

HAINES LAW GROUP, APC

Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Fletcher W. Schmidt (SBN 286462)
fschmidt@haineslawgroup.com
Matthew K. Moen (SBN 305956)
mmoen@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

AEGIS LAW FIRM, PC

KASHIF HAQUE, State Bar No. 218672
SAMUEL A. WONG, State Bar No. 217104
JESSICA L. CAMPBELL, State Bar No. 280626
CHELSEA D. HOLLINS, State Bar No. 305229
9811 Irvine Center Drive, Suite 100
Irvine, California 92618
Telephone: (949) 379-6250
Facsimile: (949) 379-6251
Email: chollins@aegislawfirm.com

Attorneys for Plaintiffs, individually,
and on behalf of all others similarly situated.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF KERN

DIANA FOY; RAYMOND YBARRA; and
RAYMOND HARRIS; individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

EXEL INC., dba DHL SUPPLY CHAIN; and
DOES 1 through 20, inclusive,
Defendants.

Case No. BCV-20-102463

*[Case assigned for all purposes to the Hon.
Bernard C. Barmann, Jr., Dept. 10]*

**DECLARATION OF MATTHEW K.
MOEN IN SUPPORT OF PLAINTIFFS'
MOTION FOR SETTLEMENT
APPROVAL OF CLAIMS BROUGHT
UNDER THE PRIVATE ATTORNEYS
GENERAL ACT, REASONABLE
ATTORNEYS' FEES AND COSTS, AND
ENHANCEMENT AWARDS**

Date: June 2, 2022
Time: 8:30 a.m.
Dept: Division H

Action Filed: October 21, 2020
Trial Date: None Set

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I, MATTHEW K. MOEN, declare as follows:

1. I am a senior associate with Haines Law Group, APC, and counsel for the named Plaintiffs Diana Foy, Raymond Ybarra, and Raymond Harris (“Plaintiffs”) in the above-captioned matter. I am a member in good standing of the bar of the State of California and am admitted to practice in this Court. I have personal knowledge of the facts stated in this declaration and could testify competently to them if called upon to do so.

2. I received a Bachelor of Arts degree from UCLA in 2011, and a Juris Doctor from Loyola Law School, Los Angeles, in 2015. Both before and during law school, I worked for the law firm of Prindle, Amaro, Goetz, Hillyard, Barnes & Reinholtz LLP (now known as Prindle, Goetz, Barnes & Reinholtz LLP), located in Long Beach, California. Both before and during law school, I also worked for Jill McBride Baxter, Certified Sports Agent and Sports Law Attorney.

3. From January 2016 to December 2017, I worked as an associate at Baltodano & Baltodano LLP, a law firm dedicated exclusively to the practice of Plaintiff-side employment law located in San Luis Obispo, California. After the co-founder and lead litigation attorney at Baltodano & Baltodano LLP, the Honorable Hernaldo J. Baltodano, was appointed to the California judiciary in December 2017, the firm dissolved on December 31, 2017. Since January 1, 2018, I have worked as an associate at my current firm, Haines Law Group, APC.

4. During my time with both Baltodano & Baltodano LLP and Haines Law Group, APC, my practice has been solely devoted to litigating plaintiff-side employment related cases in both state and federal court, including wage and hour class actions arising under the California Labor Code and the Fair Labor Standards Act. I am currently staffed on over fifty (50) active wage and hour class actions in which I am integrally involved in all aspects of the litigation. I have also supervised the work of several junior attorneys staffed on the same wage and hour class actions.

5. The following is a non-exhaustive list of the recent wage and hour class actions (that have been granted final approval) in which I have been named as Class Counsel: *Morales*

1 *v. Ball Horticultural Co.*, Case No. 16CV-0488, San Luis Obispo County Superior Court,
2 Honorable Linda D. Hurst, presiding (approving an hourly rate of \$375 for work performed in
3 2017 and 2018); *Ruvalcaba Quiroz v. Circle M Contractors, Inc.*, Case No. 30-2016-00885065-
4 CU-OE-CXC, Orange County Superior Court, Honorable William D. Claster, presiding;
5 *Armenta, et al., v. California Friends Homes d/b/a Quaker Gardens*, Case No. 30-2016-
6 00883282-CU-OE-CXC, Orange County Superior Court, Honorable Randall J. Sherman,
7 presiding; *Willie Daniel Myers, Jr. v. Jerome's Furniture Warehouse*, Case No. CIVDS
8 1715069, San Bernardino County Superior Court, Honorable Janet M. Frangie, presiding
9 (approving an hourly rate of \$375 for work performed in 2018 and 2019); *Tina Arellano v.*
10 *Williams Sonoma Stores, Inc.*, Case No. BC693760, Los Angeles County Superior Court,
11 Honorable Daniel J. Buckley, presiding (approving an hourly rate of \$375 for work performed
12 in 2018 and 2019); *William Cuellar v. UMA Enterprises, Inc.*, Case No. BC657146, Los
13 Angeles County Superior Court, Honorable Maren E. Nelson, presiding (approving an hourly
14 rate of \$375 for work performed in 2018 and 2019); *Arturo Delgado v. Spears Manufacturing*
15 *Co.*, Case No. BC709665, Los Angeles County Superior Court, Honorable Maren E. Nelson,
16 presiding (approving an hourly rate of \$400 for work performed in 2018, 2019, and 2020);
17 *Abbygail Hernandez v. WirelessPCS CA, LLC*, Case No. BC721326, Los Angeles County
18 Superior Court, Honorable Carolyn B. Kuhl, presiding; *Lucia Kang, et al., v. Extra Space*
19 *Management, Inc.*, Case No. 30-2018-00997364-CU-OE-CXC, Orange County Superior Court,
20 Honorable William Claster, presiding (approving an hourly rate of \$400 for work performed in
21 2018, 2019, and 2020); *Fishback v. Paragon Framing, Inc.*, Case No. CIVDS1906610, San
22 Bernardino County Superior Court, Honorable David Cohn, presiding (approving an hourly rate
23 of \$400 for work performed in 2019 and 2020); *Francisco Garcia v. Searing Industries, Inc.*,
24 Case No. CIVDS1932477, San Bernardino County Superior Court, Honorable David Cohn,
25 presiding (approving an hourly rate of \$400 for work performed in 2019 and 2020); *David*
26 *Hasler, et al. v. Anheuser-Busch, LLC*, Case No. 19STCV00802, Los Angeles County Superior
27 Court, Honorable Daniel J. Buckley, presiding; *Angel Ochoa v. Fonseca Construction, Inc.*,
28 Case No. CIVDS1928625, San Bernardino County Superior Court, Honorable David Cohn,

1 presiding (approving an hourly rate of \$400 for work performed in 2019 to 2021); *William*
2 *Chang v. Avcorp Composite Fabrication, Inc.*, Case No. BC715159, Los Angeles County
3 Superior Court, Honorable Amy D. Hogue, presiding (approving an hourly rate of \$400 for
4 work performed in 2018 to 2021); and *David Alvarado, et al. v. J.G. Boswell Company*, Case
5 No. 19STCV19033, Los Angeles County Superior Court, Honorable Daniel J. Buckley,
6 presiding (approving an hourly rate of \$400 for work performed in 2019 to 2021).

7 6. I have also moved to certify, and have received an order certifying, a class action
8 as Class Counsel in the following case: *Staublein v. Wells Fargo Bank, National Association*,
9 Case No. CIVDS1712267, San Bernardino Superior Court, Honorable David Cohn, presiding
10 (certifying a wage statement class).

11 7. In 2020-2022, Thomson Reuters and Los Angeles Magazine recognized me as a
12 Top Young Attorney in Southern California in the annual Rising Star Edition of Super Lawyers.
13 This is an honor awarded to no more than two-and-a-half percent (2.5%) of attorneys under the
14 age of forty in Southern California each year.

