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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

ARTURO MARTINEZ, individually and on
behalf of others similarly situated, and as an
aggrieved employee and private attorney
general,

Plaintiff,

vs.

MERIT LOGISTICS, LLC, a Delaware
limited liability company; and DOES 1
through 50, inclusive,

Defendants.

Case No.: RIC2001625

*Assigned for All Purposes to: Hon. Angel M.
Bermudez, Dept. S302*

**JOINT STIPULATION OF CLASS
ACTION AND PAGA SETTLEMENT**

Complaint Filed: June 12, 2020
Trial Date: None Set

This Joint Stipulation of Class Action and PAGA Settlement is entered into by and between Plaintiffs Arturo Martinez, Donny Adame, and Anthony Wellington, individually and on behalf of the Settlement Class and Defendant Merit Logistics, LLC.

1. “Agreement” or “Settlement Agreement” means this Joint Stipulation of Class Action and PAGA Settlement.

3. “Class Counsel” means Heather Davis and Amir Nayebdadash of Protection Law Group, LLP, and Edwin Aiwarzian of Lawyers *for* Justice, PC.

5. “Class List” means a complete list of all Class Members that Defendant will diligently and in good faith compile from their records and provide to the Settlement Administrator within fourteen (14) calendar days after Preliminary Approval of this Settlement.

The Class List will be formatted in a readable Microsoft Office Excel spreadsheet and will include Class Member's: (1) full name; (2) last known home address; (3) last known telephone number; (4) social security number; (5) start and end dates of active employment as a non-exempt employee of Defendant in the State of California; (6) total Workweeks during the Class Period; (7) total Workweeks during the PAGA Period; and (8) any other information required by the Settlement Administrator in order to effectuate the terms of the Settlement.

6. "Class" or "Class Members" means all current and former hourly-paid, non-exempt employees of Defendant who were employed by Defendant in the State of California at any time during the Class Period.

7. "Class Period" means the period from June 12, 2016 until the date of preliminary approval of the settlement by the Court or July 23, 2022, whichever date occurs earlier.

8. "Class Representatives" means Plaintiffs Arturo Martinez, Donny Adame, and Anthony Wellington in their capacity as representatives of the Participating Class Members.

9. "Class Representative Incentive Payments" means the amount that the Court authorizes to be paid to Plaintiffs Arturo Martinez, Donny Adame, and Anthony Wellington in addition to their Individual Settlement Payments, in recognition of the efforts and risks they have taken in assisting with the prosecution of the Actions and in exchange for the General Release of their claims as provided herein.

10. "Court" means the Superior Court of the State of California for the County of Riverside.

11. "Defendant" means Merit Logistics, LLC.

12. "Effective Date" means: the later of: (a) if no timely objections are filed or if all objections are withdrawn, the date upon which the Court enters Final Approval; (b) if an objection is filed and not withdrawn, the date for filing an appeal and no such appeal being filed; (c) if any timely appeals are filed, the date of the resolution (or withdrawal) of any such appeal in a way that does not alter the terms of the settlement.

13. "Final Approval" means the Court entering an order granting final approval of the Settlement Agreement.

1 14. “Gross Settlement Amount” means the sum of Two Million Eight Hundred
2 Twenty-Five Thousand Dollars (\$2,825,000.00). The Gross Settlement Amount is non-
3 reversionary; no portion of the Gross Settlement Amount will return to Defendant, and includes
4 all: (1) payments to the Class, (2) Class Counsel’s fees, inclusive of fees incurred in the *Adame*
5 Action and *Wellington* Action, (3) Class Counsel’s costs, inclusive of costs incurred in the *Adame*
6 Action and *Wellington* Action, (4) Settlement Administration Costs, (5) Incentive Payments to
7 Plaintiffs, and (6) Payment of PAGA penalties to be paid to the LWDA and PAGA Members.
8 The Gross Settlement Amount is exclusive of employer share of any applicable payroll taxes, and
9 any such employer-side payroll taxes shall be paid by Defendant separately and in addition to the
10 Gross Settlement Amount.

11 15. “Individual Settlement Payment” means the amount payable from the Net
12 Settlement Amount to each Participating Class Member and any payment a PAGA Member is
13 eligible to receive from the employee portion of the PAGA Payment. Individual Settlement
14 Payments shall be paid by a Settlement Check made payable to Participating Class Members
15 and/or PAGA Members.

16 16. “Net Settlement Amount” means the funds available for payments to the Class,
17 which shall be amount remaining after the following amounts are deducted from the Gross
18 Settlement Amount: (1) Class Counsel’s fees; (2) Class Counsel’s costs; (3) Settlement
19 Administration Costs; (4) Class Representative Incentive Payments to Plaintiffs Arturo Martinez,
20 Donny Adame, and Anthony Wellington; and (5) the PAGA Payment to the LWDA and PAGA
21 Members.

22 17. “Notice” means the Notice of Class Action Settlement in a form substantially
23 similar to the form attached hereto as Exhibit A, that will be mailed to Class Members’ last known
24 address, and which will provide Class Members with information regarding the Actions and
25 information regarding the settlement of the Actions.

26 18. “PAGA” means the California Labor Code Private Attorneys General Act of 2004
27 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”).

28 19. “PAGA Payment” means the amount that the Parties have agreed to allocate in

order to settle claims arising under the Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*) (“PAGA”). The Parties have agreed that Two Hundred Fifty Thousand Dollars (\$250,000.00) of the Gross Settlement Amount will be allocated to the resolution of Plaintiffs’ PAGA Claims. Seventy Five Percent (75%) of this amount (\$187,500.00) will be paid to the California Labor and Workforce Development Agency in accordance with Labor Code §§ 2698 *et seq.* Twenty Five Percent (25%) of this amount (\$62,500.00), will be distributed to PAGA Members. PAGA Members will receive payment from the employee portion of the PAGA Payment regardless of their decision to participate in the class action if the PAGA Payment is approved by the Court.

