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and Proposed Class Counsel
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES – POMONA COURTHOUSE SOUTH**
11

12 HERIBERTO MARQUEZ, on behalf of
13 himself and all “aggrieved employees”
pursuant to Labor Code § 2698 *et seq.*,

14 Plaintiffs,

15 v.

16 P & B INTERMODAL SERVICES
17 LIMITED LIABILITY COMPANY, a
New Jersey limited liability company, and
18 DOES 1 through 10, inclusive,

19 Defendants.
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Case No.: 21PSCV00224

*Assigned For All Purposes to the Honorable Judge
Peter A. Hernandez, Dept. O*

**DECLARATION OF DANIEL F. GAINES IN
SUPPORT OF UNOPPOSED MOTION AND
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND SEEKING
LEAVE TO FILE FIRST AMENDED
COMPLAINT**

DATE: April 26, 2022

TIME: 9:30 a.m.

DEPT.: O

Reservation No.: 985275804395

Action Filed: March 17, 2021

1 I, DANIEL F. GAINES, hereby declare and state as follows:

2 1. I am an attorney duly admitted to the practice of law in the State of California. I am
3 a shareholder of Gaines & Gaines, APLC, counsel for Plaintiff Heriberto Marquez (“Marquez” or
4 “Plaintiff”) and proposed Class Counsel in this action. I have personal knowledge of the facts set
5 forth herein and if called as a witness to testify to them, I could and would do so competently.

6 **Education and Experience:**

7 2. I obtained my BS degree from the University California at Berkeley in 2003. I
8 majored in Business Administration at the Haas School of Business.

9 3. Thereafter, I attended the University of Virginia School of Law. At Virginia, I was
10 a member of the editorial board of the Virginia Tax Review. I was also the recipient of the Lacy
11 Armour Scholarship, awarded to recognize academic excellence. At Virginia, I focused my
12 studies on tax and real estate. I earned my JD and became a member of the California Bar in 2007.

13 4. After becoming a member of the Bar, I practiced law with my partner/father,
14 Kenneth, at Gaines & Gaines, APLC. My father, recently retired, practiced law in California for
15 over 40 years, emphasizing litigation for the vast majority of his career. Our current practice
16 specializes in litigation, with an emphasis in employment disputes like this one. Over 95% of our
17 practice is devoted to complex employment litigation.

18 5. My firm has represented employees in complex employment matters such as this
19 one, with an emphasis in wage and hour issues. I have participated in and have been certified as
20 class counsel in dozens of class action matters since my admission to the Bar. A list of the cases
21 in which I have been appointed as class counsel is attached hereto as **Exhibit A**.

22 **Factual and Procedural Background:**

23 6. On January 11, 2021, Plaintiff sent a letter to the LWDA, alleging Defendant
24 violated the California Labor Code and seeking penalties under the Private Attorneys General Act,
25 Labor Code section 2698 *et seq.* (“PAGA”). Specifically, Plaintiff alleged Defendant failed to pay
26 wages and premium wages to Defendant’s non-exempt California employees, failed to reimburse
27 business expenses, failed to provide accurate itemized wage statements, and failed to timely pay
28 wages during employment and at separation of employment.

1 7. On March 17, 2021, Plaintiff filed a representative action complaint in the Los
2 Angeles County Superior court titled *Heriberto Marquez, et al. vs. P & B Intermodal Services*
3 *Limited Liability Company, et al.*, case no. 21PSCV00224. Plaintiff alleges Defendant violated
4 various sections of the California Labor Code and applicable wage orders as alleged in his letter
5 to the LWDA.

6 8. The First Amended Complaint, which will be filed as part of the settlement approval
7 process, asserts direct class and representative action claims against Defendant for (1) Failure to
8 Pay All Wages Due (Labor Code §§ 510 and 1194); (2) Failure to Reimburse Business Expenses
9 (Labor Code § 2802); (3) Failure to Comply With Itemized Employee Wage Statement Provisions
10 (Labor Code § 226(a), (e), (h)); (4) Failure to Pay Wages Due at Separation of Employment (Labor
11 Code §§ 201-203); (5) Violation of Business and Professions Code § 17200 et seq.; (6) Civil
12 Penalties Pursuant to Labor Code § 2698 Et Seq. for Violations of Labor Code §§ 201, 202, 204,
13 226(a), 510, 1194, and 2802 and Pursuant to Labor Code § 2699(a) for Violations of Labor Code
14 §§ 210, 226.3, and 558 (the "First Amended Complaint"). A true and correct copy of the proposed
15 First Amended Complaint is attached hereto as **Exhibit B-C**.

16 **Investigation and Settlement Discussions**

17 9. The Parties engaged in informal discovery prior to attending mediation in the
18 Action, including but not limited to: Defendant's policies and procedures regarding the payment
19 of wages, issuance of wage statements, and providing all wages at separation, as well as
20 information regarding the number of putative class members and the mix of current versus former
21 employees, the average number of hours worked, and the wage rates in effect. The Parties
22 thoroughly investigated all of the claims in the Action prior to negotiating a settlement in the
23 Action.

24 10. On November 1, 2021, the Parties attended a formal mediation with well-known
25 mediator Marc J. Feder, Esq. The Parties reached a settlement agreement at the conclusion of the
26 mediation and executed a memorandum of understanding which is superseded in full by their
27 Settlement Agreement.
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1 **Class Counsel's Assessment of the Fairness of the Settlement and the Risks of Continued**
2 **Litigation:**

3 11. Based on our independent investigation and evaluation, my colleagues and I are of
4 the opinion that settlement for the consideration and on the terms set forth in their Settlement
5 Agreement is fair, reasonable, and adequate and is in the best interest of the Settlement Class in
6 light of all known facts and circumstances, including the risk of significant delay, the risk the
7 Settlement Class will not be certified by the Court, and the defenses asserted by Defendant.

8 12. Defendant has denied and continues to deny each and all of the claims and
9 allegations in the Action. Defendant has asserted and continues to assert many defenses thereto
10 and has expressly denied and continues to deny any fault, wrongdoing, or liability whatsoever
11 arising out of the conduct alleged in the Action. Defendant contends that it has, at all times,
12 complied with the provisions of the California Labor Code, the California Business and
13 Professions Code, and all applicable federal and California laws and regulations. Neither the
14 Settlement (including all drafts hereof) nor any document referred to herein, nor any action taken
15 to carry out this Settlement is, may be construed as, or may be used in any proceeding as an
16 admission by or against Defendant of any fault, wrongdoing, infirmity of defense, or liability
17 whatsoever. Defendant expressly denies any fault, wrongdoing, or liability, and expressly denies
18 the validity of all causes of action and prayers for relief asserted in the Action.

19 13. The parties jointly prepared the Stipulation of Settlement ("Settlement Agreement,"
20 "Settlement," or "Stip."). A true and correct copy of the Settlement is attached hereto as **Exhibit**
21 **B.**

22 14. Discussions between counsel for the Parties, informal discovery, as well as the
23 investigation and evaluation of the claims of Plaintiff by the Parties, have permitted each side to
24 assess the relative merits of the claims and the defenses to those claims. The Parties agree that the
25 above-described investigation and evaluation, as well as the information exchanged during
26 settlement negotiations and mediation, are more than sufficient to assess the merits of the
27 respective Parties' positions and to compromise the issues on a fair and equitable basis.
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1 15. My office created a comprehensive damage analysis using sampling information
2 obtained through informal discovery. This damage analysis reveals that the negotiated settlement
3 falls within a realistic range of recovery on Class Members' claims.

4 16. Plaintiff alleges that Defendant failed to properly blend bonus/incentive wages into
5 Plaintiff's and Class Members' regular rate of pay when they worked overtime hours and earned
6 bonus wages, in violation of Labor Code §§ 510, 558 and 1194. The overtime rate is at least one-
7 and-one-half times an employee's regular rate of pay. Plaintiff and Class Members earned
8 bonuses/incentives for surpassing projected production levels, but Defendant allegedly did not
9 factor these bonuses/incentives into Plaintiff's and Class Members' regular rate of pay when
10 calculating their overtime rate. Pursuant to expert analysis, the damages for this claim total
11 \$29,635 and these violations occurred in approximately 1,966 pay periods during the applicable
12 time period.

13 17. Plaintiff further alleges that Defendant failed to compensate Plaintiff and Class
14 Members on a timely basis. Labor Code § 204 requires employers—like Defendant—who pay
15 their employees on a bi-weekly basis, to issue wages no later than seven calendar days after the
16 final day of the payroll period. *Labor Code* § 204(d). Defendant allegedly did not comply with
17 Labor Code § 204 (and derivatively, Labor Code § 210) because it did not issue bonus/incentive
18 wages to Plaintiff and Class Members within seven calendar days after the final day of the
19 applicable payroll period—it issued certain bonus/incentive wages nine or more days later, well
20 beyond the time frame permitted by Labor Code § 204. During the relevant limitations period (one
21 year prior to filing the Action through the present), Defendant allegedly issued wages late to Class
22 Members 2,184 times, yielding civil penalties for this claim of approximately \$218,400 (at the rate
23 of \$100 per pay period during which wages were willfully withheld).