15 8. As counsel for Plaintiffs, I have been closely involved in all aspects of this
16 litigation, and believe that the proposed Settlement Agreement and Addendum to Settlement
17 Agreement (collectively, the “Settlement” or “Settlement Agreement”) is a fair and reasonable
18 result for the Aggrieved Employees and the State of California.

19 9. A true and correct copy of the parties’ Settlement Agreement is attached hereto
20 as **Exhibit 1**. A true and correct copy of the proposed Notice of PAGA Settlement and Release
21 of Claims (“Notice”) is attached as Exhibit A to the Settlement Agreement. A true and correct
22 copy of the parties’ Addendum to Settlement Agreement is attached hereto as **Exhibit 2**.

23 10. Concurrently with the filing of Plaintiffs’ motion, Plaintiffs provided notice of
24 the proposed Settlement, a copy of the motion, and all papers filed in support thereof, to the
25 LWDA. True and correct copies of Plaintiffs’ Settlement submission and the LWDA’s
26 confirmation of receipt are attached hereto as **Exhibit 3**.

27 11. The parties’ Settlement provides for a Gross Settlement Amount of
28 \$1,895,000.00. However, the parties’ Settlement also includes an escalator clause that provides

1 for a pro-rata increase to the settlement amount in the event that the actual number of pay
2 periods at issue exceeded the amount of pay periods initially contemplated by the parties.
3 Ultimately, the escalator clause was triggered, resulting in a Total Settlement Amount (“TSA”)
4 of \$2,738,488.59, which was calculated based on the percentage increase in the overall number
5 of pay periods at issue. Because the increase in total pay periods was mirrored by the increase in
6 the TSA, Plaintiffs submit that the fairness of the settlement and the percentage of the
7 forecasted recovery remain unchanged.

8 12. Defendant Exel, Inc. dba DHL Supply Chain (“Defendant”) provides services
9 such as international freight forwarding, warehousing, supply chain analysis and management,
10 in-plant services, assembly and packaging, and transportation management throughout
11 California. Plaintiff Foy began working for Defendant in May 2020 in Defendant’s shipping and
12 auditing department at a facility in Arvin, California. Plaintiff Ybarra began working for
13 Defendant in November 2015 as a forklift operator at Defendant’s Carson, California facility.
14 Plaintiff Harris began working for Defendant on February 25, 2019 as a non-exempt Driver.
15 Plaintiffs, like all Aggrieved Employees, were employed by Defendant as non-exempt
16 employees during the PAGA Period, and were subject to Defendant’s wage and hour policies
17 and practices.

18 13. On October 20, 2020, Plaintiff Foy filed the instant action against Defendant,
19 alleging that Defendant failed to: (1) pay all minimum wages; (2) pay all overtime wages; (3)
20 provide all lawful meal periods; (4) permit all lawful rest periods; (5) issue accurate itemized
21 wage statements; (6) pay all wages due upon separation of employment and within the required
22 time; and (7) comply with Business and Professions Code §§17200, *et seq.* On December 29,
23 2020, after exhausting her pre-filing requirements, Plaintiff Foy filed a First Amended
24 Complaint, adding a cause of action for civil penalties under PAGA premised upon the same
25 underlying Labor Code violations. Shortly thereafter, Defendant provided Plaintiff Foy’s
26 counsel with an arbitration agreement signed by Plaintiff Foy containing a class action waiver.
27 As a result, Plaintiff Foy dismissed her class and individual claims without prejudice, and
28 amended her complaint to allege a single cause of action for civil penalties under PAGA.

1 Around this same time, Plaintiff Ybarra retained Plaintiff Foy’s counsel with the intent of
2 pursuing similar claims against Defendant. On June 1, 2021, Plaintiff Foy filed a Second
3 Amended Complaint, adding Plaintiff Ybarra as a named plaintiff.

4 14. On November 6, 2020, Plaintiff Harris filed a class action complaint against
5 Defendant in Riverside County Superior Court, titled *Raymond Harris v. Exel, Inc., dba DHL*
6 *Supply Chain (USA)*, Case No. CVRI2000034 (the “Riverside County Action”), alleging that
7 Defendant failed to: (1) properly separately compensate for rest periods being paid on a piece-
8 rate basis; (2) issue accurate itemized wage statements; and (3) comply with Business and
9 Professions Code §§17200, *et seq.* On November 6, 2020, Plaintiff Harris sent a letter to
10 Defendant via certified mail, and to the LWDA via online submission, describing Defendant’s
11 alleged Labor Code violations and providing notice of his intent to bring a PAGA claim, as
12 required by Labor Code section 2699.3. After exhausting his pre-filing requirements, Plaintiff
13 Harris filed a First Amended Complaint on January 11, 2021, adding a cause of action for
14 PAGA civil penalties based on the underlying labor code violations alleged in his initial
15 complaint.

16 15. After the filing of his First Amended Complaint, Plaintiff Harris learned that
17 Plaintiff Foy had previously initiated the instant action. Counsel in the two actions then met and
18 conferred, and agreed to jointly prosecute the two actions and to attend mediation in an attempt
19 to seek a global resolution of all claims alleged therein.

20 16. On June 17, 2021, the parties attended a full-day mediation session with Steve
21 Pearl, an experienced wage and hour mediator. Prior to attending mediation, Defendant
22 provided Plaintiffs with a representative sampling of the Aggrieved Employees’ timekeeping
23 and payroll records, as well as various key data points, including the total number of both
24 current and former Aggrieved Employees and the total number of workweeks worked by the
25 Aggrieved Employees during the relevant time period, and Defendant’s applicable written wage
26 and hour policies. Plaintiffs then retained an expert to examine Defendant’s produced data and
27 conduct a comprehensive exposure analysis for the claims at issue.

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1 17. During mediation, the parties debated the legal bases for their claims and
2 defenses, their respective data analyses, and their respective positions regarding the extent to
3 which the Court would likely reduce any PAGA penalties recovered. At the conclusion of
4 mediation, the parties successfully reached an agreement to globally and fully resolve all PAGA
5 claims asserted by Plaintiffs, and ultimately executed the Settlement Agreement. As a material
6 term of the Settlement, Plaintiffs Foy and Ybarra filed a Third Amended Complaint on
7 November 19, 2021, adding Plaintiff Harris as a named plaintiff in the instant action.
8 Subsequently, Plaintiff Harris filed a request for dismissal, without prejudice, of the *Harris*
9 *Action*, which was granted on December 6, 2021. In March 2022, the parties agreed to make a
10 modification to the parties' settlement agreement, and ultimately executed the Addendum to
11 Settlement Agreement.

12 18. Plaintiffs allege that Defendant failed to pay Plaintiffs and the Aggrieved
13 Employees all wages owed for work performed off-the-clock. Specifically, Plaintiffs allege that
14 employees were required to spend an additional 10 minutes inside Defendant's facilities waiting
15 in line with other employees to clock in for their shift. Plaintiffs also allege that, shortly after the
16 start of the pandemic, Plaintiffs and the Aggrieved Employees were required to undergo
17 temperature checks before clocking in for their work shifts. Plaintiffs further allege that
18 Defendant failed to accurately record all time worked by the Aggrieved Employees due to an
19 inability to access their electronic timekeeping system, Kronos, or other timekeeping systems
20 for a period of time. In response, Defendant contends that employees clocked in immediately
21 upon arrival to Defendant's facilities at all times throughout the PAGA liability period, and
22 therefore were accurately paid all wages owed. Defendant further asserts that individualized
23 inquiries would be necessary to determine whether an employee was actually performing
24 compensable work during the hours prior to the employee's scheduled start time, an issue
25 exacerbated by the lack of any records of off-the-clock work being performed, resulting in an
26 unmanageable series of mini-trials.