20. “PAGA Members” means all current and former non-exempt employees of Defendant who were employed by Defendant in the state of California at any time during the PAGA Period.

21. “PAGA Period” means the period from December 27, 2018 until the date of preliminary approval of the settlement by the Court or July 23, 2022, whichever date occurs earlier.

22. “Parties” means Plaintiffs and Defendant, collectively, and “Party” shall mean either Plaintiffs or Defendant, individually.

23. “Participating Class Members” means all Class Members who do not submit valid and timely Requests for Exclusion.

24. “Plaintiffs” means Arturo Martinez, Donny Adame, and Anthony Wellington.

25. “Preliminary Approval” means the Court order granting preliminary approval of the Settlement Agreement.

26. “Objection” means a Class Member’s valid and timely written objection to the Settlement Agreement. For an Objection to be valid, it must include: (a) the objector’s full name, address, telephone number, last four digits of the employees’ social security number or employee ID number; (b) the name of the case and case number; and (c) a written statement of all grounds for the objection accompanied by legal support, if any, for such objection.

27. “Released Class Claims” means all claims, rights, demands, liabilities and causes

of action that are alleged, or reasonably could have been alleged based on the facts and claims asserted in the operative Complaint in the Action including the following claims: (i) failure to pay all regular wages, minimum wages and overtime wages due; (ii) failure to provide meal periods or compensation in lieu thereof; (iii) failure to provide rest periods or compensation in lieu thereof; (iv) failure to reimburse necessary business expenses; (v) failure to provide complete, accurate wage statements; (vi) failure to pay wages timely at time of termination or resignation; and (vii) unfair business practices that could have been premised on the claims, causes of action or legal theories of relief described above or any of the claims, causes of action or legal theories of relief pleaded in the operative Complaint.

28. “Released PAGA Claims” means any and all PAGA claims that could have been asserted under the California Labor Code Private Attorneys General Act of 2004 based on the same or similar factual allegations and claims in the operative Complaint in the Action or any PAGA notices submitted by Plaintiffs to the LWDA, for the PAGA Period.

29. “Released Parties” means Defendant Merit Logistics, LLC, together with its officers, directors, employees, and agents.

30. “Request for Exclusion” means a valid and timely written statement submitted by a Class Member requesting to be excluded from the class settlement. To be effective, the Request for Exclusion must contain (a) the Class Member’s name, address, telephone number, and the last four digits of the Class Member’s Social Security number and/or the Employee ID number and (b) a clear statement requesting to be excluded from the settlement of the class claims similar to the following: “I wish to exclude myself from the class settlement reached in the matter of *Martinez v. Merit Logistics, LLC*. I understand that by excluding myself, I will not receive money from the settlement of my individual claims.” To be effective, the Request for Exclusion must be post-marked by the Response Deadline and received by the Settlement Administrator. The Request for Exclusion shall not be effective as to the release of claims arising under the Private Attorneys General Act.

31. “Response Deadline” means the date sixty (60) calendar days after the Settlement Administrator mails Notice to Class Members and the last date on which Class Members may

submit Requests for Exclusion, written objections to the Settlement, or Workweek Disputes. In the event the 60th day falls on a Sunday or Federal holiday, the Response Deadline will be extended to the next day on which the U.S. Postal Service is open. The Response Deadline for Requests for Exclusion or objections will be extended fifteen (15) calendar days for any Class Member who is re-mailed a Notice by the Settlement Administrator, unless the 15th day falls on a Sunday or Federal holiday, in which case the Response Deadline will be extended to the next day on which the U.S. Postal Service is open. The Response Deadline may also be extended by express agreement between Class Counsel and Defendant. Under no circumstances, however, will the Settlement Administrator have the authority to unilaterally extend the deadline for Class Members to submit a Request for Exclusion or objection to the Settlement.

32. “Settlement” means the disposition of the Actions pursuant to this Agreement.

33. “Settlement Administrator” means Phoenix Settlement Administrators. The Parties each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

34. “Settlement Administration Costs” mean the costs payable from the Gross Settlement Amount to the Settlement Administrator for administering this Settlement, including, but not limited to, translating the Notice, printing, distributing, and tracking documents for this Settlement, calculating/confirming the class member Workweeks from the information contained in the Class List, calculating each Participating Class Member’s Individual Settlement Payment, tax reporting, distributing the Gross Settlement Amount, providing necessary reports and declarations, and other duties and responsibilities set forth herein to process this Settlement, and as requested by the Parties. Settlement Administration Costs shall not exceed Twenty Thousand Dollars (\$20,000.00).

35. “Settlement Class Members” shall mean all Participating Class Members as described in paragraph 56 and the PAGA Members.

36. “Workweek” shall mean any calendar week (*i.e.*, a week beginning on Sunday and ending on Saturday) in which a Class Member or PAGA Member worked at least 1 day.

TERMS OF AGREEMENT

37. Filing of Amended Complaint: The Parties shall file a stipulation and order to allow Plaintiff Martinez to file an amended complaint in the *Martinez* Action, Riverside County Superior Court Case No. RIC2001625, which will add Class and PAGA Representatives from the *Adame* Action and the *Wellington* Action to the *Martinez* Action. Upon the filing of the Second Amended Complaint, Plaintiffs will cause the Complaints in the *Adame* Action and the *Wellington* Action to be dismissed, without prejudice. Plaintiffs shall pursue approval of this Settlement within the *Martinez* Action.