24 18. Plaintiff also alleges that Defendant failed to reimburse Plaintiff and Class
25 Members' business expenses incurred in the discharge of their duties, in violation of Labor Code
26 § 2802. Plaintiff contends that Defendant failed to reimburse Plaintiff and other Class Members
27 for the use of their personal cellular phones to take and receive work-related phone calls and text
28 messages with Defendant, but were not fully reimbursed by Defendant for this expense, in

1 violation of Labor Code § 2802. Plaintiff estimates \$15 per month per Class Member in
2 unreimbursed cell phone expenses during the Class Period, yielding total exposure of up to
3 \$137,000.

4 19. Class Members also sought wage statement penalties pursuant to Labor Code §
5 226(e), waiting time penalties pursuant to Labor Code § 203 and PAGA penalties derivative of the
6 underlying violations alleged. The value of these penalties – which are derivative, discretionary,
7 and subject to defenses of their own – totals up to \$3.4 million, a substantial amount which required
8 a compromise to resolve based on risk of litigation. Plaintiff believed it was unlikely that many
9 of these penalties could be recovered because their value would eclipse the value of alleged
10 underpaid wages (if wages were recovered at all), because Plaintiff's claims are novel, and because
11 of Defendant's potential independent defenses to these penalties.

12 20. The discount negotiated for settlement here is a reasonable compromise, particularly
13 considering that the risk of obtaining class certification on all or any of Plaintiff's claims involves
14 a 50% or higher hurdle, and to which Defendant maintains strong arguments to defeat class
15 certification (in addition to multiple defenses on the merits of the claims). Class certification is a
16 substantial risk in any class action case. Here, while Plaintiff maintains that the requirements of
17 class certification are met, Defendant proffers various arguments why class treatment is not
18 appropriate, including but not limited to that individualized inquires among class members
19 predominate over common ones. If Defendant was to defeat Plaintiff's class certification motion,
20 there would be no class wide relief whatsoever, and most class members would likely not file
21 individual claims.

22 21. Plaintiff also faced the risk of a loss on the merits on his claims. It is very possible
23 that the Court would agree with Defendant's position that its wage payment policies and practices
24 complied with the requirements of California law or could not be certified. In such a case, the
25 value of the majority of Plaintiff's claims would be zero.

26 22. Finally, Plaintiff faced the risk that he would not obtain a maximum damage/penalty
27 award on all (or any of) his claims. For example, Plaintiff seeks discretionary penalties pursuant
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1 to the PAGA. Even if Plaintiff did prevail on these claims, it is possible that the Court would not
2 impose all penalties pursuant to its discretionary power to reduce them.

3 23. Defendant strongly contends that its policies and practices do not violate any laws.
4 It contends that it properly provided for all meal and rest periods and fully compensated their
5 employees for all time worked. It further contends that the wage statements it provides to its
6 employees are fully compliant with California law.

7 24. When the costs and risks of non-certification and loss on the merits are considered,
8 my colleagues and I are of the opinion that the settlement reached is clearly a favorable one.

9 25. The settlement for each Class Member is fair, reasonable and adequate, given the
10 inherent risk of litigation, the risk relative to class certification and the costs of pursuing such
11 litigation. The settlement shall finally resolve all claims of the Class Members as alleged in the
12 Action.

13 **Class Certification Requirements:**

14 26. To date, no class has been certified. The Stipulation of Settlement contains a
15 provision pursuant to which we stipulate to the Court's provisional certification of the
16 approximately 439-member Settlement Class, but do so for purposes of this settlement only.

17 27. In this case, the Class Members are identifiable from Defendant's employment and
18 payroll records. Further, the Settlement Class is sufficiently numerous to warrant certification.
19 According to Defendant's records, the Class comprises approximately 439 employees.

20 28. The Class Members' claims all stem from a common source: members of the
21 Settlement Class allege that Defendant violated the same Labor Code provisions in connection
22 with their employment. All members of the Class seek the same relief under the same California
23 laws (related to unpaid wages, unreimbursed business expenses, inaccurate or incomplete wage
24 statements, failure to timely pay wages due upon separation, and derivative claims). Under these
25 circumstances, the commonality requirement is satisfied for purposes of certifying the Settlement
26 Class for settlement purposes.

27 29. In this case, named Plaintiff and proposed Class Representative Heriberto Marquez
28 is a former non-exempt employee who worked for Defendant in the State of California during the

1 Class Period. He contends that Defendant failed to pay all wages, failed to provide meal and rest
2 periods, failed to comply with itemized employee wage statement provisions, failed to reimburse
3 expenses, and failed to timely pay wages, in violation of Labor Code §§ 201-203, 204, 210, 226(a),
4 226.3, 510, 558, 1194, 2698, 2699, and 2802, among other Labor Code provisions. He has the
5 same claims as those that the members of the Settlement Class would reasonably be expected to
6 bring based on the course of conduct alleged herein.

7 30. Plaintiff has also demonstrated that he will aggressively and competently assert the
8 interests of the proposed Settlement Class; he has taken an active role in this litigation and has no
9 apparent conflicts with other class members.

10 **Settlement of Claims Pursuant to Labor Code § 2699 et seq. (PAGA)**

11 31. Concurrently with the filing of this Motion, Plaintiff's counsel is transmitting the
12 Settlement Agreement (and these approval documents) to the LWDA, in compliance with Labor
13 Code § 2699(1)(2).

14 I declare, under penalty of perjury, under the laws of the State of California, that the
15 foregoing is true and correct. Executed this 2nd day of March, 2022 at Calabasas, California.

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17 *Daniel F. Gaines*
18 DANIEL F. GAINES
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EXHIBIT A

Adams v. Newell Rubbermaid, USDC – Central District of California (Los Angeles), Case No. EDCV 08-1499 JTM (CTx)

Adams v. Sam's West, Inc., San Bernardino County Superior Court, Case No. CIVDS1403987

Agredano v. GS Brothers, Inc., Los Angeles County Superior Court, Case No. BC445561

Allen v. Toms Sierra Company, Nevada County Superior Court, Case No. CU18-082823

Allen v. Valley Inventory Service, Inc., Solano County Superior Court, Case No. FCS034682

Alvarez v. Pilot Travel Centers, LLC, San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-4605

Alonzo v. Camblin Steel Service, Inc., Placer County Superior Court, Case No. SCV0034165

Amenhotep v. Google, Inc., Santa Clara County Superior Court, Case No. 17CV311528

Anaya v. Progressive Logistics Services, LLC, Riverside County Superior Court, Case No. RIC1308270

Andre v. Newell Rubbermaid, Inc., San Bernardino County Superior Court, Case No. CIVVS1200282

Anduha v. ABC Phones of North Carolina, Inc., Stanislaus County Superior Court, Case No. 2022729

Anslow v. Wellington Energy, Inc., USDC – Northern District of California (San Francisco), Case No. CV11-1596-JCS

Aranda, et al. v. Universal Lumpers of California, Inc., San Joaquin County Superior Court, Case No. STK-UOE-2017-7826

Armendariz v. Integrated Pain Management Medical Group, Inc., Kern County Superior Court, Case No. BCV-19-100267-SDS

Barrow, et al. v. Desmond Foods, L.P., Sacramento County Superior Court, Case No. 34-2015-00187227

Batmanghelich v. Sirius XM Radio Inc., USDC – Central District of California (Los Angeles), Case No. CV 09-9190 VBF (JCx)

Bosser v. Hooked on Solar, Yolo County Superior Court, Case No. CVCV-2016-876

Bourland v. Horizon Personnel Services, Inc., Sacramento County Superior Court, Case No. 34-2014-00161365-CU-OE-GDS

Bowen v. IMI Material Handling Logistics, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-0000192

Branson v. Mladen Buntich Construction, San Bernardino County Superior Court, Case No. CIVDS1609129

Brandt v. Sacramento Auto Insurance Center, Inc., San Joaquin County Superior Court, Case No. 39-2009-00202938-CU-OE-STK

Brown v. 22nd District Agricultural Association, United States District Court, Southern District of California, Case No. 15-cv-2578-DHB

Brown v. Sierra Central Credit Union, Sutter County Superior Court, Case No. CVCS18-0002161

Burgess v. Blue Cross and Blue Shield of South Carolina, San Joaquin County Superior Court, Case No. 39-2012-00277449-CU-BT-STK

Burgess v. Strategic Retail Solutions, LLC, Los Angeles County Superior Court, Case No. BC413791

Calhoun v. Celadon Trucking Services, Inc., USDC – Central District of California (Los Angeles), Case No. 5:16-cv-01351-PSG-FFM

Caporicci v. Owens & Minor Distribution, Inc., San Joaquin County Superior Court, Case No. 39-2013-00295662-CU-OE-STK

Carl v. Advanced Call Center Technologies, LLC, Sacramento County Superior Court, Case No. 34-2013-00148310