27 19. Plaintiffs further allege that Defendant failed to separately compensate piece-rate
28 employees on an hourly basis for their rest periods at their effective hourly rate of pay for the

workweek. Instead, Plaintiffs allege that Defendant paid the employees separate rest period pay at a rate that did not factor in the value of any piece-rate earnings accrued, resulting in Defendant's failure to separately compensate for all rest periods at the proper rate of pay.

20. Similarly, Plaintiffs allege that Defendant failed to pay Plaintiffs and the Aggrieved Employees all overtime wages earned in pay periods in which employees earned shift premiums and other forms of incentive and/or bonus pay. Specifically, Plaintiffs allege that Defendant used the rate in effect method of calculating overtime rates of pay in such instances, when it should have used the weighted average method instead, or otherwise incorrectly calculated the Aggrieved Employees' overtime rates of pay using the wrong hours. As a result, Defendant failed to incorporate the value of shift premiums and other forms of incentive and/or bonus pay into the Aggrieved Employees' overtime rates of pay.

21. In response, Defendant argues that it does separately compensate employees paid on a piece-rate basis for rest periods at the proper rate. Moreover, Defendant argues that Plaintiffs' damages analysis for these claims were overstated, since only a small portion of the Aggrieved Employees worked for Defendant as drivers, and only drivers were paid on a piece-rate basis, and only 2% of the Aggrieved Employees received shift premiums and earned overtime wages in the same pay period. Defendant further argues that Plaintiffs' claims would be unmanageable at trial, since they would require individualized inquiries into every pay period worked by the Aggrieved Employees to determine whether Defendant had complied with Labor Code § 226.2 and 29 CFR § 778.115.

22. Plaintiffs also allege that Defendant failed to pay all overtime wages owed to Plaintiffs and the Aggrieved Employees as a result of Defendant's failure to properly institute a lawful alternative workweek schedule ("AWS"). Specifically, Plaintiffs allege that Defendant only paid overtime wages to the Aggrieved Employees when they worked more than 10.0 hours in a workday, despite not satisfying all of the statutory prerequisites to implementing a lawful AWS. In response, Defendant asserts that it properly implemented a valid AWS after complying with all election procedures at two of its locations, and that those remain the only locations at

1 which an AWS was used. Defendant therefore contends that it will prevail on the merits of this
2 claim.

3 23. Plaintiffs also assert that Defendant failed to provide Plaintiffs and the Aggrieved
4 Employees with all lawful meal periods to which they were entitled. Specifically, Plaintiffs
5 assert that Defendant routinely failed to provide the Aggrieved Employees with meal periods
6 when employees worked shifts lasting between 5.0 and 6.0 hours and between 10.0 and 12.0
7 hours, and instead forced Plaintiffs and the Aggrieved Employees to sign unlawful meal period
8 waivers as a condition of employment. Similarly, Plaintiffs assert that Defendant failed to
9 authorize and permit the Aggrieved Employees to take a third rest period for shifts lasting
10 longer than 10.0 hours in length, as required by California law.

11 24. In response, Defendant asserts that it maintained facially lawful written meal and
12 rest period policies at all times throughout the PAGA liability period, and the meal period
13 waivers that employees signed were voluntary, lawful, and not a condition of continued
14 employment. Moreover, Defendant asserts that Plaintiffs' meal and rest period claims are
15 preempted by the Ninth Circuit Court of Appeals' holding in *International Brotherhood of*
16 *Teamsters, Local 2785 v. Federal Motor Carrier Safety Administration*, 986 F.3d 841 (9th Cir.
17 2021), which held that the applicable federal regulations governing companies employing
18 property-carrying motor vehicle drivers preempted the applicable meal and rest period rules
19 outlined in the California Labor Code. Further, Defendant asserts that these claims are
20 unmanageable, as they require individualized inquiries into whether each employee failed to
21 take a lawful rest period and on which days, or whether the employee voluntarily waived a meal
22 period on any given day, resulting in an unmanageable series of mini-trials.

23 25. Plaintiffs also allege that Defendant failed to provide the Aggrieved Employees
24 with wage statements that complied with the requirements of Labor Code section 226(a), as the
25 wage statements issued by Defendant failed to include the correct rates of pay for overtime
26 wages when employees received a shift premium, and failed to list employees' total hours
27 worked, piece rate units earned, and corresponding piece-rates earned during pay periods in
28 which an employee was paid on a piece-rate basis. In response, Defendant asserts that the wage

1 statements it issued did comply with Labor Code section 226(a) with respect to all hourly rates
2 of pay, including overtime rates of pay. Further, Defendant asserts that Plaintiffs' damages
3 analyses are substantially overstated, as only a small fraction of the Aggrieved Employees
4 performed piece-rate work as drivers during the relevant time period, and because Defendant
5 changed the information contained on the wage statements issued to those drivers in August
6 2020.

7 26. Finally, as a result of Defendant's failures to pay all minimum wages, overtime
8 wages, and meal period and rest period premiums, Plaintiff asserts that Defendants also failed to
9 issue accurate and itemized wage statements, and failed to timely pay all final wages at the time
10 of separation. In response, Defendant argues that Plaintiffs' underlying claims will fail and, as a
11 result, the wholly derivative wage statement claim will also fail. Defendant also maintains that
12 given its good faith defenses, this Court would exercise its discretion to substantially reduce any
13 PAGA penalties awarded. Further, Defendant argues that Plaintiffs could only seek PAGA
14 penalties at the \$100 "initial" violation rate, as opposed to the \$200 "subsequent" violation rate,
15 since Defendant had never been put on notice by a court or the Labor Commissioner that its
16 practices violated the Labor Code until Plaintiffs initiated this action.

17 27. Although the parties engaged in substantial informal discovery and information
18 exchange prior to mediation, the parties agreed to postpone formal written and deposition
19 discovery until after exhausting their settlement efforts at mediation. Therefore, absent
20 settlement, the parties will be required to expend substantial time and resources conducting
21 formal written and deposition discovery. Preparation for trial remained, as well as the prospect
22 of appeals in the wake of a summary judgment ruling for either party, and appeals after trial.

23 28. Prior to mediation, Plaintiffs' data analysis revealed that the Aggrieved
24 Employees worked an aggregate 228,447 pay periods during the relevant time period. Plaintiffs'
25 data analysis further revealed that approximately 16.9% of the applicable pay periods included
26 an overtime underpayment as a result of Defendant's allegedly unlawful AWS implementation;
27 approximately 47.1% of the applicable pay periods included at least one rest period violation;
28 approximately 56.9% of the applicable pay periods included at least one meal period violation;

1 and approximately 14.2% of the applicable pay periods included an overtime underpayment as a
2 result of Defendant's failure to accurately incorporate the value of shift premium payments or
3 piece-rate earnings into the regular rate calculation. Plaintiffs therefore calculate Defendants'
4 maximum possible PAGA exposure at \$12,998,634 (228,447 pay periods x 56.9% highest
5 applicable violation rate x \$100 per violation).

6 29. However, as discussed above, Defendant raised numerous defenses to the merits
7 of Plaintiffs' underlying claims and challenged the manageability of Plaintiffs' claims should
8 the action proceed to trial, and argued that even if found liable, the Court would exercise its
9 discretion to drastically reduce any potential PAGA penalties awarded. Plaintiff therefore
10 discounted this figure by 45% to account for the risk of losing on the merits and/or for having
11 overestimated Defendant's potential maximum exposure, and by an additional 65% for the risk
12 of the Court reducing the penalties, to arrive at a realistic recovery of \$2,502,237. Therefore, the
13 proposed gross settlement amount of \$1,895,000 represented approximately 75.7% of Plaintiffs'
14 reasonably forecasted recovery, which is well within the range approved by courts as being fair,
15 reasonable and adequate, while also avoiding further expense and risk of further litigation.