38. Settlement Consideration: Defendant shall fund the Gross Settlement Amount and all applicable employer-side payroll taxes following Final Approval by the Court and the occurrence of the Effective Date. The following will be paid out of the Gross Settlement Amount: the sum of the Individual Settlement Payments, the Class Representative Incentive Payments, Class Counsel's Fees and Costs, the PAGA Payment, and the Settlement Administration Costs, as specified in this Agreement. Except for any employer-side taxes due on the Individual Settlement Payments, or as a result of an increase in the number of workweeks as set forth below, Defendant shall not be required to pay more than the Gross Settlement Amount. The Gross Settlement Amount is non-reversionary; no portion of the Gross Settlement Amount will revert to Defendant.

39. Potential Increase to the Gross Settlement Amount: Defendant has represented there are approximately 37,988 Workweeks within the Class Period. Should the qualifying Workweeks worked by the class Members during the Class Period ultimately increase by more than ten percent (10%) (*i.e.*, by more than 3,799 Workweeks), Defendant shall increase the Gross Settlement Amount on a *pro-rata* basis equal to the percentage increase in the number of Workweeks worked by the Class Members above 10%. For example, if the number of Workweeks increases by 11% to 41,788 Workweeks, the Gross Settlement Amount will increase by 1%.

40. Funding of the Gross Settlement Amount: Defendant will deposit the Gross Settlement Amount and all applicable employer-side payroll taxes into a Qualified Settlement Fund ("QSF") to be established by the Settlement Administrator within fourteen (14) days of the Effective Date. Defendant shall provide all information necessary for the Settlement

1 Administrator to calculate necessary payroll taxes including its official name, 8-digit state
2 unemployment insurance tax ID number, and other information requested by the Settlement
3 Administrator, no later than seven (7) calendar days of the Effective Date.

4 41. Distribution of the Gross Settlement Amount: Within fourteen (14) calendar days
5 of the funding of the Settlement, the Settlement Administrator will issue payments for: (a)
6 Individual Settlement Payments; (b) the PAGA Payment to the Labor and Workforce
7 Development Agency; (c) the Class Representative Incentive Payments; (d) Class Counsel's Fees
8 and Costs; and (e) Settlement Administration Costs.

9 42. Attorneys' Fees and Costs: Defendant agrees not to oppose any application or
10 motion by Class Counsel for attorneys' fees of not more than Nine Hundred Eighty-Eight
11 Thousand Seven Hundred Fifty Dollars (\$988,750.00) plus the reimbursement of costs and
12 expenses associated with the litigation and settlement of the Actions, in an amount not to exceed
13 Fifty Thousand Dollars (\$50,000.00), both of which will be paid from the Gross Settlement
14 Amount. Any portion of the requested fees or costs that is not awarded to the Class Counsel shall
15 be reallocated to the Net Settlement Amount and distributed to Participating Class Members as
16 provided in this Agreement.

17 43. Class Representative Incentive Payments: Defendant agrees not to oppose or
18 object to any application or motion by Plaintiffs for Class Representative Incentive Payments of
19 Seven Thousand Five Hundred Dollars (\$7,500.00) each for Plaintiffs Arturo Martinez, Donny
20 Adame, and Anthony Wellington (total of \$22,500.00). The Class Representative Incentive
21 Payments are in exchange for the General Release of the Plaintiffs' individual claims and for their
22 time, effort and risk in bringing and prosecuting the Actions. Any portion of the requested Class
23 Representative Incentive Payments that is not awarded to the Class Representatives shall be
24 reallocated to the Net Settlement Amount and distributed to Participating Class Members as
25 provided in this Agreement.

26 44. Settlement Administration Costs: The Settlement Administrator will be paid for
27 the reasonable costs of administration of the Settlement and distribution of payments from the
28 Gross Settlement Amount as further set forth in this Agreement. Settlement Administration Costs

shall not exceed Twenty Thousand Dollars (\$20,000.00).

45. PAGA Payment: Two Hundred Fifty Thousand Dollars (\$250,000.00) shall be allocated from the Gross Settlement Amount for settlement of claims for civil penalties under the PAGA. The Settlement Administrator shall pay seventy-five percent (75%) of the PAGA Payment, or One Hundred Eighty-Seven Thousand Five Hundred Dollars (\$187,500.00), to the California Labor and Workforce Development Agency (“LWDA”). Sixty-Two Thousand Five Hundred Dollars (\$62,500.00) will be distributed to PAGA Members on a *pro rata* basis based on the total number of Workweeks worked by each PAGA Member during the PAGA Period. PAGA Members shall receive their portion of the PAGA Payment regardless of their decision to opt-out of the class settlement.

46. Net Settlement Amount for Payment of Class Claims: The Net Settlement Amount will be used to satisfy the class portion of Participating Class Members Individual Settlement Payments in accordance with the terms of this Agreement. The estimated Net Settlement Amount is as follows:

Gross Settlement Amount	\$	2,825,000.00
Incentive Payments:	\$	22,500.00
Class Counsel’s Fees:	\$	988,750.00
Class Counsel’s Costs:	\$	50,000.00
PAGA Payment	\$	250,000.00
Settlement Administration Costs:	\$	20,000.00
Estimated Net Settlement Amount	\$	1,493,750.00

47. Individual Settlement Payment Calculations: Individual Settlement Payments will be paid from the Net Settlement Amount and the 25% portion of the PAGA Payment allocated for PAGA Members and shall be paid pursuant to the formula set forth herein:

a) Calculation of Class Portion of Individual Settlement Payments:

The Settlement Administrator will calculate the total Workweeks for all Participating Class Members by adding the number of Workweeks worked by each Participating Class Member

1 during the Class Period. The respective Workweeks for each Participating Class Member will be
2 divided by the total Workweeks for all Participating Class Members, resulting in the Payment
3 Ratio for each Participating Class Member. Each Participating Class Member's Payment Ratio
4 will then be multiplied by the Net Settlement Amount to calculate each Settlement Class
5 Member's estimated share of the Net Settlement Amount.