Carlisle, et al. v. Professional Technical Security Services, Inc., Case No. CGC18569791

Carrete v. Gamestop, Inc., Imperial County Superior Court, Case No. ECU08501

Carrillo v. Bimbo Bakeries, Inc., San Bernardino County Superior Court, Case No. CIVDS1606813

Caudillo v. Aegis Treatment Centers, LLC, Merced County Superior Court, Case No. 18CV-0744

Cerami v. Metlife, Inc., USDC – Central District of California (Orange County), Case No. 11-CV-00681-CJC (MLGx)

Charles v. Aaron's Inc., Los Angeles County Superior Court, Case No. BC431468

Charles v. Nursefinders, LLC, Imperial County Superior Court, Case No. ECU07422

Cheifer v. JetBlue Airways Corporation, Los Angeles County Superior Court, Case No. BC451887

Cheifer, et al. v. WHGM, Inc., Los Angeles County Superior Court, Case No. LC104900

Chong, et al. v. Crescent Northwoods Inn, Inc., Del Norte County Superior Court, Case No. CVUJ-2018-1133

Church v. GameStop, Inc., et. al., USDC – Central District of California (Los Angeles), Case No. 11-CV-00132-VAP-RZ

Clothier v. Spar Marketing Services, Inc., Alameda County Superior Court, Case No: RG12-639317

Coleman v. Wireless Lifestyle, Inc., USDC – Western District of Missouri, Case No. 4:12-cv-00855-ODS

Colombo-Beyeler, et al. v. Viking River Cruises, Inc., San Bernardino County Superior Court, Case No. CIVDS1611608

Conlee v. Clark Pacific Corporation, Yolo County Superior Court, Case No. CV14-1409

Contreras v. Osmose Utilities Services, Inc., San Bernardino County Superior Court, Case No. CIVDS1513998

Contreras v. West American Service Corporation, Kings County Superior Court, Case No. 14C0280

Corona v. Yosemite Meat & Locker Service, Inc., Stanislaus County Superior Court, Case No. 2006828

Cortellessa v. Dotnext, Inc., Alameda County Superior Court, Case No. RG09429971

County v. Ingram Mirco, Inc., San Bernardino Superior Court, Case No. CIVRS 1304445

Covarrubias, et al. v. Petersendean Builder Group, Inc., Kern County Superior Court, Case No. BCV-16-101122

Cowen, et al. v. Evergreen Alliance Golf Limited, L.P., d/b/a Arcis Golf, San Bernardino County Superior Court, Case No. CIVDS1719283

Cruz-Garcia v. Lemonade Restaurant Group, LLC, Los Angeles County Superior Court, Case No. BC478205

Cunningham v. Performance Contracting, Inc., Contra Costa County Superior Court, Case No. C16-02157

Dabney v. Coneybeare, LLC, et al., Orange County Superior Court, Case No. 30-2018-00999989-CU-OE-CXC

Dabney, et al. v. Panera, LLC., San Bernardino County Superior Court, Case No. CIVDS1516030

Diaz, et al. v. Seaworld Entertainment, Inc., Imperial County Superior Court, Case No. ECU10046

Diggs v. Western Waterproofing Company, Inc., San Francisco County Superior Court, Case No. CGC-14-539281

Dismuke v. Rhodes Retail Services, Inc., Sacramento County Superior Court, Case No. 34-2011-00105001

Dorsette v. TA Operating, LLC, USDC – Central District of California (Los Angeles), Case No. EDCV 09-1350 PA (RZx)

Duran v. The Image of California, Inc., Kern County Superior Court, Case No. S-1500-CV-284056 DRL

Edwards v. Trans World Entertainment Corp., San Diego County Superior Court, Case No. 37-2010-00095123-CU-OE CTL

Esakhani v. Central Valley Gaming, Stanislaus County Superior Court, Case No. 2020667

Escobar v. SMSSI of California, Inc., San Francisco Superior Court, JCCP No. 4776

Espinosa v. Taltech Construction, et al., Los Angeles County Superior Court, Case No. BC590176

Espinosa v. Bodycote Thermal Processing, Inc., Los Angeles County Superior Court, Case No. BC501617

Espinoza v. Pabco Building Products, LLC, Los Angeles County Superior Court, Case No. VC065660

Estrada v. Net Source Communications, Inc., Los Angeles County Superior Court, Case No. BC431169

Estrada v. OS Restaurant Services, LLC, Santa Clara County Superior Court, Case No. 16CV293249

Estupinan v. Global Development Strategies, Inc., Santa Clara County Superior Court, Case No. 110CV178898

Fadhl. v. Siemens Healthcare Diagnostics Inc., Sacramento County Superior Court, Case No. 34-2017-00209518

Fernandez v. The Regents of the University of California, Los Angeles County Superior Court, Case No. BC656256

Ferrer v. Dish Network Corporation, Los Angeles County Superior Court, Case No. BC441354

Findora v. Barry Callebaut USA LLC, Napa County Superior Court, Case No. 19CV000219

Flores v. Cintas Corporation, Los Angeles County Superior Court, Case No. BC400422

Friel v. Midwest Construction Services, Inc., San Joaquin County Superior Court, Case No. 39-2015-00329204-CU-OE-STK

Gagnon v. Banc of California, Contra Costa County Superior Court, Case No. C 15-00196

Galarza v. Bayou Well Services, LLC, Kern County Superior Court, Case No. S-1500-CV-279372 DRL

Galarza v. C & H Testing Service LLC, Kern County Superior Court, Case No. BCV-15-100008 SPC

Garcia v. Old Dominion Freight Line, Inc., San Bernardino County Superior Court, Case No. CIVDS1404636

Geer v. Applied Aerospace Structures Corp., San Joaquin County Superior Court, Case No. 39-2014-00313702-CU-OE-STK

Getz v. California Cinema Investments, Inc., Ventura County Superior Court, Case No. 56-2013-00437706-CU-MC-VTA

Gibbs v. M. Lehmann Enterprises, Orange County Superior Court, Case No. 30-2013-00678538-CU-OE-CXC

Gilles v. Schaefer Ambulance Service Inc., Imperial County Superior Court, Case No. ECU07970

Goldman, et al. v. Defender 's, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-0009973

Gomez v. Low Desert Empire Pizza, Inc., San Bernardino County Superior Court, Case No. CIVVS900392

Gomez v. Pizza Hut of Southeast Kansas, Inc., San Bernardino County Superior Court, Case No. CIVVS900679

Gonzalez v. Harris Farms, Inc., USDC – Eastern District of California (Fresno), Case No. 1:14-cv-00038-LJO-SAB

Guerrero v. Main Electric Supply Company LLC, Ventura County Superior Court, Case No. 56-2019-00525427-CU-OE-VTA

Gutierrez v. Asset Management Specialists, Inc., Fresno County Superior Court, Case No. 12CECG03577

Gutierrez v. Linkus Enterprises, Inc., Madera County Superior Court, Case No. MCV065774

Gutierrez v. Shiekh, LLC, San Bernardino County Superior Court, Case Nos. CIVRS1206525, CIVRS1303408

Hairston v. Stanislaus Surgical Hospital, Stanislaus County Superior Court, Case No. CV-19-000651

Hindman v. Service Quick, Inc., San Bernardino County Superior Court, Case No. CIVDS1724229

Hogan v. iMobile of CA LLC, San Bernardino County Superior Court, Case No. CIVDS1409263

Hogan v. Wireless Evolution Inc., Riverside County Superior Court, Case No. MCC1300669

Hogan v. Wireless That's It! LLC, Riverside County Superior Court, Case No. RIC1201997

Holmes v. Bottling Group, LLC, Stanislaus County Superior Court, Case No. 2022584

Hooper, et al. v. URS Midwest, Inc., et al., San Bernardino Superior Court, Case No. CIVDS1607489

Humphrey v. Freedomroads, LLC, Shasta County Superior Court, Case No. 178228

Hurtado v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC427672

Hyde v. Dent Wizard International Corporation, Sacramento County Superior Court, Case No. 34-2015-00173882

Ibrihim v. Imperfect Foods, Inc., San Joaquin County Superior Court, Case No. STK-VI-UOE-2019-0000846

Id-deen v. Educational Services of America, Solano County Superior Court, Case No. FCS040803

Isherwood v. Mason Dixon Intermodal, Inc., San Joaquin County Superior Court, Case No. 39-2012-00279891-CU-OC-STK

Jahanbin v. Pacific Mercantile Bank, Orange County Superior Court, Case No. 30-2011-00480705CU-OE-CXC

Jenkins v. Sedgwick Claims Management Services, Inc., Los Angeles Superior Court, Case No. LC101648

Job v. California Security Services, Yuba County Superior Court, Case No. 14-0000820

Johnson v. The Goodyear Tire & Rubber Company, USDC – Northern District of California (San Francisco), Case No. 3:13-cv-01069-MMC

Jolin v. Bay Cities Recovery, Inc., El Dorado County Superior Court, Case No. PC20100458

Jordan v. Sutter Memorial Hospital, Stanislaus County Superior Court, Case No. 2023344