16 30. Plaintiffs' counsel's fee request of \$912,829.53 (one-third of the TSA) is the
17 same percentage sought by class counsel in *Laffitte v. Robert Half Int'l, Inc.*, 1 Cal.5th 480
18 (2016), and is consistent with my firm's experience in similar wage and hour class action and
19 representative PAGA matters. The fee award requested here is justified because Plaintiffs'
20 counsel achieved a reasonable monetary recovery for the Aggrieved Employees and the State of
21 California (who did not take this case after receiving Plaintiff's PAGA notice) in an uncertain
22 and risky case, while bearing the substantial burdens of representation on a contingency basis.

23 31. Since undertaking representation of Plaintiffs, Plaintiffs' counsel dedicated
24 substantial resources to this litigation, including expending \$13,539.77 in litigation costs,
25 without receiving any compensation to date. Plaintiffs' counsel's efforts include conducting pre-
26 filing investigation, analyzing Plaintiffs' claims, conducting extensive legal research regarding
27 the merits and legal bases of Plaintiffs' claims, Plaintiffs' ability to recover penalties under the
28 PAGA, and Defendants' potential defenses, drafting and filing Plaintiffs' respective complaints

1 and LWDA notice letters, reviewing the arbitration agreement produced by Defendant, drafting
2 Plaintiffs' requests to dismiss class and individual claims, attending various court hearings,
3 reviewing substantial documents and data produced by Defendant prior to mediation, retaining
4 an expert to analyze Defendant's document production, extensively evaluating the timekeeping
5 and payroll data prior to mediation, building a comprehensive damages model, preparing for
6 and attending mediation, drafting a mediation brief, negotiating and drafting the long-form
7 Settlement Agreement, Addendum to Settlement Agreement, and Notice documents, preparing
8 this Motion for settlement approval and all supporting documents hereto, and otherwise
9 litigating the case. Plaintiffs' counsel will spend additional time attending the hearing on this
10 Motion and overseeing the settlement administration process. Practice in the narrow field of
11 wage and hour litigation requires skill and knowledge concerning the rapidly evolving
12 substantive state and federal law, as well as the procedural law of representative litigation.

13 32. My law firm has incurred \$5,393.94 in actual litigation costs in prosecuting this
14 action. Filed concurrently herewith is the declaration of my co-counsel, Chelsea D. Hollins,
15 attesting to the costs incurred by her law firm, Aegis Law Firm, PC. Plaintiffs' counsel's request
16 for reimbursement of these litigation costs is fair, adequate, and reasonable, as all of these costs
17 are documented and reasonably incurred. A true and correct copy of my firm's expense report is
18 attached hereto as **Exhibit 4**.

19 33. Plaintiffs also request that the Court approve \$19,950.00 in administration costs
20 to the Settlement Administrator, Phoenix Settlement Administrators. Phoenix was selected to
21 administer this Settlement because it is an experienced and well-respected settlement
22 administrator, and returned a bid at a competitive rate.

23 34. Plaintiffs also seek enhancement awards of \$5,000.00 each, and believe that this
24 request is reasonable given Plaintiffs' efforts in this case, the significant time devoted to the
25 prosecution and resolution of this action, and the risks they undertook on behalf of the
26 Aggrieved Employees. Among other things, Plaintiffs searched for and gathered relevant
27 documents and provided them to their attorneys, engaged in multiple discussions with their
28 attorneys regarding Defendant's policies and practices, provided information related to their

1 working conditions and Defendant's company structure and operations, had regular discussions
2 with their attorneys over the phone regarding the claims in the lawsuit and the facts and legal
3 theories at issue in the case, discussed the status of the case and general case strategy with their
4 attorneys on many occasions, helped their attorneys prepare for mediation, and reviewed and
5 discussed the Settlement with their attorneys.

6 I declare under penalty of perjury under the laws of the United States and the state of
7 California that the foregoing is true and correct. Executed on May 9, 2022, at El Segundo,
8 California.

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10 Matthew K. Moen
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EXHIBIT 1

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement”) of claims brought under the Private Attorneys General Act, Labor Code § 2698 *et seq.* (“PAGA”), is made and entered into between Plaintiffs Diana Foy, Raymond Ybarra and Raymond Harris, acting in their capacity as private attorney generals, and Defendant Exel Inc. dba DHL Supply Chain.

I. DEFINITIONS

The following terms, when used in this Settlement, will have the following meanings:

1. “Actions” collectively refers to the following lawsuits: *Diana Foy, et al. v. Exel Inc. dba DHL Supply Chain*, Kern County Superior Court, Case No. BCV-20-102463 (the “Foy Action”) and *Raymond Harris v. Exel Inc., dba DHL Supply Chain (USA)*, Riverside County Superior Court, Case No. CVRI2000034 (the “Harris Action”).

2. “Aggrieved Employees” consist of all current and former non-exempt employees of Defendant Exel Inc. dba DHL Supply Chain who worked in the State of California at any time between October 21, 2019 to August 15, 2021. Based on the information provided by Defendant, Plaintiffs estimate that there are approximately 5,300 Aggrieved employees.

3. “Defendant” means Exel Inc. dba DHL Supply Chain.

4. “Court” means the Superior Court of California for the County of Kern.

5. “Effective Date” means the date upon which the Court signs an Order approving the Settlement.

6. “Individual Settlement Payment” means the amount to be paid to each Aggrieved Employee based on the formula described herein.

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

8. “Gross Settlement Amount” is the non-reversionary sum of \$1,895,000.00, which represents the total amount payable under this Settlement by Defendant, including, without limitation, payments to all Aggrieved Employees, payment to the LWDA, payment of Plaintiffs’ attorneys’ fees and costs, payment of Plaintiffs’ enhancement awards, and payment to the Settlement Administrator for administration costs.

9. “Net Settlement Amount” is the amount remaining to distribute to the LWDA and Aggrieved Employees after the following amounts (subject to Court approval) are subtracted from the Gross Settlement Amount: (a) Plaintiffs’ attorneys’ fees up to one-third of the Gross Settlement Amount, currently estimated at \$631,666.66; (b) Plaintiffs’ reasonable verified litigation costs up to \$22,500.00; (c) Plaintiffs’ representative enhancement awards of \$15,000.00 (\$5,000.00 to each named Plaintiff); and (d) reasonable third-party administration costs up to \$12,250.00.

10. “PAGA” means the California Labor Code Private Attorneys General Act, California Labor Code § 2698, *et seq.*

11. “PAGA Period” means the time period between October 21, 2019 to August 15, 2021.

12. “PAGA Released Claims” means any and all claims asserted in the Actions under PAGA, or that could have been asserted in the Actions under PAGA based on the facts alleged, including but not limited to any and all claims for PAGA penalties for violations of the California Labor Code governing: failure to pay minimum wages, failure to pay overtime wages, failure to provide meal periods or compensate an additional hour of pay for missed or improper meal periods, failure to permit rest breaks or compensate an additional hour of pay for missed or improper rest periods, failure to provide accurate itemized wage statements, failure to pay all wages due upon separation of employment, failure to keep accurate and complete time and payroll records for employees, failure to timely pay wages during employment, failure to pay rest periods at the proper rate and failure to comply with Labor Code Section 226.2.

13. “Parties” means Plaintiffs and Defendant.

14. “Plaintiffs” means Diana Foy, Raymond Ybarra and Raymond Harris.

15. “Plaintiffs’ Counsel” means Paul K. Haines, Fletcher W. Schmidt, and Matthew K. Moen of Haines Law Group, APC., and Samuel Wong, Jessica Campbell, and Chelsea Hollins of Aegis Law Firm, PC.

16. “Settlement Administrator” means Phoenix Settlement Administrators (“Phoenix”).