6 b) Calculation of PAGA Portion of Individual Settlement Payments:

7 The Settlement Administrator will calculate the total Workweeks for all PAGA Members by
8 adding the number of Workweeks worked by each PAGA Member during the PAGA Period. The
9 respective Workweeks for each PAGA Member will be divided by the total Workweeks for all
10 PAGA Members, resulting in the Payment Ratio for each PAGA Member. Each PAGA Member's
11 Payment Ratio will then be multiplied by the employee portion of the PAGA Payment to calculate
12 each PAGA Member's estimated share of the PAGA Payment. PAGA Members shall receive this
13 portion of their Individual Settlement Payment regardless of whether they opt out of the
14 participation regarding the class claims.

15 c) Allocation of Individual Settlement Payments: All Individual

16 Settlement Payments will be allocated as follows: twenty percent (20%) of each Individual
17 Settlement Payment will be allocated as wages, forty percent (40%) shall be allocated as interest,
18 and forty percent (40%) shall be allocated as penalties. The portion of the Individual Settlement
19 Payment allocated to wages will be reported by the Settlement Administrator on an IRS Form W-
20 2. The remaining non-wage payments will be reported on an IRS Form-1099 by the Settlement
21 Administrator.

22 48. No Credit Toward Benefit Plans: The Individual Settlement Payments made to
23 Participating Class Members under this Settlement, as well as any other payments made pursuant
24 to this Settlement, will not be utilized to calculate any additional benefits under any benefit plans
25 to which any Class Members may be eligible, including, but not limited to profit-sharing plans,
26 bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and
27 any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not
28

1 affect any rights, contributions, or amounts to which any Class Members may be entitled under
2 any benefit plans.

3 49. Settlement Administration Process: The Parties agree to cooperate in the
4 administration of the Settlement and to make all reasonable efforts to control and minimize the
5 costs and expenses incurred in administration of the Settlement. The Settlement Administrator
6 will provide the following services:

- 7 a) Establish and maintain a Qualified Settlement Fund.
- 8 b) Calculate the Individual Settlement Payment each Participating Class
9 Member is eligible to receive and the portion of the PAGA Payment each
10 PAGA Member shall receive.
- 11 c) Translate the Notice from English to Spanish.
- 12 d) Print and mail the Notice in English and Spanish.
- 13 e) Conduct additional address searches for mailed Notices that are returned
14 as undeliverable.
- 15 f) Process Requests for Exclusion, field inquiries from Class Members.
- 16 g) Print and issue Settlement Payment Checks, prepare IRS W2 and 1099 Tax
17 Forms and any other filings required by any governmental taxing authority.
- 18 h) Provide declarations and/or other information to this Court as requested by
19 the Parties and/or the Court regarding the settlement administration
20 process.
- 21 i) Provide weekly status reports to counsel for the Parties.
- 22 j) Posting a notice of final judgment online at Settlement Administrator's
23 website.

24 50. Delivery of the Class List and Tax Rate Information: Within fourteen (14) calendar
25 days of Preliminary Approval, Defendant will provide the Class List and Tax Rate Information
26 to the Settlement Administrator. This is a material term of the Agreement, and if Defendant fails
27 to comply, Plaintiffs shall have the right to void the Agreement.

28 51. Notice by First-Class U.S. Mail: Within seven (7) calendar days after receiving

the Class List from Defendant, the Settlement Administrator will mail the Notice to all Class Members via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in the Class List.

52. Confirmation of Contact Information in the Class List: Prior to mailing, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. Any Notice returned to the Settlement Administrator as non-deliverable on or before the Response Deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator will indicate the date of such re-mailing on the Notice. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address and/or Social Security number of the Class Member involved and will then perform a single re-mailing. If any notice sent to a Class Member by the Settlement Administrator is returned as undeliverable to a current employee, then Defendant shall make reasonable efforts to obtain the current address from the Class Member and provide the same within seven (7) calendar days of notice from the Settlement Administrator. Those Class Members who receive a re-mailed Notice, whether by skip-trace or by request, will have between the later of (a) an additional fifteen (15) calendar days or (b) the Response Deadline to postmark a Request for Exclusion, or an objection to the Settlement.

53. Notice: All Class Members will be mailed a Notice in English and Spanish. Each Notice will provide: (a) information regarding the nature of the Actions; (b) a summary of the Settlement's principal terms; (c) the Class definition; (d) the total number of Workweeks each respective Class Member worked for Defendant during the Settlement Class Period; (e) each Class Member's estimated Individual Settlement Payment and the formula for calculating Individual Settlement Payments; (f) the dates which comprise the Class Period; (g) the deadlines by which the Class Member must postmark Requests for Exclusion, Objections to the Settlement, or Workweek Disputes; (h) the claims to be released, as set forth herein; and (j) the date for the final approval hearing.

1 54. Disputed Information on Notice: Class Members will have an opportunity to
2 dispute the information provided in their Notice. To the extent Class Members dispute the number
3 of Workweeks with which they have been credited or the amount of their Individual Settlement
4 Payment, Class Members may produce evidence to the Settlement Administrator showing that
5 such information is inaccurate. Absent evidence rebutting Defendant's records, Defendant's
6 records will be presumed determinative. However, if a Class Member produces evidence to the
7 contrary by the Response Deadline, the Parties will evaluate the evidence submitted by the Class
8 Member and the Parties will make the final decision as to the number of eligible Workweeks that
9 should be applied and/or the Individual Settlement Payment to which the Class Member may be
10 entitled. If the Parties do not agree, the dispute will be submitted to the Court.

