2016 through April 14, 2021). The Net Settlement Amount will be divided by the total number of Qualifying Workweeks by all Class Members during the Class Period and then allocated on a pro rata basis.

Your estimated Individual Settlement Payment is listed in section 7 of this Notice. Payroll deductions will be made to your Individual Settlement Payment for state and federal withholding taxes and any other applicable payroll deductions owed by you as a result of the payment, with 30% allocated to

wages, and 70% allocated to interest and penalties. The taxes ordinarily paid by an employer will be paid by Railserve, separate from and in addition to the Gross Settlement Amount.

WHO IS IN THE CLASS?

6. Am I part of this Class?

The “Settlement Class” is the group of all persons who worked as non-exempt, hourly paid employees in California for Railserve at any time from April 8, 2016, through April 14, 2021 (the “Class Period”).

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: *Railserve 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 become part of this lawsuit and receive a Settlement payment based on the total number of workweeks that Railserve employed you as a Class Member during the Class Period in relation to the total number of weeks worked by all Class Members in the Class Period. You will release all of the Released Claims, as defined in Section No. 9 below, and you will 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 Lawsuit. If the Court grants final approval of the Settlement, you will not receive an Individual Settlement Payment and you will not give up the right to sue the Released Parties, including Railserve, for the Released Claims defined in Section No. 9 below.
- **OBJECT:** You may submit 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 sections 9-10.

7. What is my approximate Individual Settlement Payment?

According to payroll records maintained by Railserve, the total number of weeks you worked in California for Railserve, Inc. as an hourly paid employee during the Class Period is _____.

Based on information provided above, anticipated court-approved deductions, and preliminary calculations of Qualifying Workweeks, it is estimated your share of the Settlement will be \$_____, less applicable taxes and withholdings.

You do not need to do anything further to receive your Individual Settlement Payment, other than to ensure that the Settlement Administrator has an accurate mailing address for you.

If you believe your total weeks worked during the Class Period shown above are not correct, you may send a letter to the Settlement Administrator indicating what you believe is correct. You may also send any documents or other information that supports your belief that the information set forth above is incorrect. The Settlement Administrator will resolve any dispute based upon Railserve's records and any information you provide. Please be advised that the number of weeks you worked as an hourly paid employee in California during the Class Period is presumed to be correct unless you submit documents to support your dispute. Any such dispute must be mailed to the Settlement Administrator no later than [DATE].

8. What rights am I releasing if I participate in the Settlement?

You are releasing Railserve from all factual claims that were alleged in Plaintiff's operative complaint and investigated in the case, including the following: (1) failure to pay minimum wages, (2) failure to pay overtime and/or double time wages, (3) failure to provide meal periods or pay premiums in lieu thereof; (4) failure to authorize and permit rest periods or pay premiums in lieu thereof; (5) failure to provide accurate wage statements; (6) failure to pay timely final wages upon termination of employment; and (7) violations of California Business and Professions Code §§ 17200, et seq.; and (8) enforcement of the Private Attorneys General Act of 2004 ("PAGA"). ("Released Claims"). You will release these Released Claims through April 14, 2021.

9. How do I object to the Settlement?

If you are a Class Member and would like to object to the Settlement, you must not submit a request for exclusion (*i.e.*, must not opt out). If you submit both a request for exclusion and an objection, you will be excluded from the settlement (see paragraphs 11 and 12 below), and your objection will not be considered. No later than [DATE], you should mail a written objection to the Settlement Administrator (at the address in section 18 below) setting forth the grounds of objection, signed and dated by you or your attorney, along with any supporting documents. You can also appear at the final approval hearing yourself or through an attorney. The information for the hearing is included in Section 17 of this notice.

The Court decided that Samuel A. Wong, Kashif Haque, Jessica L. Campbell, Ali S. Carlsen, and Alexander G.L. Davies, of Aegis Law Firm, PC are qualified as Class Counsel to represent you and all other Class members simultaneously.

Samuel A. Wong Kashif Haque Jessica L. Campbell Ali S. Carlsen Alexander G.L. Davies AEGIS LAW FIRM, PC 9811 Irvine Center Drive, Suite 100

Irvine, California 92618
Telephone: (949) 379-6250
Facsimile: (949) 379-6251
acarlsen@aegislawfirm.com
adavies@aegislawfirm.com
www.aegislawfirm.com

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.

10. How do I ask to be excluded from the Class?

If you are a member of the Class described above and would like to exclude yourself from the Class, you need to submit a written request for exclusion which, includes your name, address, and telephone number, and states the following:

“I wish to exclude myself from the settlement reached in the matter of *Batista v. Railserve, Inc.*, Santa Clara Superior Court, Case No. 20CV3666688. I understand that by excluding myself, I will not receive any money from the settlement.”

This request must be signed and mailed to the Settlement Administrator at the address below in section 18, and it must be postmarked on or before [DATE]. The date of the postmark on the mailing envelope shall be the exclusive means used to determine whether a request for exclusion has been timely submitted. Any Class Member who requests to be excluded from the Class will not be entitled to any recovery under the Settlement and will not be bound by the Settlement or have any right to object, appeal, or comment thereon. Class Members who fail to submit a valid and timely request for exclusion on or before [DATE] shall be bound by all terms of the Settlement and any final disposition entered in this Class Action if the Settlement is approved by the Court. Railserve may, in its discretion, withdraw from this settlement if more than 10% of the Class Members opt out of the Settlement. If you exclude yourself, you should talk to your own lawyer soon because your claims may be subject to the statute of limitations

THE SETTLEMENT, APPROVAL, AND PAYMENT PROCESS

11. Who is handling the Settlement Administration process?

The Settlement Administrator, Simpluris, Inc., will handle the process.

12. When is the Final Fairness and Approval Hearing and do I have to attend?

The Final Fairness and Approval Hearing has been set for [DATE] at [TIME] p.m. in Department 1 of the Superior Court of the State of California, County of Santa Clara, located at 191 North First Street, San Jose, California, 95113. You do not need to attend the hearing to be a part of the Settlement. However, if you wish to object to the Settlement as discussed above, you may appear at the hearing to object.

GETTING MORE INFORMATION

13. Are more details available?

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact Class Counsel listed above, or the Settlement Administrator:

Simpluris, Inc.
TELEPHONE xxx-xxx-xxxx
P.O. Box 26170
Santa Ana, California 92799
Fax (888) 369-3780

Please refer to the Railserve 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 191 North First St., San Jose, California 95113. 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 CALL OR WRITE TO THE JUDGE OR TO THE COURT
REGARDING THIS NOTICE OR THE LAWSUIT.**