II. RECITALS

1. Plaintiffs allege that Defendant is liable for civil penalties under the PAGA as a result of its failure to: (i) pay all overtime wages; (ii) pay all minimum wages; (iii) provide all meal periods or provide compensation in lieu thereof; (iv) authorize and permit all rest periods or provide compensation in lieu thereof; (v) issue accurate, itemized wage statements; and (vi) pay all final wages due upon separation; (vii) pay all wages earned at least twice during the calendar month; (viii) maintain accurate time and payroll records; (ix) pay rest periods at the proper rate; (x) comply with Labor Code Section 226.2. Defendant denies these allegations and, in entering into this Settlement, Defendant does not admit the sufficiency of any claims, allegations, assertions, or contentions made against it in the Actions.

2. On June 17, 2021, the Parties participated in a full-day mediation with Steve Pearl, Esq. and ultimately reached a tentative global settlement to fully resolve all PAGA claims asserted in the Actions as to Plaintiffs and the Aggrieved Employees.

3. As a material term of this Settlement, the Parties agree that Plaintiff Harris will dismiss the *Harris* Action with prejudice as to Plaintiff Harris and without prejudice as to the allegedly aggrieved employees and the State of California, and will instead be added as a representative to the *Foy* Action. The Parties therefore also agree to stipulate to the filing of a Third Amended Complaint (“TAC”) in the *Foy* Action, adding Plaintiff Harris as a named plaintiff and to consolidate the factual allegations in the *Foy* action and Harris action. Upon the filing of the TAC in the *Foy* Action and as soon as practicable thereafter, Plaintiffs shall move the Court for approval of the Settlement.

III. OPERATIVE TERMS OF SETTLEMENT

The Parties agree as follows:

1. **Non-Admission of Liability.** Defendant denies liability to Plaintiffs and to the Aggrieved Employees upon any claim or cause of action. This Settlement does not constitute, and is not intended to constitute, an admission by Defendant as to the merits, validity, or accuracy of any of the allegations or claims made against it in the Actions.

Nothing in this Settlement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of the negotiations leading to this Settlement, is intended by the Parties to constitute, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in this case or any other judicial, arbitral, administrative, investigative or other forum or proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. The Parties themselves agree not to introduce, use, or admit this Settlement, directly or indirectly, in this case or any other judicial, arbitral, administrative, investigative or other forum or proceeding, as purported evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity, or for any other purpose. Notwithstanding the foregoing, this Settlement may be used in any proceeding before the Court that has as its purpose the interpretation, implementation, or enforcement of this Settlement or any orders or judgments of the Court entered in connection with the Settlement.

2. **Gross Settlement Amount.** Defendant will pay \$1,895,000.00 as the non-reversionary Gross Settlement Amount. The Gross Settlement Amount will be deposited with the Settlement Administrator no later than 45 days after the Effective Date.

3. **Escalator Clause.** Defendant estimates that as of August 15, 2021, the Aggrieved Employees worked 228,447 PAGA pay periods during the PAGA Period. However, if the number of pay periods actually worked during the PAGA Period (as determined by the updated data provided to the Settlement Administrator) is more than 15% greater than this figure (i.e., if there are more than 262,714 PAGA pay periods worked by the Aggrieved Employees), Defendant agrees to increase the Gross Settlement Amount proportionately over the 15% grace amount (i.e., should the PAGA pay periods increase by 16%, the Gross Settlement Amount shall increase by 1%).

4. **Net Settlement Amount.** The Parties agree that the following amounts should be subtracted from the Gross Settlement Amount, subject to Court approval, resulting in a Net Settlement Amount to distribute to the LWDA and Aggrieved Employees:

- a. **Plaintiffs' Attorneys' Fees and Costs.** Defendant will not oppose Plaintiffs' request for attorneys' fees in the amount of up to one-third of the Gross Settlement Amount (\$631,666.66) and actual costs incurred in prosecuting this Action, up to \$22,500.00. In the event the Court approves a payment of less than these amounts, the difference will be added to the Net Settlement Amount. The Settlement Administrator will report these payments on IRS Form 1099 issued to Plaintiffs' Counsel.

- b. Plaintiffs' Enhancement Awards. Defendant will not oppose Plaintiffs' request for enhancement awards totaling \$15,000.00 (\$5,000.00 for each named Plaintiff) for their service to the State of California and the Aggrieved Employees and the risk Plaintiffs undertook by attaching their names to this Action. In the event the Court approves a payment of less than the requested amount, the difference will be added to the Net Settlement Amount. The Settlement Administrator will report this payment on IRS Form 1099 issued to Plaintiffs.
- c. Administration Costs. Defendant will not oppose the Settlement Administrator's costs in the amount up to \$12,250.00 for administering the Settlement. In the event the Court approves a payment of less than this amount, the difference will be added to the Net Settlement Amount. The Settlement Administrator will report this payment on IRS Form 1099 issued to the Settlement Administrator.

5. Allocation of Net Settlement Amount. The Net Settlement Amount will be distributed 75% to the LWDA and 25% to the Aggrieved Employees, pursuant to Labor Code § 2699(i). The 25% portion to be paid to Aggrieved Employees will be paid to all Aggrieved Employees based on the proportionate number of pay periods worked by each Aggrieved Employee during the PAGA Period as follows: Individual Settlement Payments will be calculated based on the proportionate number of pay periods worked by each Aggrieved Employee during the PAGA Period, by multiplying the Net Settlement Amount by a fraction, the numerator of which is each Aggrieved Employee's total pay periods worked during the PAGA Period, and the denominator of which is the total aggregate number of pay periods worked by all Aggrieved Employees during the PAGA Period.

6. PAGA Released Claims. In consideration for the payments awarded pursuant to the terms of this Settlement, Plaintiffs, in their capacity as private attorney generals and "aggrieved employees" acting on behalf of themselves, the State of California, and the Aggrieved Employees, agree that upon entry of an Order approving the Settlement, Plaintiffs and the Aggrieved Employees shall release Defendant from any and all PAGA Released Claims against Defendant that arose during the PAGA Period. Upon entry of the Order approving the Settlement and judgment entered thereon, Plaintiffs and the Aggrieved Employees will be forever barred from pursuing any and all of the PAGA Released Claims that arose during the PAGA Period against Defendant.

7. Covenants and Representations by Plaintiffs. Plaintiffs represent and warrant that they have not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or portion thereof, or interest therein, which is or may be subject to this Settlement. Plaintiffs acknowledge that they have read this Settlement, that they fully understand their rights, privileges and duties under the Settlement, and enter into this Settlement freely and voluntarily. Plaintiffs further acknowledge that they had the opportunity to consult with their attorneys to explain the terms of this Settlement and the consequences of signing this Settlement.

8. Judgment. As part of the Motion to approve the Settlement, Plaintiffs will submit a proposed order and judgment which enters judgment in the Action in accordance with the terms of the Settlement and which retains jurisdiction of the Court over the Action for the purpose of enforcing the terms of the Settlement following approval of the Settlement. This Settlement is expressly conditioned upon the Court entering an order as set forth herein. The order will not

release or bar any claims other than the PAGA Released Claims as to Plaintiffs and the Aggrieved Employees. The Parties agree to reasonably cooperate in preparing any other filings required by the Court for the approval of this Settlement.

9. **Publicity.** Plaintiffs and their counsel agree that they have not and will not publish the Actions or the Settlement. Plaintiffs will state that “the case was resolved and it was resolved confidentially” in response to any inquiries. Plaintiffs’ counsel shall not report the Actions or the Settlement in any medium or in any publication, shall not post or report anything regarding the claims of Plaintiffs or the Aggrieved Employees or the Settlement on their websites, and shall not contact any reporters or media regarding the Settlement. Despite this provision, Plaintiffs’ Counsel can discuss the Settlement with the court for purposes of approval and with Plaintiffs.