11 55. Defective Submissions: If a Class Member's Request for Exclusion is defective as
12 to the requirements listed herein, that Class Member will be given an opportunity to cure the
13 defect(s). The Settlement Administrator will mail the Class Member a cure letter within three (3)
14 business days of receiving the defective submission to advise the Class Member that his or her
15 submission is defective and that the defect must be cured to render the Request for Exclusion
16 valid. The Class Member will have until the later of (a) the Response Deadline or (b) fifteen (15)
17 calendar days from the date of the cure letter, whichever date is later, to postmark a revised
18 Request for Exclusion. If a Class Member responds to a cure letter by filing a defective claim,
19 then the Settlement Administrator will have no further obligation to give notice of a need to cure.
20 If the revised Request for Exclusion is not postmarked within that period, it will be deemed
21 untimely.

22 56. Request for Exclusion Procedures: Any Class Member wishing to opt-out from the
23 class settlement must sign and postmark a written Request for Exclusion to the Settlement
24 Administrator by the Response Deadline. The Request for Exclusion must include (a) the Class
25 Member's name, address, telephone number, and the last four digits of the Class Member's Social
26 Security number and/or the Employee ID number and (b) a clear statement requesting to be
27 excluded from the settlement of the class claims similar to the following: "I wish to exclude
28 myself from the class settlement reached in the matter of *Martinez v. Merit Logistics, LLC*. I

1 understand that by excluding myself, I will not receive money from the settlement of my
2 individual claims.” The date of the postmark on the return mailing envelope receipt confirmation
3 will be the exclusive means to determine whether a Request for Exclusion has been timely
4 submitted. All Requests for Exclusion will be submitted to the Settlement Administrator, who
5 will certify jointly to Class Counsel and Defendant’s Counsel the Requests for Exclusion that
6 were timely submitted. All Class Members who do not request exclusion from the Actions will
7 be bound by all terms of the Settlement Agreement if the Settlement is granted final approval by
8 the Court. The Request for Exclusion shall not be effective as to the release of claims arising
9 under the Private Attorneys General Act.

10 57. Defendant’s Right to Rescind: If ten percent (10%) or more of the Class Members
11 (rounded to the next whole number) elect not to participate in the Settlement, Defendant may, at
12 its election, rescind the Settlement Agreement and all actions taken in furtherance of it will be
13 thereby null and void. Defendant must meet and confer with Class Counsel prior to exercising
14 this right and must make clear their intent to rescind the Agreement within fourteen (14) calendar
15 days of the Settlement Administrator notifying the Parties of these opt-outs. If Defendant
16 exercises its right to rescind the Agreement, Defendant shall be responsible for all Settlement
17 Administration Costs incurred to the date of rescission.

18 58. Settlement Terms Bind All Class Members Who Do Not Opt-Out: Upon the
19 complete funding of the Gross Settlement Amount, any Class Member who does not affirmatively
20 opt-out of the Settlement by submitting a timely and valid Request for Exclusion will be bound
21 by all of its terms, including those pertaining to the Released Class Claims, as well as any
22 Judgment that may be entered by the Court if it grants final approval to the Settlement. Class
23 Members who opt-out of the Settlement shall not be bound by such Judgment or release. The
24 names of Class Members who have opted-out of the settlement shall be disclosed to the Counsel
25 for both Plaintiffs and Defendant and noted in the proposed Judgment submitted to the Court.

26 59. Objection Procedures: To object to the Settlement, a Participating Class Member
27 must postmark a valid Objection to the Settlement Administrator on or before the Response
28 Deadline. The Objection must be signed by the Participating Class Member and contain all

information required by this Settlement Agreement including the employees full name, address, telephone number, the last four digits of their social security number and/or Employee ID number, the name of the case and case number, and the specific reason including any legal grounds for the Participating Class Member's objection. The postmark date will be deemed the exclusive means for determining that the Notice of Objection is timely. Participating Class Members who fail to object in the manner specified above will be foreclosed from making a written objection, but shall still have a right to appear at the Final Approval Hearing in order to have their objections heard by the Court. At no time will any of the Parties or their counsel seek to solicit or otherwise encourage Participating Class Members to submit written objections to the Settlement or appeal from the Order and Judgment. Class Counsel will not represent any Class Members with respect to any objections to this Settlement.

60. Certification Reports Regarding Individual Settlement Payment Calculations: The Settlement Administrator will provide Defendant's Counsel and Class Counsel a weekly report which certifies: (a) the number of Class Members who have submitted valid Requests for Exclusion; (b) the number of Notices returned and re-mailed and (c) whether any Class Member has submitted a challenge to any information contained in the Notice. Additionally, the Settlement Administrator will provide to counsel for both Parties any updated reports regarding the administration of the Settlement Agreement as needed or requested.

61. Uncashed Settlement Checks: Any checks issued by the Settlement Administrator to Participating Class Members and PAGA Members will be negotiable for at least one hundred eighty (180) calendar days. If a Participating Class Member or PAGA Member does not cash his or her Settlement Check or PAGA payment check within one hundred eighty (180) days, the uncashed funds, subject to Court approval, shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code §1500, *et seq.* for the benefit of those Participating Class Members and PAGA Members who did not cash their checks until such time that they claim their property. The Parties agree that this disposition results in no "unpaid residue" under California Civil Procedure Code § 384, as the entire Net Settlement Amount will be paid out to Participating Class Members and PAGA Members,

whether or not they all cash their Settlement Checks or PAGA payment checks. Therefore, Defendant will not be required to pay any interest on such amounts. The Individual Settlement Payments provided to Participating Class Members and to PAGA Members shall prominently state the expiration date or a statement that the Settlement Check will expire in one hundred eighty (180) days, or alternatively, such a statement may be made in a letter accompanying the Individual Settlement Payment. Expired Individual Settlement Payments will not be reissued, except for good cause and as mutually agreed by the Parties in writing. The Parties agree no unclaimed funds will result from the settlement.