Keebaugh v. Mike Thompson Recreational Vehicles, San Bernardino County Superior Court, Case No. CIV-DS-1500718

Kelly v. Robin's Enviro Vac, Inc., Kern County Superior Court, Case No. S-1500-CV-282277
DRL

King v. Levy Premium Foodservice Limited Partnership, Alameda County Superior Court, Case No. HG15786353

Kunsman v. Punch Bowl Sacramento, LLC, et al., Sacramento County Superior Court, Case No. 34-2018-00243175

LaFear v. Encore Education Corporation, San Bernardino County Superior Court, Case No. CIVDS1802251

Lanzarin v. AWI Management Corporation, Solano County Superior Court, Case No. FCS041809

Lee, et al. v. Foster Dairy Farms, Stanislaus County Superior Court, Case Nos. 2006542, 2015679

Lemus, et al. v. Eastridge Workforce Technology, Inc., San Bernardino County Superior Court, Case No. CIV-DS-1611470

Lewis v. American Casino & Entertainment Properties LLC, San Bernardino County Superior Court, Case No. CIVDS1719094

Lemus v. On Assignment Staffing Services, San Bernardino County Superior Court, Case No. CIV-DS-1600497

Leon v. Piercey West Inc., Los Angeles County Superior Court, Case No. BC656874

Lopez v. Creative Communication Technologies, Inc., Imperial County Superior Court, Case No. ECU07851

Lopez v. Go Green Auto Spa Franchise, Inc., et al., Los Angeles County Superior Court, Case No. BC 562212

Lopez v. Truck Accessories Group, LLC, Yolo County Superior Court, Case No. CV13798

Ludlow v. Prince Telecom, LLC, Stanislaus County Superior Court, Case No. 684239

Luna v. Express Locations, LLC, Imperial County Superior Court, Case No. ECU09779

Macias v. American Tire Distributors, Inc., Kern County Superior Court, Case No. BCV-18-101586

Maldonado v. Hardwood Flooring Liquidators, Inc., Los Angeles County Superior Court, Case No. BC642170

Mansfield v. Cambridge Real Estate Services, Inc., Butte County Superior Court, Case No. 160175

Martinez v. DPI Specialty Foods West, San Joaquin County Superior Court, Case No. 39-2015-00327311-CU-OE-STK

Martinez v. Styles For Less, Inc., San Bernardino County Superior Court, Case No. CIVVS1203057

Mayne v. John Muir Behavioral Health, Contra Costa County Superior Court, Case No. C17-00998

Maze v. Bulldog Freightway, Inc., Imperial County Superior Court, Case No. ECU08716

McCormick v. G & O Body Shop, Inc., El Dorado Superior Court, Case No. PC20130291

McCrary v. Campbell Soup Supply Company, San Joaquin County Superior Court, Case No. 39-2013-00297698-CU-OE-STK

McDaniel v. Vancary, Inc., Tulare County Superior Court, Case No. 268036

Melgar-Farela v. Guardian Compliance, Inc., Los Angeles County Superior Court, Case No. BC481865

Mendiola v. Tyco Electronics Corporation, Riverside County Superior Court, Case No. RIC1400721

Mettler v. Les Schwab Tire Centers of California, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-476

Miller v. California Subshine, Inc., Los Angeles County Superior Court, Case No. BC637754

Miller v. Southwest Airlines Co., USDC – Northern District of California (San Francisco), Case No. 3:12-cv-05978-CRB

Mitchell v. Crossmark, Inc., USDC – Central District of California (Los Angeles), Case No. CV 11-2818-JAK (FMOx)

Moghrabi v. Vitaligent, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-1650

Molina v. Berkshire Hathaway Energy Company, et al., Imperial County Superior Court, Case No. ECU000522

Moore v. Horizon Solar Power, Inc., San Bernardino County Superior Court, Case No. CIVDS1410001

Murray v. Select Media Services, LLC, Los Angeles County Superior Court, Case No. BC424506

Myles v. Central Transport LLC, San Bernardino County Superior Court, Case No. CIVDS1401434

Navarro v. Mariana Packing Co., Inc., Solano County Superior Court, Case No. FCS045935

Nehrlich, et al. v. RPM Mortgage, Inc., Orange County Superior Court, Case No. 30-2013-00666783-CU-OE-CXC

Overton v. Hat World, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:11-CV-01645-LKK-KJN

Perez v. Alcatel-Lucent USA Inc., Imperial County Superior Court, Case No. ECU07977

Perez v. Major Gloves and Safety, Inc., San Bernardino County Superior Court, Case No. CIVDS1710445

Perry v. Cardinal Health 200, LLC, Solano County Superior Court, Case No. FCS035303

Phraxayavong-Briones v. RSM, Inc., Sacramento County Superior Court, Case No. 34-2012-00117524

Pugh v. Wi Spa, LLC, Imperial County Superior Court, Case No. ECU07932

Quist v. Knight Transportation, Inc., San Bernardino Superior Court, Case No. CIVDS 1615414

Quitco v. Aviation Fuel Systems Repair, Inc., San Bernardino Superior Court, Case No. CIVRS1302311

Rambeau v. C.C.M. Corporation, et al., Sacramento County Court, Case No. 34-2018-00244842

Rankins v. Roman Empire Living Skills, Inc., Los Angeles County Superior Court, Case No. BC713399

Rees v. Advantel, Incorporated, Santa Clara County Superior Court, Case No. 16-CV-292219

Renfrow v. Janra Enterprises, Inc., Sacramento County Superior Court, Case No. 3402010-00080471

Reynolds v. Diamond Pet Food Processors of Ripon, San Joaquin County Superior Court, Case No. 39-2014-00310818

Richard v. A-Para Transit Corp., Alameda County Superior Court, Case No. HG17870373

Richardson v. TEC Equipment, Inc., et al., Los Angeles County Superior Court, Case No. VC065536

Robles v. North County Health Project Incorporated, San Diego Superior Court, Case No. 37-2014-00001751-CU-OE-NC

Rodas v. Monetary Management of California, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:14 cv 01389 TLN AC

Rodriguez v. 20/20 Plumbing & Heating, Inc., San Bernardino County Superior Court, Case No. CIVDS1705362

Rodriguez v. Commerce Distribution Company, Los Angeles County Superior Court, Case No. BC656259

Rodriguez v. Valley Oak, San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-7980

Roden v. Service Champions, San Bernardino County Superior Court, Case No. CIVDS1613183

Russell v. Bradshaw International, Imperial County Superior Court, Case No. ECU00853

Rutledge, et al. v. Healthport Technologies, LLC, Alameda County Superior Court, Case No. RG16835813

Sabala v. Econtactlive, Inc., Stanislaus County Superior Court, Case No. 684981

Sabatier v. Picture Perfect Installation, Inc., Riverside County Superior Court, Case No. RIC10004953

Salameh v. Sonomaience OPCO, LLC, Sonoma County Superior Court, Case No. SVC264228

Salazar v. Tag-3 Medical Investment Group, LLC, Los Angeles County Superior Court, Case No. BC527698

Salbeck v. Ingredion Incorporated, San Joaquin County Superior Court, Case No. STK-UOE-2017-0012622

Sampson v. Healthnet of California Inc., Sacramento County Superior Court, Case No. 34-2015-00183785-CU-OE-GDS

Sanchez v. Don Roberto Jewelers, Inc., Imperial County Superior Court, Case No. ECU06819

Sanders v. Lionakis, Sacramento County Superior Court, Case No. 34-2017-00223601

Santana v. United Staffing Associates, LLC, Tulare County Superior Court, Case No. 249338

Schrader v. Adidas Promotional Retail Operations, Inc., Los Angeles County Superior Court, Case No. BC414168

Sebrell v. Pomeroy IT Solutions, San Bernardino County Superior Court, Case No. CIVDS1721560

Seymour v. Quest Service Group, LLC, Sacramento County Superior Court, Case No. 34-2017-00206917

Silva v. Trical, San Benito County Superior Court, Case No. CU-16-00218

Simler v. Polly's Inc., Riverside County Superior Court, Case No. RIC 1117862

Sipin, Scott v. Salesforce.com, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2019-0004629

Skuro v. BMW of North America, LLC, USDC – Central District of California (Los Angeles), Case No.: CV 10-8672-GW (FFMx)

Smith v. Steelcase, Inc., San Bernardino County Superior Court, Case No. CIVDS1725850

Sohal v. Foster Poultry Farms, Stanislaus County Superior Court, Case No. 2026605

Solomon v. City of Los Angeles, Los Angeles County Superior Court, Case No. BC570345

Solano v. Vozzcom, Inc., Imperial County Superior Court, Case No. ECU09519

Smith, et al. v. Sente Development, Inc., Sacramento County Superior Court, Case No. 34-2016-00196614

Solorzano v. FDS Manufacturing Corporation, Los Angeles County Superior Court, Case No. BC542532

Solowitz v. BakeMark USA LLC, Los Angeles County Superior Court, Case No. BC467838