IV. ADMINISTRATION OF SETTLEMENT

1. **Settlement Administrator.** The Parties agree to use Phoenix Settlement Administrators to handle the administration of this Settlement.

2. **Provision of Information for Aggrieved Employees.** Within ten (10) business days after the Effective Date, Defendant will provide the Settlement Administrator with information for the Aggrieved Employees. Defendant will, in good faith, compile from its records a list of Aggrieved Employees that will be in a computer-readable format, such as a Microsoft Excel spreadsheet, and will include each Aggrieved Employee’s full name, last known mailing address, last known telephone number, pay period information, and Social Security numbers. Because Social Security numbers are included in the list, the Settlement Administrator will maintain the list in confidence, and access will be limited to those with a need to use the list as part of the administration of the Settlement.

Within ten (10) business days of receiving the Aggrieved Employees’ information from Defendant, the Settlement Administrator will circulate to counsel for both Parties an anonymized spreadsheet containing the Individual Settlement Payments to each Aggrieved Employee and the data used to calculate said payments. The Settlement Administrator will also determine whether the Escalator Clause in Paragraph III.3 has been triggered. The Settlement Administrator will obtain approval from all counsel for the Parties of the calculations before mailing Individual Settlement Payments.

3. **Explanatory Letter and Individual Settlement Payments.** Within five (5) business days of receiving approval from all counsel for the Parties, pursuant to Paragraph IV.2, the Settlement Administrator will perform a search on the National Change of Address database to update the Aggrieved Employees’ addresses.

Within ten (10) business days of receiving approval from all counsel for the Parties, pursuant to Paragraph IV.2, the Settlement Administrator will mail copies of the explanatory letter, which has been mutually approved by the Parties and is attached hereto as **Exhibit A**, in English and Spanish, along with the Individual Settlement Payments to all Aggrieved Employees via First-Class U.S. Mail.

Each Individual Settlement Payment will be deemed penalties and reported using IRS Form 1099. Checks will remain negotiable for one hundred eighty (180) days from the date they are mailed by the Settlement Administrator. Any check that is not negotiated within one hundred

eighty (180) days of mailing to an Aggrieved Employee will be transferred to the cy pres Public Counsel, a pro bono law firm offering legal aid to low-income individuals throughout California.

4. **Undeliverable Letters.** The Settlement Administrator will exercise its best judgment to determine the current mailing address for each Aggrieved Employee. The address identified by the Settlement Administrator as the current mailing address will be presumed to be the best mailing address for each Aggrieved Employee. Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via First-Class U.S. Mail to the forwarding address affixed thereto. 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 or Social Security number of the Aggrieved Employee involved, and will perform a single re-mailing.

Defendant fully discharges its obligations to those Aggrieved Employees to whom they will pay an Individual Settlement Payment through the Settlement Administrator's initial mailing of a check, regardless of whether such checks are actually received and/or negotiated by Aggrieved Employees.

Plaintiffs and their counsel, as well as Defendant and their counsel shall not bear any responsibility for errors or omissions in the calculation or distribution of the settlement payments or the development of the list of recipients of settlement payments.

5. **Payment of Remainder.** Within ten (10) business days of receiving approval from all counsel for the Parties, pursuant to Paragraph IV.2, the Settlement Administrator will mail the following payments: (1) the 75% share of the Net Settlement Fund to the LWDA; (2) Court-approved attorneys' fees and costs to Plaintiffs' Counsel; (3) Court-approved enhancement awards to Plaintiffs; and (4) Court-approved administration costs to the Settlement Administrator.

6. **Accounting.** The Settlement Administrator will provide an accounting declaration under oath to the Parties of the amounts paid from the Settlement as soon as practicable after the check cashing deadline described in Paragraph IV.3.

7. **Tax Consequences.** Individual Settlement Payments made under this Settlement will be attributed 100% as penalties and interest and paid via IRS Form 1099 issued to each Aggrieved Employee. Neither Plaintiffs nor Defendant, nor counsel for either of the Parties, makes any representations or warranties with respect to tax consequences of any payment under this Settlement.

V. 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 STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE

ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISOR'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

VI. MISCELLANEOUS PROVISIONS

1. **Successors.** This Settlement will be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators and successors.

2. **Governing Law.** This Settlement will be construed under and governed by the laws of the State of California, without regard to choice of law principles. All questions of validity, interpretation or performance of any of its terms or of any rights or obligations of the Parties to this Settlement will be governed by California law. If any legal or equitable action is necessary to enforce the terms of this Settlement, it will be brought in the State of California, County of San Bernardino.

3. **Complete Agreement.** The Parties each acknowledge and represent that no promise or representation not contained in this Settlement has been made to them and acknowledge and represent that this Settlement contains the entire understanding between them and contains all terms and conditions pertaining to the compromise and settlement of the Action. This Settlement cannot be amended or modified except by a writing signed by the Parties hereto.

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

5. **Judgment and Continued Jurisdiction.** After approval of this Settlement, the Court will have continuing jurisdiction per California Code of Civil Procedure § 664.6 solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement; (ii) settlement administration matters; and (iii) such post-judgment matters as may be appropriate under court rules or as set forth in this Settlement.

6. **Amendment or Modification.** This Settlement may be amended or modified only by a written instrument, signed by the Parties or their successors-in-interest or counsel for the Parties.

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

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

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

10. **Invalidity of Any Provision.** Before declaring any provision of this Settlement 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 Settlement valid and enforceable.

11. **Severability.** If any term or provision of this Settlement is held to be invalid or unenforceable, the remaining portions of this Settlement will continue to be valid and will be performed, construed and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the Parties, as determined from the face of the Settlement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

12. **Waiver.** No waiver of any condition or covenant contained in this Settlement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such Party of the same or any other condition, covenant, right or remedy.

13. **Enforcement Action.** In the event that 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 or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

14. **Mutual Preparation.** The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement. Accordingly, this Settlement will not be construed more strictly

against one Party merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement.

15. **Representation by Counsel.** The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement, and this Settlement has been executed with the consent and advice of counsel and reviewed in full.

16. **Cooperation and Execution of Necessary Documents.** The Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement. The Parties agree to work cooperatively, diligently and in good faith to ensure that all documents necessary to seek the Court's approval of this Settlement are timely filed.

17. **Binding Agreement.** The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement 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 mediation confidentiality provisions that otherwise might apply under federal or state law.

IN WITNESS THEREOF, the Parties to this Settlement each acknowledge that they have read the foregoing Settlement, accept and agree to the provisions contained in this Settlement and hereby execute it voluntarily and with full understanding of its consequences.

RAYMOND HARRIS

Dated: _____

Raymond Harris, Plaintiff

DIANA FOY

Dated: 11/12/2021

DocuSigned by:
Diana Foy
825F647BD343457 ...

Diana Foy, Plaintiff

RAYMOND YBARRA

Dated: _____

Raymond Ybarra, Plaintiff

EXEL INC., DBA DHL SUPPLY CHAIN

Dated: _____

By: _____
Title: _____

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[SIGNATURES CONTINUE ON FOLLOWING PAGE]

RAYMOND HARRIS

Dated: _____

Raymond Harris, Plaintiff

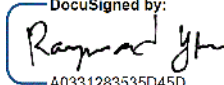
DIANA FOY

Dated: _____

Diana Foy, Plaintiff

RAYMOND YBARRA

Dated: 11/12/2021

DocuSigned by:

A0331283535D45D...