62. Administration of Taxes by the Settlement Administrator: The Settlement Administrator will be responsible for issuing to Plaintiffs, Participating Class Members, and Class Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid pursuant to this Settlement. The Settlement Administrator will also be responsible for forwarding all payroll taxes and penalties to the appropriate government authorities.

63. Tax Liability: Defendant makes no representation as to the tax treatment or legal effect of the payments called for hereunder, and Plaintiffs and Participating Class Members are not relying on any statement, representation, or calculation by Defendant or by the Settlement Administrator in this regard. Plaintiffs and Participating Class Members understand and agree that they will be solely responsible for the payment of any taxes and penalties assessed on the payments described herein. Defendant's share of any employer payroll taxes and other required employer withholdings due on the Individual Settlement Payments, including, but not limited to, Defendant's FICA and FUTA contributions, shall be paid separate and apart from the Gross Settlement Amount.

64. Circular 230 Disclaimer: Each Party to this Agreement (for purposes of this section, the "acknowledging party" and each Party to this Agreement other than the acknowledging party, an "other party") acknowledges and agrees that: (1) no provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United

1 States Treasury Department circular 230 (31 CFR part 10, as amended); (2) the acknowledging
2 party (a) has relied exclusively upon his, her or its own, independent legal and tax counsel for
3 advice (including tax advice) in connection with this Agreement, (b) has not entered into this
4 Agreement based upon the recommendation of any other Party or any attorney or advisor to any
5 other Party, and (c) is not entitled to rely upon any communication or disclosure by any attorney
6 or advisor to any other party to avoid any tax penalty that may be imposed on the acknowledging
7 party, and (3) no attorney or advisor to any other Party has imposed any limitation that protects
8 the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such
9 limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or
10 tax structure of any transaction, including any transaction contemplated by this Agreement.

11 65. No Prior Assignments: The Parties and their counsel represent, covenant, and
12 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported
13 to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand,
14 action, cause of action or right herein released and discharged.

15 66. Release by Participating Class Members: Upon the complete funding of the Gross
16 Settlement Amount and all applicable employer-side payroll taxes by Defendant, Participating
17 Class Members shall fully release and discharge the Released Parties from the Released Class
18 Claims that arose during the Class Period. This release shall be binding on all Participating Class
19 Members.

20 67. Release by the State of California and LWDA: Upon the complete funding of the
21 Gross Settlement Amount by Defendant, Plaintiffs, the LWDA, and the State of California release
22 the Released Parties of the Released PAGA Claims. Eligible PAGA Employees will receive their
23 share of the employee portion of the PAGA Payments and will be deemed to have released any
24 claims arising out of PAGA, regardless of whether they opt-out from the release of their class
25 claims. The fact that a PAGA Employee has decided not to participate in the Class Settlement
26 shall not affect the Release of PAGA Claims under the PAGA for the PAGA Period. The Parties
27 agree that there is no right for a PAGA Employee to opt out of or object to the PAGA Settlement.
28 A copy of this Agreement will be provided by Class Counsel to the LWDA concurrently with the

1 submission of the Preliminary Approval Motion.

2 68. Release of Additional Claims & Rights by Plaintiffs: Upon the funding of the
3 Gross Settlement Amount, Plaintiffs Arturo Martinez, Donny Adame, and Anthony Wellington
4 agree—on behalf of themselves only—to the additional following General Release: In
5 consideration of Defendant’s promises and agreements as set forth herein, Plaintiffs hereby fully
6 release the Released Parties from any and all Released Class Claims and Released PAGA Claims
7 and also generally release and discharge the Released Parties from any and all claims, demands,
8 obligations, causes of action, rights, or liabilities of any kind which have been or could have been
9 asserted against the Released Parties arising out of or relating to their employment by Defendant
10 or termination thereof, including but not limited to claims for wages, restitution, penalties,
11 retaliation, defamation, discrimination, harassment or wrongful termination of employment. This
12 release specifically includes any and all claims, demands, obligations and/or causes of action for
13 damages, restitution, penalties, interest, and attorneys’ fees and costs (except provided by the
14 Settlement Agreement) relating to or in any way connected with the matters referred to herein,
15 whether or not known or suspected to exist, and whether or not specifically or particularly
16 described herein. Specifically, Plaintiffs Arturo Martinez, Donny Adame, and Anthony Wellington,
17 waive all rights and benefits afforded by California Civil Code Section 1542, which provides:

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

24 This release specifically excludes claims for unemployment insurance, disability, social
25 security, and workers compensation (with the exception of claims arising pursuant to California
26 Labor Code Sections 132(a) and 4553).

27 69. Neutral Employment Reference: Defendant agrees that it will adopt a neutral
28 reporting policy regarding any future employment references related to Plaintiffs. In the event

that any potential or future employers of Plaintiffs request a reference regarding Defendant's employment of Plaintiffs Arturo Martinez, Donny Adame, and Anthony Wellington, Defendant shall only provide the requested Plaintiffs' dates of employment and job titles during employment. Defendant shall not refer to the Actions or this Settlement.

70. Nullification of Settlement Agreement: In the event that: (a) the Court does not finally approve the Settlement as provided herein; (b) the Court strikes or does not approve any material term of this Settlement Agreement; or (c) the Settlement does not become final as written and agreed to by the Parties for any other reason, then this Settlement Agreement, and any documents generated to bring it into effect, will be null and void, all amounts deposited into the QSF will be returned to Defendant, and the Parties shall be returned to their original respective positions. Any order or judgment entered by the Court in furtherance of this Settlement Agreement will likewise be treated as void from the beginning. Should the Court fail to approve this settlement for any reason, the Parties agree that they will return to and attend mediation with a mutually agreed Mediator in an effort to reach a settlement that may be approved by the Court.