Spampinato v. Wind & Sea Restaurants, Inc., San Bernardino County Superior Court, Case No. CIVVS1205154

Spitzer, et al. v. FRHI Hotels & Resorts (Canada) Inc., San Bernardino County Superior Court, Case No. C IVDS1712220

Stephens v. C.S., Inc., Riverside County Superior Court, Case No. PSC1301224

Stevenson v. Harvest Management Sub LLC, Ventura County Superior Court, Case No. 56-2011-00397420-CU-OE-SIM

Thompson v. Continental Labor Resources, Inc. d/b/a Continental Labor & Staffing Resources, Kern County Superior Court, Case No. S-1500-CV-278751-DRL

Thompson v. Sidhu Truck Line, Inc., Kern County Superior Court, Case No. BCV-15-101308-DRL

Tigas v. Ajilon Communications, Los Angeles County Superior Court, Case No. BC409737

Torres v. Coastal Employment Inc., Los Angeles County Superior Court, Case No. BC529207

Tran v. CSP Fiber Services, San Bernardino County Superior Court, Case No. CIVDS172758

Tripp v. California Guest Services, Inc., Plumas County Superior Court, Case No. CV16-00036

Valdez v. Diamond Landscaping, Inc., Los Angeles County Superior Court, Case No. BC497097

Valencia v. American Team Managers, Inc., Orange County Superior Court, Case No. 30-2016-00857365-CU-CR-CXC

Van Son v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC494747

Vasquez v. Schurman Fine Papers, San Joaquin County Superior Court, Case No. STK-CV-LMC-2015-10035

Velasquez v. Modesto Ventures, LLC, Sacramento County Superior Court, Case No. 32-2012-00126159

Victoria v. Bali Limousines Inc., San Mateo County Superior Court, Case No. CIV507774

Victorian v. Vision X, Inc., Los Angeles County Superior Court, Case No. BC400333

Wade v. Frito Lay, Kern County Superior Court, Case No. BCV-17-102014

Walls v. E. & J. Gallo, Stanislaus County Superior Court, Case No. 2015874

Warner v. Waterdrops Express Car Wash, LLC, Tulare County Superior Court, Case No. 265708

Waybright v. EAH, Inc., Stanislaus County Superior Court, Case No. 2011677

Weiss v. C.A.R. Enterprises, Inc., Riverside County Superior Court, Case No. RIC1113165

White v. Sally Beauty Supply, LLC, Imperial County Superior Court, Case No. ECU08177

Williams v. Dennis Dillon RV, LLC, San Bernardino County Superior Court, Case No. CIVDS 16006879

Williams v. Closet World, Inc., Los Angeles County Superior Court, Case No. BC400178

Williams v. Progress Rail Services Corporation, Kern County Superior Court, Case No. S-1500-CV-280236 DRL

Wing v. Three Group, Inc., Los Angeles County Superior Court, Case No. BC643883

Wilson v. ALSCO, Inc., Imperial County Superior Court, Case No. ECU07406

Wilson v. Michael C. Stead, Inc., Contra Costa Superior Court, Case No. C1400135

Winningham v. Storer Transportation Service, San Joaquin County Superior Court, Case No. 39-2015-00324708-CU-STK

Woody v. WBN Home Design, San Bernardino County Superior Court, Case No. CIVDS1613367

Woods, et al. v. F&B Innovations, LLC, San Bernardino County Superior Court, Case No. CIVDS1717765

Woodyard v. Bellus ALC Acquisition, LLC, USDC – Central District of California (Los Angeles), Case No. 2:13-cv-05285 SJO AGRx

Wright v. Social Vocational Services, Inc., Kern County Superior Court, Case No. BCV-15-101264

Ybarra v. New Legend, Inc., Sutter County Superior Court, Case No. CVCS-16-2097

Zaragoza v. Center Automotive, Inc., Los Angeles Superior Court, Case No. BC505194

EXHIBIT B

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P&B INTERMODAL SERVICES, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

HERIBERTO MARQUEZ, on behalf of
himself and all "aggrieved employees"
pursuant to Labor Code § 2698 *et seq.*,

Plaintiff,

v.

P & B INTERMODAL SERVICES
LIMITED LIABILITY COMPANY, a New
Jersey limited liability company, and DOES
1 through 10, inclusive,

Defendants.

CASE NO.: 21PSCV00224
[Unlimited Jurisdiction]

STIPULATION OF SETTLEMENT

*Assigned for all purposes to the
Honorable Peter A. Hernandez, Dept. O*

Complaint Filed: March 17, 2021
Trial Date: None set

1 This Stipulation of Settlement is made by and between the Named Plaintiff, Heriberto
2 Marquez ("Plaintiff"), on his own behalf and on behalf of all members of the Settlement Class,
3 as defined below, on the one hand, and Defendant P&B Intermodal Services, LLC ("Defendant")
4 on the other hand (collectively the "Parties"), in the lawsuit entitled *Heriberto Marquez, et al. v.*
5 *P&B Intermodal Services Limited Liability Company, et al.*, filed in Los Angeles Superior Court,
6 Case No. 21PSCV00224 (the "Litigation"). This Stipulation of Settlement resolves all claims
7 that were asserted or could have been asserted against Defendant pertaining to the claims in the
8 Litigation.

9 **I. DEFINITIONS**

10 **A. Administrative Costs.** All administrative costs of settlement, including cost of
11 notice to the Settlement Class, claims administration, and any fees and costs incurred or charged
12 by the Settlement Administrator in connection with the execution of its duties under this
13 Stipulation of Settlement.

14 **B. Agreement.** The terms "Agreement" or "Settlement Agreement" are used
15 synonymously herein to mean this Stipulation of Settlement.

16 **C. Class Counsel.** The term "Class Counsel" as used herein means: the law firm of
17 GAINES & GAINES, APLC and all the lawyers of that firm, specifically including but not
18 limited to Daniel F. Gaines, Esq., Alex P. Katofsky, Esq., and Evan S. Gaines, Esq. The term
19 Class Counsel shall be used synonymously with the term Plaintiff's Counsel.

20 **D. Court.** The term "Court" as used herein means the Superior Court of the State of
21 California for the County of Los Angeles.

22 **E. Final.** The term "Final" means the earliest of the following: (1) the date of final
23 affirmation of the Final Approval from any appeal, the expiration of the time for, or the denial
24 of, a petition to review the Final Approval, or if review is granted, the date of final affirmation
25 of the Final Approval following review pursuant to that grant; or (2) the date of final dismissal
26 of any appeal from the Final Approval or the final dismissal of any proceeding to review the
27 Final Approval, provided that the Final Approval is affirmed and/or not reversed in any part; or
28 (3) if no appeal is filed but one or more objections to this Agreement are timely filed and not

1 withdrawn, the expiration date of the time for the filing or noticing of any appeal from the Court's
2 Final Approval of the Resolution, as determined under Rule 8.104(a) of the California Rules of
3 Court; or (4) if no objections to this Agreement are timely filed, or if any objections to this
4 Agreement which are timely filed are subsequently withdrawn, the Date of Final Approval.

5 **F. Date of Final Approval.** The terms "Date of Final Approval" or "Final
6 Approval" as used herein mean the date the final formal judgment is entered by the Court at the
7 Final Fairness and Approval Hearing in accordance with the terms herein, approving this
8 Agreement.

9 **G. Defendant.** The term "Defendant" as used herein means P&B Intermodal
10 Services, LLC.

11 **H. Employer Taxes.** Employer-funded taxes and contributions imposed on the wage
12 portions of the Settlement Payment under the Federal Insurance Contributions Act, the Federal
13 Unemployment Tax Act, and any similar state taxes and contributions required of employers,
14 such as for unemployment insurance.

15 **I. Litigation.** The term "Litigation" as used herein means the action entitled
16 *Heriberto Marquez, et al. v. P&B Intermodal Services Limited Liability Company, et al.*, filed in
17 Los Angeles Superior Court, Case No. 21PSCV00224.

18 **J. Named Plaintiff.** The term "Named Plaintiff" as used herein means Heriberto
19 Marquez.

20 **K. Net Settlement Amount.** The term "Net Settlement Amount" as used herein
21 means the Settlement Amount minus any award of attorneys' fees and Litigation costs,
22 Administrative Costs, enhancement to the Named Plaintiff, and penalties paid pursuant to
23 California's Private Attorneys General Act ("PAGA") ("PAGA Settlement") as provided in
24 Sections XIII, VIII, XIV, XV, and XVI, respectively.

25 **L. Net Settlement Payments.** The term "Net Settlement Payment(s)" shall include
26 payments made to the Settlement Class as part of the Resolution, including wages, penalties and
27 interest, and shall be supplemented by any portion of the requested attorneys' fees and Litigation
28 costs, Administrative Costs, and the enhancement to the Named Plaintiff which are not approved

1 by the Court.

2 **M. PAGA Members.** The term "PAGA Members" as used herein means all Class
3 Members who were employed during the period from January 11, 2020 to November 1, 2021
4 ("PAGA Period"), each of whom will be paid an equal share of the PAGA Payment allocated to
5 employees (i.e. \$5,000) whether or not they exclude themselves from the class settlement.