Raymond Ybarra, Plaintiff

EXEL INC., DBA DHL SUPPLY CHAIN

Dated: _____

By: _____
Title: _____

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[SIGNATURES CONTINUE ON FOLLOWING PAGE]

RAYMOND HARRIS

Dated: Nov 11, 2021


Raymond H Harris sr (Nov 11, 2021 22:59 PST)

Raymond Harris, Plaintiff

DIANA FOY

Dated: _____

Diana Foy, Plaintiff

RAYMOND YBARRA

Dated: _____

Raymond Ybarra, Plaintiff

EXEL INC., DBA DHL SUPPLY CHAIN

Dated: 11/15/2021


By: Andrew O. Etter
Title: Senior Legal Counsel

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[SIGNATURES CONTINUE ON FOLLOWING PAGE]

APPROVED AS TO FORM AND CONTENT:

Dated: 10-12-21

HAINES LAW GROUP, APC

By: 
Fletcher W. Schmidt
Attorneys for Plaintiff, Raymond Harris

Dated: _____

AEGIS LAW FIRM, PC

By: _____
Samuel Wong
Jessica Campbell
Chelsea D. Hollins
Attorneys for Plaintiffs, Diana Foy and
Raymond Ybarra

Dated: _____

FISHER & PHILLIPS LLP

By: _____
Boris Sorsher
Ashton M. Riley
Attorneys for Defendant

APPROVED AS TO FORM AND CONTENT:

Dated: _____

HAINES LAW GROUP, APC

By: _____

Fletcher W. Schmidt

Attorneys for Plaintiff, Raymond Harris

Dated: November 12, 2021

AEGIS LAW FIRM, PC

By: _____

Samuel Wong

Jessica Campbell

Chelsea D. Hollins

Attorneys for Plaintiffs, Diana Foy and

Raymond Ybarra

Dated: November 16, 2021

FISHER & PHILLIPS LLP

By: _____

Boris Sorsher

Ashton M. Riley

Attorneys for Defendant

EXHIBIT A

NOTICE OF PAGA SETTLEMENT AND RELEASE OF CLAIMS

Diana Foy, et al. v. Exel Inc. dba DHL Supply Chain

Kern County Superior Court, Case No. BCV-20-102463

<<Name>>

<<Address>>

<<City>>, <<State>> <<Zip Code>>

XX - XX - _ _ _ _

I. NOTICE OF PAGA SETTLEMENT

The Kern County Superior Court (the “Court”) has approved the PAGA Settlement Agreement (“Settlement”) in the above-captioned lawsuit filed by Diana Foy, Raymond Ybarra, and Raymond Harris (“Plaintiffs”) on behalf of themselves and all other aggrieved employees, including you.

In this lawsuit, Plaintiffs seek to recover civil penalties for alleged violations of a California law known as the Private Attorneys General Act (“PAGA”). Plaintiffs are acting as “private attorney generals” on behalf of the California Labor and Workforce Development Agency (“LWDA”) and other aggrieved employees. Plaintiffs allege that PAGA penalties are owed because Defendant Exel Inc. dba DHL Supply Chain (“DHL”) failed to: (i) pay all overtime wages; (ii) pay all minimum wages; (iii) provide all meal periods or provide compensation in lieu thereof; (iv) authorize and permit all rest periods or provide compensation in lieu thereof; (v) issue accurate, itemized wage statements; (vi) pay all final wages due upon separation; (vii) pay all wages earned at least twice during the calendar month; (viii) maintain accurate time and payroll records; (ix) pay rest periods at the proper rate; and (x) comply with Labor Code Section 226.2.

The Court has ***not*** made a determination about Plaintiffs’ claims. This Notice is not to be understood as an expression of any opinion by the Court as to the merits of Plaintiffs’ claims. DHL maintains that Plaintiffs’ allegations are without merit and enters into this Settlement with no admission of liability, and solely for the purposes of compromising and settling the lawsuit to avoid the cost and operational burden of continued litigation.

You are receiving this Notice because you are in the group of employees referred to as the “Aggrieved Employees,” which is defined as: all current and former non-exempt employees of DHL who worked in the State of California at any time between October 21, 2019 to March 31, 2022.

The “PAGA Period” is defined as October 21, 2019 to March 31, 2022.

II. CALCULATION OF INDIVIDUAL SETTLEMENT PAYMENT

Each Aggrieved Employee is receiving a share of the Net Settlement Amount based on the proportionate number of pay periods worked by each Aggrieved Employee during the PAGA Period, by multiplying the Net Settlement Amount by a fraction, the numerator of which is each Aggrieved Employee’s total pay

periods worked during the PAGA Period, and the denominator of which is the total aggregate number of pay periods worked by all Aggrieved Employees during the PAGA Period.

According to DHL's records, you worked **[THIS EMPLOYEE'S PAY PERIODS]** during the PAGA Period. The total number of pay periods worked by all Aggrieved Employees during the PAGA Period is **[TOTAL PAY PERIODS]**.

Therefore, your Individual Settlement Payment has been calculated at \$**[AMOUNT PAID TO THIS EMPLOYEE]**. Your payment is enclosed with this Notice.

III. RELEASE

On **[PAGA APPROVAL DATE]**, the Court approved the parties' Settlement Agreement (the "Settlement"). By operation of the Settlement's terms, all Aggrieved Employees shall release DHL from any and all claims asserted in the action under PAGA, or that could have been asserted in the action under PAGA based on the facts alleged in any of the complaints filed in the action and Plaintiffs' letters to the LWDA dated October 20, 2020, November 6, 2020, and March 23, 2022, including but not limited to any and all claims for PAGA penalties for violations of the California Labor Code governing: failure to pay minimum wages, failure to pay overtime wages, failure to provide meal periods or compensate an additional hour of pay for missed or improper meal periods, failure to permit rest breaks or compensate an additional hour of pay for missed or improper rest periods, failure to provide accurate itemized wage statements, failure to pay all wages due upon separation of employment, failure to keep accurate and complete time and payroll records for employees, failure to timely pay wages during employment, failure to pay rest periods at the proper rate and failure to comply with Labor Code Section 226.2, that arose during the PAGA period ("PAGA Released Claims").

Upon entry of the Order approving the Settlement, Plaintiffs and the Aggrieved Employee are forever barred from pursuing any and all of the PAGA Released Claims that arose during the PAGA Period against DHL.

IV. SETTLEMENT ADMINISTRATOR

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

You may call the Court-approved Settlement Administrator, Phoenix Settlement Administrators, at **[ADMINISTRATOR INFO]** with any questions.

Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall direct all unclaimed funds to Public Counsel, the parties' *cy pres* designee. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

EXHIBIT 2

ADDENDUM TO SETTLEMENT AGREEMENT

This Addendum to Settlement Agreement (“Addendum”) of claims brought under the Private Attorneys General Act, Labor Code § 2698 *et seq.* (“PAGA”), is made and entered into between Plaintiffs Diana Foy, Raymond Ybarra and Raymond Harris, acting in their capacity as private attorney generals, and Defendant Exel Inc. dba DHL Supply Chain.

This Addendum is being made in accordance with Section VI.6 of the Settlement Agreement.

The following terms, as defined in this Addendum, will replace and supersede Section I of the Settlement Agreement:

2. “Aggrieved Employees” consist of all current and former non-exempt employees of Defendant Exel Inc. dba DHL Supply Chain who worked in the State of California at any time between October 21, 2019 to March 31, 2022. Based on the information provided by Defendant, Plaintiffs estimate that the Aggrieved Employees worked an aggregate total of 364,398.7 PAGA pay periods during the PAGA Period.

11. “PAGA Period” means the time period between October 21, 2019 to March 31, 2022.