71. Preliminary Approval Hearing: Plaintiffs will obtain a hearing before the Court to request Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary Approval Order for: (a) conditional certification of the Settlement Class for settlement purposes only, (b) Preliminary Approval of the proposed Settlement Agreement, and (c) setting a date for a Final Approval/Settlement Fairness Hearing. The Preliminary Approval Order will provide for the Notice to be sent to all Class Members as specified herein. In conjunction with the Preliminary Approval hearing, Plaintiffs will submit this Agreement, which sets forth the terms of the Settlement, and will include the proposed Notice attached as Exhibit A. Defendant agrees that it will not oppose Plaintiffs' motion for Preliminary Approval. Any failure by the Court to fully and completely approve the Agreement as to the Actions will result in this Settlement Agreement and the Memorandum of Understanding entered into by the Parties, and all obligations under this Settlement Agreement and the Memorandum of Understanding being nullified and voided.

72. Final Settlement Approval Hearing and Entry of Judgment: Upon expiration of the deadlines to postmark Requests for Exclusion or objections to the Settlement Agreement, and

1 with the Court's permission, a Final Approval/Settlement Fairness Hearing will be conducted to
2 determine the Final Approval of the Settlement Agreement along with the amounts properly
3 payable for: (a) Individual Settlement Payments; (b) the Attorneys' Fees and Costs; (c) the Class
4 Representative Enhancement Payments; and (d) the Settlement Administration Costs. Class
5 Counsel will be responsible for drafting all documents necessary to obtain Final Approval. Any
6 failure by the Court to fully and completely approve the Settlement Agreement as to all of the
7 Actions, or the entry of any Order by another Court with regard to any of the Actions which has
8 the effect of modifying material terms of this Agreement or preventing the full and complete
9 approval of the Settlement Agreement as written and agreed to by the Parties, will result in this
10 Agreement and all obligations under this Agreement being null and void. Defendant agrees it
11 shall not oppose the granting of the Motion for Final Approval, provided Defendant has not
12 exercised its right to rescind pursuant to the terms of this Agreement.

13 73. Judgment and Continued Jurisdiction: Upon Final Approval of the Settlement by
14 the Court or after the Final Approval/Settlement Fairness Hearing, the Parties will present the
15 Judgment to the Court for its approval. After entry of the Judgment, the Court will have continuing
16 jurisdiction solely for purposes of addressing: (a) the interpretation and enforcement of the terms
17 of the Settlement, (b) Settlement administration matters, and (c) such post-Judgment matters as
18 may be appropriate under court rules or as set forth in this Settlement.

19 74. Exhibits Incorporated by Reference: The terms of this Settlement include the terms
20 set forth in any attached Exhibits, which are incorporated by this reference as though fully set
21 forth herein. Any Exhibits to this Settlement are an integral part of the Settlement.

22 75. Entire Agreement: This Settlement Agreement and any attached Exhibits
23 constitute the entirety of the Parties' settlement terms. No other prior or contemporaneous written
24 or oral agreements may be deemed binding on the Parties.

25 76. Amendment or Modification: This Settlement Agreement may be amended or
26 modified only by a written instrument signed by counsel for all Parties or their successors-in-
27 interest.

28 77. Authorization to Enter Into Settlement Agreement: Counsel for all Parties warrant

1 and represent they are expressly authorized by the Parties whom they represent to negotiate this
2 Settlement Agreement and to take all appropriate action required or permitted to be taken by such
3 Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other
4 documents required to effectuate the terms of this Settlement Agreement. The Parties and their
5 counsel will cooperate with each other and use their best efforts to affect the implementation of
6 the Settlement. If the Parties are unable to reach agreement on the form or content of any
7 document needed to implement the Settlement, or on any supplemental provisions that may
8 become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance
9 of the Court to resolve such disagreement.

10 78. Binding on Successors and Assigns: This Settlement Agreement will be binding
11 upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously
12 defined.

13 79. California Law Governs: All terms of this Settlement Agreement and Exhibits
14 hereto will be governed by and interpreted according to the laws of the State of California.

15 80. Execution and Counterparts: This Settlement Agreement is subject only to the
16 execution of all Parties. However, the Settlement Agreement may be executed in one or more
17 counterparts. All executed counterparts and each of them, including facsimile and scanned copies
18 of the signature page, will be deemed to be one and the same instrument provided that counsel
19 for the Parties will exchange among themselves original signed counterparts.

20 81. Acknowledgement that the Settlement is Fair and Reasonable: The Parties believe
21 this Settlement Agreement is a fair, adequate, and reasonable settlement of the Actions and have
22 arrived at this Settlement after arm's-length negotiations and in the context of adversarial
23 litigation, taking into account all relevant factors, present and potential. The Parties further
24 acknowledge that they are each represented by competent counsel and that they have had an
25 opportunity to consult with their counsel regarding the fairness and reasonableness of this
26 Settlement.

27 82. Invalidity of Any Provision: Before declaring any provision of this Agreement
28 invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible

consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable.

83. Waiver of Certain Appeals: The Parties agree to waive appeals and to stipulate to class certification for purposes of this Settlement only; except, however, that either party may appeal any court order that materially alters the Settlement Agreement's terms.

84. Class Action Certification for Settlement Purposes Only: The Parties agree to stipulate to class action certification only for purposes of the Settlement. If, for any reason, the Settlement is not approved, the stipulation to certification will be void. The Parties further agree that certification for purposes of the Settlement is not an admission that class action certification is proper under the standards applied to contested certification motions and that this Agreement will not be admissible in this or any other proceeding as evidence that either: (a) a class action should be certified or (b) Defendant is liable to Plaintiffs or any Class Member, other than according to the Settlement's terms.