6 **N. Resolution.** The term "Resolution" as used herein means this Agreement to
7 resolve the Litigation.

8 **O. Settlement Administrator.** The term "Settlement Administrator" as used herein
9 means ILYM Group, Inc, which will be responsible for the administration of the Settlement
10 Payment, as defined below, and all related matters.

11 **P. Settlement Agreement.** The terms "Settlement Agreement" or "Agreement" are
12 used synonymously herein to means this Stipulation of Settlement and Resolution.

13 **Q. Settlement Amount.** The term "Settlement Amount" as used herein mean a fund
14 in the gross sum of Four Hundred Thirty Nine Thousand Dollars and zero cents (\$439,000.00),
15 which shall be paid by Defendant, and from which all: Net Settlement Payments, Court approved
16 attorneys' fees and Litigation costs pursuant to Section XIII, Administrative Costs pursuant to
17 Section VIII, the enhancement to Named Plaintiff pursuant to Section XIV, statutory penalties,
18 interest, and Taxes pursuant to Section XV, and the PAGA Settlement pursuant to Section XVI
19 shall be paid, except as provided herein. The Settlement Amount does not include Employer
20 Taxes, which Defendant shall pay in addition to the Settlement Amount.

21 **R. Settlement Class.** For settlement purposes only, the Parties agree to the
22 certification of a class pursuant to California *Code of Civil Procedure* § 382 defined as "All
23 persons who are or were employed by P&B Intermodal Services, LLC in the State of California
24 in a non-exempt position during the Settlement Period (the "Settlement Class").

25 **S. Settlement Period.** The term "Settlement Period" as used herein means the
26 period from March 17, 2017 to November 1, 2021 ("the Settlement Period").

27 **II. BACKGROUND**

28 **A.** In the Litigation, the Named Plaintiff alleges, *inter alia*, on behalf of himself and

1 all others similarly situated, that Defendant violated California state wage and hour laws, the
2 California Business and Professions Code Section 17200 *et seq.*, and PAGA, as a result of
3 Defendant's California wage and hour policies and practices. Specifically, Named Plaintiff
4 alleges that Defendant failed to pay its employees overtime pay and to pay overtime at the legally
5 required rates, failed to pay all wages earned, failed to provide timely wages due and owing,
6 failed to provide accurate wage statements, failed to reimburse business expenses, and failed to
7 timely provide all wages owed upon separation of employment.

8 **B.** Class Counsel conducted informal discovery that yielded information and
9 documentation concerning the claims set forth in the Litigation, such as Defendant's policies and
10 procedures regarding the payment of wages, issuance of wage statements, and providing all
11 wages at separation, as well as information regarding the number of putative class members and
12 the mix of current versus former employees, the average number of hours worked, and the wage
13 rates in effect.

14 **C.** Named Plaintiff and Class Counsel have engaged in good faith, arms-length
15 negotiations with Defendant concerning possible resolution of the claims asserted in the
16 Litigation. On November 1, 2021, the Parties participated in a mediation before mediator Marc
17 Feder, a well-respected wage and hour class action mediator, that resulted in a tentative
18 settlement of the Litigation, subject to finalization of a formal Stipulation for Resolution and
19 approval of the Court. The Parties signed a Memorandum of Understanding and have since
20 engaged in extensive negotiations about the terms and conditions of the Resolution. The Parties
21 have now entered into a more detailed, formalized Settlement Agreement for submission to the
22 Court for preliminary and final approval.

23 **D.** Class Counsel has conducted an investigation of the law and facts relating to the
24 claims asserted in the Litigation and has concluded, taking into account the sharply contested
25 issues involved, the expense and time necessary to pursue the Litigation through trial and any
26 appeals, the risks and costs of further prosecution of the Litigation, the risk of an adverse
27 outcome, the uncertainties of complex litigation, and the substantial benefits to be received by
28 the Named Plaintiff and the members of the Settlement Class pursuant to this Agreement, that a

1 settlement with Defendant on the terms and conditions set forth herein is fair, reasonable,
2 adequate, and in the best interests of the Settlement Class. Named Plaintiff, on his own behalf
3 and on behalf of the Settlement Class, has agreed to settle the Litigation with Defendant on the
4 terms set forth herein.

5 E. Defendant has concluded that, because of the substantial expense of defending
6 against the Litigation, the length of time necessary to resolve the issues presented herein, the
7 inconvenience involved, and the concomitant disruption to their business operations, it is in their
8 best interests to accept the terms of this Agreement. Defendant denies each of the allegations
9 and claims asserted against it in the Litigation. However, Defendant nevertheless desire to settle
10 the Litigation for the purpose of avoiding the burden, expense and uncertainty of continuing
11 litigation and for the purpose of putting to rest the controversies engendered by the Litigation in
12 the interest of both Parties.

13 F. This Agreement is intended to and does effectuate the full, final and complete
14 resolution of all allegations and claims that were asserted, or could have been asserted, in the
15 Litigation by Named Plaintiff and members of the Settlement Class as set forth in Section II.A.

16 **III. JURISDICTION**

17 The Court has jurisdiction over the Parties and the subject matter of this Litigation. The
18 Litigation includes claims that, while Defendant denies them in their entirety, would, if proven,
19 authorize the Court to grant relief pursuant to the applicable statutes. After the Court has granted
20 Final Approval of the Resolution and after the Court has ordered the entry of Judgment, pursuant
21 to California Code of Civil Procedure Section 664.6 and California Rules of Court, Rule 3.769(h),
22 the Court shall retain jurisdiction of this action solely for the purpose of interpreting,
23 implementing, and enforcing this Resolution consistent with the terms set forth herein.

24 **IV. STIPULATION OF CLASS CERTIFICATION**

25 The Parties stipulate to the certification of this Settlement Class for purposes of
26 Resolution only. This Stipulation is contingent upon the Preliminary and Final Approval and
27 certification of the Settlement Class only for purposes of Resolution. Should the Resolution not
28 become final, for whatever reason, the fact that the Parties were willing to stipulate provisionally

1 to class certification as part of the Resolution shall have no bearing on, and shall not be admissible
2 in connection with, the issue of whether a class should be certified in a non-settlement context in
3 the Litigation. Defendant expressly reserves the right to oppose class certification should this
4 Resolution be modified or reversed on appeal or otherwise not become final.

5 **V. MOTION FOR PRELIMINARY APPROVAL; PLAINTIFF'S FIRST AMENDED**
6 **COMPLAINT**

7 The Named Plaintiff will bring a motion before the Court for an order preliminarily
8 approving the Resolution including the Notice of Proposed Class Action Resolution, and
9 Workweek Dispute Form, which are attached hereto as Exhibits "A" and "B," respectively,
10 including certification of the Settlement Class for settlement purposes only, and for leave to file
11 the First Amended Class and Representative Action Complaint in the form attached hereto as
12 Exhibit "C," which the Parties agree to only for purposes of effectuating settlement.

13 The date that the Court grants Preliminary Approval of this Agreement will be the
14 "Preliminary Approval Date." Class Counsel will prepare the Motion for Preliminary Approval
15 and will provide Defendant's counsel the opportunity to review it and provide input before it is
16 filed; on the same date on which it is filed with the Court, Class Counsel shall concurrently
17 submit it to the Labor & Workforce Development Agency in compliance with Labor Code § 2698
18 *et seq.*, the Private Attorneys General Act ("PAGA").

19 **VI. STATEMENT OF NO ADMISSION**

20 A. Defendant denies liability to Named Plaintiff and to the Settlement Class upon
21 any claim or cause of action. This Agreement does not constitute, and is not intended to
22 constitute, an admission by Defendant as to the merits, validity, or accuracy of any of the
23 allegations or claims made or could have been made against it in the Litigation.

24 B. Nothing in this Agreement, nor any action taken in implementation thereof, nor
25 any statements, discussions or communications, nor any materials prepared, exchanged, issued
26 or used during the course of the negotiations leading to this Agreement or the
27 Settlement/Resolution, is intended by the Parties to constitute, nor will any of the foregoing
28 constitute, be introduced, be used or be admissible in any way in this case or any other judicial,

1 arbitral, administrative, investigative or other forum or proceeding as evidence of any violation
2 of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any
3 obligation or duty at law or in equity. The Parties themselves agree not to introduce, use, or
4 admit this Agreement, directly or indirectly, in this case or any other judicial, arbitral,
5 administrative, investigative or other forum or proceeding, as purported evidence of any violation
6 of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any
7 obligation or duty at law or in equity, or for any other purpose. Notwithstanding the foregoing,
8 this Agreement may be used in any proceeding before the Court that has as its purpose the
9 interpretation, implementation, or enforcement of this Agreement or any orders or judgments of
10 the Court entered in connection with the Settlement or Resolution.

11 C. None of the documents produced or created by Named Plaintiff or the Settlement
12 Class in connection with the claims procedures or claims resolution procedures constitute, and
13 they are not intended to constitute, an admission by Defendant of any violation of any federal,
14 state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or
15 duty at law or in equity.