12. “PAGA Released Claims” means any and all claims asserted in the Actions under PAGA, or that could have been asserted in the Actions under PAGA based on the facts alleged in any of the complaints filed in the Actions and Plaintiffs’ letters to the LWDA dated October 20, 2020, November 6, 2020, and March 23, 2022, including but not limited to any and all claims for PAGA penalties for violations of the California Labor Code governing: failure to pay minimum wages, failure to pay overtime wages, failure to provide meal periods or compensate an additional hour of pay at the regular rate for missed or improper meal periods, failure to permit rest breaks or compensate an additional hour of pay at the regular rate for missed or improper rest periods, failure to provide accurate itemized wage statements, failure to pay all wages due upon separation of employment, failure to keep accurate and complete time and payroll records for employees, failure to timely pay wages during employment, failure to pay rest periods at the proper rate and failure to comply with Labor Code Section 226.2.

Pursuant to the redefined terms above, the Escalator Clause in Section III.3 is triggered and, therefore, the Gross Settlement Amount in Sections I.8 and III.2, the Net Settlement Amount in Section I.9, Plaintiffs’ Attorneys’ Fees in Section III.4.a and Administration costs in Section III.4.c are subject to a pro-rata increase upwards based on the Total Settlement Amount. Section I is also amended to add a section 17 with the defined term “Total Settlement Amount,” which is defined as follows:

I.17. "Total Settlement Amount" is the non-reversionary sum of \$2,738,488.59, which represents the total amount payable under this Settlement by Defendant as a result of the trigger of the escalator clause and the resulting increase in the Gross Settlement Amount, including, without limitation, payments to all Aggrieved Employees, payment to the LWDA, payment of Plaintiffs' attorneys' fees and costs, payment of Plaintiffs' enhancement awards, and payment to the Settlement Administrator for administration costs.

I.9. "Net Settlement Amount" is the amount remaining to distribute to the LWDA and Aggrieved Employees after the following amounts (subject to Court approval) are subtracted from the Total Settlement Amount: (a) Plaintiffs' attorneys' fees up to one-third of the Total Settlement Amount, currently estimated at \$912,829.53; (b) Plaintiffs' reasonable verified litigation costs up to \$22,500.00; (c) Plaintiffs' representative enhancement awards of \$15,000.00 (\$5,000.00 to each named Plaintiff); and (d) reasonable third-party administration costs up to \$19,950.00.

III.2 **Total Settlement Amount.** Defendant will pay \$2,738,488.59 as the non-reversionary Total Settlement Amount. The Total Settlement Amount will be deposited with the Settlement Administrator no later than 60 days after the Effective Date.

III.4.a **Plaintiffs' Attorneys' Fees and Costs.** Defendant will not oppose Plaintiffs' request for attorneys' fees in the amount of up to one-third of the Total Settlement Amount (\$912,829.53) and actual costs incurred in prosecuting this Action, up to \$22,500.00. In the event the Court approves a payment of less than these amounts, the difference will be added to the Net Settlement Amount. The Settlement Administrator will report these payments on IRS Form 1099 issued to Plaintiffs' Counsel.

III.4.c **Administration Costs.** Defendant will not oppose the Settlement Administrator's costs in the amount up to \$19,950.00 for administering the Settlement. In the event the Court approves a payment of less than this amount, the difference will be added to the Net Settlement Amount. The Settlement Administrator will report this payment on IRS Form 1099 issued to the Settlement Administrator.

IN WITNESS THEREOF, the Parties to this Addendum each acknowledge that they have read the foregoing Addendum, accept and agree to the provisions contained in this Settlement and hereby execute it voluntarily and with full understanding of its consequences.

RAYMOND HARRIS

Dated: Apr 24, 2022


Raymond H Harris (Apr 24, 2022 17:45 PDT)

Raymond Harris, Plaintiff

DIANA FOY

Dated: 4/20/2022

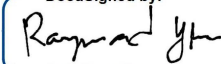
DocuSigned by:

825E647BD343457...

Diana Foy, Plaintiff

RAYMOND YBARRA

Dated: 4/20/2022

DocuSigned by:

A0331203535D45D...

Raymond Ybarra, Plaintiff

EXEL INC., DBA DHL SUPPLY CHAIN

Dated: _____

By: _____
Title: _____

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[SIGNATURES CONTINUE ON FOLLOWING PAGE]

RAYMOND HARRIS

Dated: _____

Raymond Harris, Plaintiff

DIANA FOY

Dated: _____

Diana Foy, Plaintiff

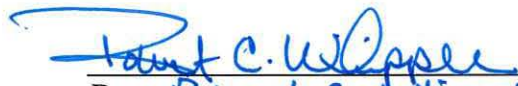
RAYMOND YBARRA

Dated: _____

Raymond Ybarra, Plaintiff

EXEL INC., DBA DHL SUPPLY CHAIN

Dated: April 20, 2022


By: Robert C. Whipple
Title: Associate General Counsel

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[SIGNATURES CONTINUE ON FOLLOWING PAGE]

APPROVED AS TO FORM AND CONTENT:

Dated: April 25, 2022

HAINES LAW GROUP, APC

By: 
Fletcher W. Schmidt
Attorneys for Plaintiff, Raymond Harris

Dated: April 20, 2022

AEGIS LAW FIRM, PC

By: 
Samuel Wong
Jessica Campbell
Chelsea D. Hollins
Attorneys for Plaintiffs, Diana Foy and
Raymond Ybarra

Dated: April 26, 2022

FISHER & PHILLIPS LLP

By: 
Boris Sorsher
Ashton M. Riley
Attorneys for Defendant

EXHIBIT 3



Private Attorneys General Act (PAGA) – Filing

Proposed Settlement of PAGA case

PAGA Number (LWDA-CM-) : *

Please enter only the eight digit number after "LWDA-CM-" in the following format, "XXXXXX-XX".
[Search for PAGA Case number](#)

The timing of the deposit of settlement checks is governed by the provisions of the State Administrative Manual. This ministerial, administrative act of depositing a settlement check mandated by state procedures should not be construed as nor does it constitute an unconditional, voluntary and/or absolute acceptance of settlement proceeds or approval of the terms of any settlement agreement or judgment related to that check.

Your Information (Person Who is Filing)

Your First Name *

Paul

Your Last Name *

Haines

Your Email Address *

ncastillo@haineslawgroup.

Your Street Name, Number and Suite/Apt *

2155 Campus Dr., Ste., 18

Your Mobile Phone Number

4242922249

Your City *

El Segundo

Your Work Phone Number

Your State *

Please select...



Your Zip/Postal Code *

90245

Court and Hearing Information

Court *

Superior Court of Californi

Court Case Number *

BCV-20-102463

Hearing Date (if any)

06/02/2022

Hearing Time

8:30 a.m.

Hearing Location

1215 Truxtun Ave., Bakers

Number of aggrieved employees *

8246

Gross settlement amount *

2738488.59

Gross penalty amount *

1777169.29

Penalties to LWDA *

1332876.97

Date of proposed settlement *

11/16/2021

Proposed Settlement and Other Documents

Proposed Settlement *

Exhibit 1 – Se... Attached).pdf

Other Attachment (if any)

Exhibit 2 – Ad...t (Signed).pdf

Other Attachment (if any)

[Remove](#)

1. 2022-05-09...l (FINAL).pdf

Other Attachment (if any)

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2. 2022-05-09... (FINAL).pdf

Other Attachment (if any)

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3. 2022-05-09... (FINAL).pdf

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4. 2022-05-09... (FINAL).pdf

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9. 2022-05-09... (FINAL).pdf

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10. 2022-05-0...I (FINAL).pdf

Other Attachment (if any)

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12. 2022-05-0...I (FINAL).pdf

[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

EXHIBIT 4

Haines Law Group, APC

Expense Summary

Diana Foy, et al. v. Exel, Inc., dba DHL Supply Chain

EXPENSE	AMOUNT
Copying, Postage, and FedEx Costs	\$332.89
Filing and Service Fees	\$1,817.05
CourtCall Fees	\$94.00
Jury Fees	\$150.00
Mediation Costs	\$3,000.00
TOTAL:	\$5,393.94