85. Non-Admission of Liability: The Parties enter into this Agreement to resolve the dispute that has arisen between them and to avoid the burden, expense and risk of continued litigation. In entering into this Agreement, Defendant does not admit, and specifically denies, it has violated any federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or any other applicable laws, regulations or legal requirements; breached any contract; violated or breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to their employees. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be construed as an admission or concession by Defendant of any such violations or failures to comply with any applicable law. Except as necessary in a proceeding to enforce the terms of this Agreement, this Agreement and its terms and provisions shall not be offered or received as evidence in any action or proceeding to establish any liability or admission on the part of Defendant or to establish the existence of any condition constituting a violation of, or a non-compliance with, federal, state, local or other applicable law.

86. Captions: The captions and section numbers in this Agreement are inserted for the

1 reader's convenience, and in no way define, limit, construe or describe the scope or intent of the
2 provisions of this Agreement.

3 87. Waiver: No waiver of any condition or covenant contained in this Settlement
4 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered
5 to imply or constitute a further waiver by such party of the same or any other condition, covenant,
6 right or remedy.

7 88. Dispute About Terms: Should a dispute arise about the terms of this Agreement,
8 such disputes shall be submitted to Lynn Frank for consultation.

9 89. Enforcement Action: In the event that one or more of the Parties institutes any
10 legal action or other proceeding against any other Party or Parties to enforce the provisions of this
11 Settlement or to declare rights and/or obligations under this Settlement, the successful Party or
12 Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys'
13 fees and costs, including expert witness fees incurred in connection with any enforcement actions.

14 90. Mutual Preparation: The Parties have had a full opportunity to negotiate the terms
15 and conditions of this Agreement. Accordingly, this Agreement will not be construed more
16 strictly against one Party than another merely by virtue of the fact that it may have been prepared
17 by counsel for one of the Parties, it being recognized that, because of the arms-length negotiations
18 between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

19 91. Representation By Counsel: The Parties acknowledge that they have been
20 represented by counsel throughout all negotiations that preceded the execution of this Agreement,
21 and that this Agreement has been executed with the consent and advice of counsel and reviewed
22 in full. Further, Plaintiffs and Class Counsel warrant and represent that there are no liens on the
23 Agreement.

24 92. All Terms Subject to Final Court Approval: All amounts and procedures described
25 in this Settlement Agreement herein will be subject to final Court approval.

26 93. Cooperation and Execution of Necessary Documents: The Parties agree to
27 cooperate to promote participation in the Settlement, and in seeking court approval of the
28 Settlement. The Parties and their counsel agree not to take any action to encourage any Class

Members to opt out of and/or object to the Settlement. Defendant agrees not to obtain any settlement agreement waivers, *Pick-Up Stix* agreements or arbitration agreements from any Class Member prior to the funding of the Gross Settlement Amount concerning claims released via this Agreement, or enter into any arbitration agreement with any Class Member that covers the claims released via this Agreement during the Settlement approval process prior to the funding of the Gross Settlement Amount and that the Parties will work in good faith to reach an agreement approved by the Court.

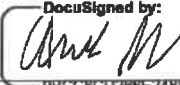
94. Confidentiality: The Parties and their counsel agree to keep the terms of the Settlement confidential until the filing of Plaintiffs' Motion for Preliminary Approval. Plaintiffs, Class Counsel, Defendant and its counsel agree that they will not issue any press releases, initiate any contact with the press, respond to any press inquiry or have any communication with the press about the fact, amount or terms of the Settlement Agreement. Nothing in this Settlement Agreement shall limit Defendant's ability to fulfill disclosure obligations reasonably required by law or in furtherance of business purposes, including the fulfillment of obligations stated in this Settlement Agreement or limit Class Counsel's communications with the Class Members in furtherance of approval of this Settlement.

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

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1 Dated: 8/7/2022

PLAINTIFF

By: 
DocuSigned by:
9BCC8C0288E248D...
 Arturo Martinez

6 Dated: 8-8-22

PLAINTIFF

By: 
Electronically Signed
2022-08-08 23:08:10 (C: 172.115.189.20)
Veritas AssureSign®
 Donny Adame

10 Dated: _____

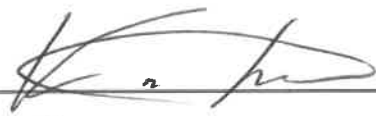
PLAINTIFF

By: _____
 Anthony Wellington

15 Dated: 8-18-22

DEFENDANT

MERIT LOGISTICS, LLC

By: 
 Name: Vern Malpass
 Title: COO

21 Approved As To Form And Content:

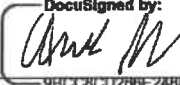
23 Dated: August 8, 2022

PROTECTION LAW GROUP, LLP

By: 
 Heather Davis, Esq.
 Attorneys for Plaintiff Arturo Martinez

1 Dated: 8/7/2022

PLAINTIFF

2
3 By: 
4 Arturo Martinez

5
6 Dated: _____

PLAINTIFF

7
8 By: _____
9 Donny Adame

10 Dated: 08/09/2022

PLAINTIFF

11 By: 
12 Anthony Wellington
13
14 Anthony Wellington

15
16 Dated: 8/18/22

DEFENDANT

MERIT LOGISTICS, LLC

17
18 By: 
19 Name: Vern Melpass
20 Title: LOO

21 Approved As To Form And Content:

22
23 Dated: August 8, 2022

PROTECTION LAW GROUP, LLP

24
25 By: 
26 Heather Davis, Esq.
27 Attorneys for Plaintiff Arturo Martinez
28

1
2 Dated: 08/08/2022

LAWYERS for JUSTICE, PC

3
4 By:


Edwin Aiwanian, Esq.
Attorneys for Plaintiffs Donny Adame and
Anthony Wellington

5
6
7
8
9 Dated: 8/24/22

THE MALONEY FIRM, APC

10
11 By:


Patrick M. Maloney, Esq.
Attorneys for Defendant