16 D. The Parties agree that class certification pursuant to California Code of Civil
17 Procedure Section 382 under the terms of this Agreement is for settlement purposes only.
18 Nothing in this Agreement will be construed as an admission or acknowledgement of any kind
19 that any class should be certified or given collective treatment in the Litigation or in any other
20 action or proceeding. Further, neither this Agreement nor the Court's actions with regard to this
21 Agreement will be admissible in any court or other tribunal regarding the propriety of class
22 certification or collective treatment. In the event that this Agreement is not approved by the
23 Court or any appellate court, is terminated, or otherwise fails to be enforceable, Named Plaintiff
24 will not be deemed to have waived, limited or affected in any way any claims, rights or remedies
25 in the Litigation, and Defendant will not be deemed to have waived, limited, or affected in any
26 way any of their objections or defenses in the Litigation.

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28 ///

1 **VII. WAIVER, RELEASE, DISMISSAL, AND CONFIDENTIALITY**

2 **A. Release as to All Settlement Class Members.**

3 Upon the Date of Final Approval, and subject to the occurrence of the Effective Date and
4 Defendant's payment of all sums required hereunder, Named Plaintiff and all members of the
5 Settlement Class, except those that make a valid and timely request to be excluded from the Class,
6 waive, release, discharge, and promise never to assert in any forum any and all claims against
7 Defendant, and its divisions, affiliates, predecessors, successors, shareholders, officers, directors,
8 employees, agents, trustees, representatives, administrators, fiduciaries, assigns, attorneys,
9 consultants, subrogees, executors, partners, parents, subsidiaries, joint employers, insurers, and
10 related corporations, or any of them, that were alleged in the Litigation or which could have been
11 alleged based on the facts asserted in the Litigation (including Named Plaintiff's LWDA Letter
12 and operative Complaint) and which arose during the Settlement Period during their employment
13 in California in a non-exempt position. These claims include, under any legal theory of liability,
14 but are not limited to: Failure to Pay Wages, Double Time and Overtime Compensation; Failure
15 to Timely Pay Wages Due At Termination; Failure to Provide Accurate Itemized Employee
16 Wage Statements; Indemnification for Business Expenses; Claims under Labor Code Sections
17 201-204, 210, 226, 226.3, 510, 558, 1194 and 2802; Violation of Business & Professions Code
18 § 17200, *et seq.* based on the foregoing facts and claims; Penalties Pursuant to PAGA (Labor
19 Code § 2698 *et seq.*) based on the foregoing facts and claims; and any other applicable provisions
20 of state or federal law, including the applicable IWC wage order.

21 **B. Release as to All PAGA Members.**

22 Upon the Date of Final Approval, and subject to the occurrence of the Effective Date and
23 Defendant's payment of all sums required hereunder, Plaintiff and all PAGA Members release
24 the Released Parties all claims under the California Labor Code Private Attorneys General Act
25 of 2004 (Labor Code section 2698 *et seq.*) that were alleged or reasonably could have been
26 alleged based on the facts and legal theories contained in the Named Plaintiff's LWDA
27 Letter/PAGA Notice and First Amended Complaint in the Action which arose during the PAGA
28 Period.

1 **C. General Release by Named Plaintiff Only.**

2 In addition to the release made in Section VII(A), Named Plaintiff makes the additional
3 following general release of all claims, known or unknown. Subject to the occurrence of the
4 Effective Date and Defendant's payment of all sums required hereunder, Named Plaintiff releases
5 Defendant, and each of its respective divisions, affiliates, predecessors, successors, shareholders,
6 officers, directors, employees, agents, trustees, representatives, administrators, fiduciaries,
7 assigns, attorneys, consultants, subrogees, executors, partners, parents, subsidiaries, joint
8 employers, insurers, and related corporations, from all claims, demands, rights, liabilities and
9 causes of action of every nature and description whatsoever, known or unknown, asserted or that
10 might have been asserted, whether in tort, contract, or for violation of any state or federal statute,
11 rule or regulation arising out of, relating to, or in connection with any act or omission by or on
12 the part of any Defendant. (The release set forth in this Paragraph B shall be referred to
13 hereinafter as the "General Release.")

14 With respect to the General Release, Named Plaintiff stipulates and agrees that, upon the
15 Date of Final Approval, and subject to the occurrence of the Effective Date and Defendant's
16 payment of all sums required hereunder, Named Plaintiff shall be deemed to have expressly
17 waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits
18 of Section 1542 of the California Civil Code, or any other similar provision under federal or state
19 law, which provides:

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

28 Accordingly, if the facts relating in any manner to this Settlement are found hereafter to be other
than or different from the facts now believed to be true, the release of claims contained herein
shall be effective as to all unknown claims.

///

1 **D. Publicity.**

2 Named Plaintiff and his counsel agree that they have not and will not publish the
3 Settlement or Resolution. In response to any inquiries Named Plaintiff will state that "the case
4 was resolved and it was resolved confidentially." Named Plaintiff's counsel shall not report the
5 Settlement or Resolution in any medium or in any publication, shall not post or report anything
6 regarding the claims of Plaintiff or the Putative Class or the Resolution on their website which
7 identify Named Plaintiff or Defendant by name, and shall not contact any reporters or media
8 regarding the Resolution. However, Named Plaintiff's attorneys are authorized to make a limited
9 disclosure to the Court and the LWDA for the purposes of obtaining the approval of the
10 Settlement and may discuss the settlement with the Class Members. This disclosure is limited to
11 court filings, submission to, and communications with, the LWDA, and responding to inquiries
12 by Class Members, and neither Named Plaintiff nor his counsel or representatives are permitted
13 to disseminate or publish, distribute or discuss the information provided to the Court in those
14 filings outside the filings themselves and any hearing held on those filings, unless ordered
15 otherwise by the Court.

16 **VIII. SETTLEMENT ADMINISTRATOR**

17 Named Plaintiff and Defendant, through their respective counsel, have selected ILYM
18 Group, Inc. as the Settlement Administrator to administer the Resolution, which includes but is
19 not limited to distributing and responding to inquiries about the Notice of Proposed Class Action
20 Resolution, determining the validity of any opt-outs, calculating all amounts to be paid from the
21 Settlement Amount, and establishing and administering a qualified settlement fund. Charges and
22 expenses of the Settlement Administrator, estimated to be \$7,500.00, will be paid from the
23 Settlement Amount. Any charges and expenses of the Settlement Administrator greater than the
24 allocated \$7,500.00 will come from the Settlement Amount. If the actual Settlement
25 Administrator fees are less than the Parties' estimation, the difference between the actual and
26 estimated Settlement Administrator fees will be paid to the participating class members. The
27 Parties agree that this Agreement may be provided to the Settlement Administrator to effectuate
28 its implementation of the settlement procedures herein.

IX. NOTICE, OBJECTIONS AND EXCLUSION RIGHTS

A. Notice.

Named Plaintiff and Defendant, through their respective attorneys, have jointly prepared a Notice of Class Action and Proposed Resolution (the "Notice") (**Exhibit A**), and a Workweek Dispute Form (**Exhibit B**), which will be transmitted to the members of the Settlement Class based on the following:

As soon as practicable following Preliminary Approval of the Settlement, but no later than thirty (30) calendar days after the Court's Preliminary Approval order, Defendant will provide to the Settlement Administrator the following information about each Settlement Class member ("Class List"): (1) name; (2) last known home address; (3) number of workweeks as a class member during the Settlement Period or the dates of employment for each Settlement Class member; and (4) Social Security number. Defendant further agrees to consult with the Settlement Administrator prior to the production date to ensure that the format will be acceptable to the Settlement Administrator. Named Plaintiff's Counsel shall also receive a redacted Class List that shall only disclose an identification number attributed to each class member and the number of workweeks each class member worked during the Settlement Period.

The Settlement Administrator shall run all the addresses provided through the United States Postal Service NCOA database (which provides updated addresses for any individual who has moved in the previous four years who has notified the U.S. Postal Service of a forwarding address) to obtain current address information, and shall mail the Notice and Workweek Dispute Form to the members of the Settlement Class via first-class regular U.S. Mail using the most current mailing address information available, within ten (10) calendar days of the receipt of the Class List from Defendant. The Notice shall provide the members of the Settlement Class forty-five (45) days' notice of all applicable dates and deadlines.

The Notice will also include information regarding the nature of the Litigation; a summary of the terms of the Settlement; the definition of the Settlement Class; a statement that the Court has preliminarily approved the Settlement; the nature and scope of the claims being released; the procedure and time period for objecting to the Settlement, the date and location of

1 the Final Approval hearing; information regarding the opt-out procedure; Defendant's
2 calculation of the number of Eligible Workweeks that each Settlement Class member has worked
3 as an employee in California at any time during the Settlement Period, and the estimated potential
4 recovery for the proposed Settlement Class Member. The Notice shall enclose the Workweek
5 Dispute Form for Settlement Class members.

6 For each Settlement Class member the Workweek Dispute Form will identify the number
7 of Eligible Workweeks that s/he was employed and inform the employee of his or her right to
8 dispute this number by completing and returning the form within forty-five (45) days of the
9 postmark date of the Workweek Dispute Form. A Settlement Class member's receipt of his or
10 her share of the Net Settlement Payments is not conditional on the submission of the Workweek
11 Dispute Form. Absent the receipt of a Workweek Dispute Form the number of workweeks
12 identified in the Workweek Dispute Form shall be deemed accurate. The settlement of any
13 disputes concerning the number of Eligible Workweeks is discussed in Section X, below.

14 If a Notice is returned from the initial notice mailing, the Settlement Administrator will
15 perform a skip trace in an attempt to locate a more current address. If the Settlement
16 Administrator is successful in locating a new address, it will re-mail the Notice to the Settlement
17 Class member. Further, any Notices returned with a forwarding address to the Settlement
18 Administrator, as non-deliverable before the deadline date, shall be sent to the forwarding address
19 affixed thereto.

20 Should any member of the Settlement Class timely submit a Workweek Dispute Form
21 with a deficiency, the Settlement Administrator shall, within five (5) calendar days of receipt by
22 the Settlement Administrator of each timely submitted Workweek Dispute Form, send a
23 deficiency notice. The deficiency notice will provide the member of the Settlement Class no
24 more than fourteen (14) days from the mailing of the deficiency notice to postmark a written
25 response to cure all deficiencies. The failure of a member of Settlement Class to timely submit
26 a Workweek Dispute or timely respond to a notice of deficiency shall invalidate the dispute
27 unless all Parties' counsel agree to allow the dispute.

28 No later than fifteen (15) days before the Final Approval Hearing, the Settlement

1 Administrator shall provide counsel for Defendant and Class Counsel with a declaration attesting
2 to the completion of the Notice process, including the number of attempts to obtain valid mailing
3 addresses for and re-sending of any returned Notices, as well as the number of valid Workweek
4 Dispute Forms, opt-outs and deficiencies that the Settlement Administrator received.

5 **B. Objections.**

6 In order for any Settlement Class member to object to this Settlement, or any term of it,
7 the person making the objection must not submit a request for exclusion (i.e., must not opt out).
8 To object to the Settlement in writing, a Class Member may send the objection to the Settlement
9 Administrator by forty-five (45) days after Notice of the Proposed Class Action Settlement was
10 initially mailed to the Settlement Class members. A Settlement Class member making an
11 objection may appear at the Final Approval Hearing with or without submitting any written
12 objection. The Settlement Class member may appear personally or through an attorney, at his or
13 her own expense, at the Final Approval hearing to present his or her objection directly to the
14 Court. If a Settlement Class member objects to the Settlement, the Settlement Class member will
15 remain a member of the Settlement Class and if the Court approves this Agreement, the
16 Settlement Class member will be bound by the terms of the Settlement and Final Approval Order
17 in the same way and to the same extent as a Settlement Class member who does not object. The
18 date of mailing of the Notice to the objecting Settlement Class member shall be conclusively
19 determined according to the records of the Settlement Administrator. The Court retains final
20 authority with respect to the consideration and admissibility of any Settlement Class member
21 objections. Any Settlement Class member who submits an objection may also participate in the
22 settlement.

23 Named Plaintiff hereby endorses the Settlement as fair, reasonable and adequate and in
24 the best interests of the Settlement Class.

25 **C. Opportunity to be Excluded and Defendant's Opt-Out Threshold.**

26 In order for any Settlement Class member to validly exclude himself or herself from the
27 Settlement Class and the Settlement (i.e., to validly opt out), a written request for exclusion
28 ("Request to be Excluded") must be signed by the Settlement Class member or his or her

1 authorized representative and must be sent to the Settlement Administrator, postmarked by no
2 later than forty five (45) days after the date the Settlement Administrator initially mails the Notice
3 to the Settlement Class members. The Notice shall contain instructions on how to opt out.

4 The date of the initial mailing of the Notice, and the date the signed Request to be
5 Excluded was postmarked, shall be conclusively determined according to the records of the
6 Settlement Administrator. Any Settlement Class member who timely and validly submits a
7 Request to be Excluded from the Settlement Class and the Settlement will not be entitled to any
8 portion of the Net Settlement Payments, will not be bound by the terms and conditions of the
9 Settlement, and will not have any right to object, appeal, or comment thereon. The Settlement
10 Administrator will provide counsel for the Parties with complete copies of all Requests to be
11 Excluded and Objections to Settlement as they are received by the Settlement Administrator,
12 including the postmark dates for each, and in any event no later than five (5) business days after
13 the Settlement Administrator receives them and no later than ten (10) calendar days before the
14 Final Fairness and Approval Hearing.

15 Any member of the Settlement Class who does not timely file and mail a Request to be
16 Excluded from the Settlement Class will be deemed included in the Settlement Class in
17 accordance with this Settlement.

18 In the event that ten percent (10%) or more of the Class Members exercise their right to
19 exclude themselves and opt out of the Settlement and Settlement Agreement, Defendant retains
20 the exclusive right, but not the obligation, to withdraw from and terminate the Settlement and the
21 Settlement Agreement and return all parties back to their same position before the Settlement
22 was reached and the Settlement Agreement was entered into. In the event that Defendant
23 exercises such rights under this paragraph, the Named Plaintiff and Defendant shall resume the
24 Litigation as if no Settlement had been agreed upon. Defendant must notify Class Counsel and
25 the Court of such a decision to withdraw and terminate the Settlement no later than five (5) days
26 prior to the date of the Final Approval Hearing. In the event of Defendant's withdrawal, no party
27 may use the fact that the Parties agreed to the Settlement for any reason, and Defendant shall pay
28 all administration expenses incurred through the date of its termination of the Settlement.

D. Cooperation

The Parties and their respective counsel agree not to encourage members of the Settlement Class to refrain from participating in the Settlement, to opt out of the Settlement, or to object to the Settlement, directly or indirectly, through any means. However, if a Settlement Class member contacts the Settlement Administrator, the Settlement Administrator may discuss the terms of the Settlement and the Settlement Class member's options.

X. DISPUTES PROCEDURE

Named Plaintiff and Defendant have agreed upon the following payment formula to resolve all disputes submitted by Settlement Class members during the Settlement Period.

The Settlement Administrator will calculate the total number of workweeks for all Class Members who were employed by Defendant in California during the Settlement Period ("Total Workweeks"). The value of each Workweek shall be determined by the Settlement Administrator by dividing the Net Settlement Amount by the total number of Workweeks available to the Class Members who do not opt out in accordance with Section IX(C) above during the Settlement Period ("Workweek Point Value").

An "Individual Settlement Payment" for each Class Member will then be determined by multiplying a Class Member's workweeks worked in California during the Settlement Period ("Eligible Workweeks") by the Workweek Point Value. The Individual Settlement Payment will be reduced by any required legal deductions, for each participating Class Member. Individual Settlement Payments will include, as to all PAGA Members whether they exclude themselves from the class portion or not, an equal portion of the PAGA Payment allocated to employees (i.e. \$5,000).

If a member of the Settlement Class does not dispute the number of Eligible Workweeks set forth in the Workweek Dispute Form, such person need not take further action to participate in the Settlement. If the member of the Settlement Class disputes the number of Eligible Workweeks set forth in the Workweek Dispute Form, such person must follow the directions in the Workweek Dispute Form and in the Notice, including preparing a statement setting forth the number of Eligible Workweeks that such person believes in good faith is correct, and stating that

the member of the Settlement Class authorizes the Settlement Administrator to review the Settlement Class member's personnel file and leave management records to determine such information, and attaching any relevant documentation in support thereof. Documentary evidence and paystubs are helpful to substantiate such person's dispute claim, but it is not required. The member of the Settlement Class must mail the signed and completed statement no later than forty-five (45) days after the date of the mailing of the Workweek Dispute Form, or the number of Eligible Workweeks set forth in the Notice and Workweek Dispute Form will govern the Net Settlement Payment to the member of the Settlement Class.

Upon timely receipt of any such challenge, the Settlement Administrator, in consultation with Class Counsel and counsel for Defendant, will review the pertinent payroll records showing the dates the Settlement Class member was employed and the pertinent leave(s) taken, which records Defendant agrees to make available to the Settlement Administrator and Class Counsel. The Settlement Administrator will provide counsel for the Parties with complete copies of all challenges or disputes as they are received by the Settlement Administrator, including the postmark dates for each, and in any event no later than five (5) business days after the Settlement Administrator receives them and no later than ten (10) calendar days before the Final Fairness and Approval Hearing.

After consulting with Class Counsel and counsel for Defendant, the Settlement Administrator shall compute the number of Eligible Workweeks to be used in computing the Settlement Class member's pro rata share of the Net Settlement Amount. In the event there is a disparity between the dates a Settlement Class member claims he or she worked during the Settlement Period and the dates indicated by Defendant's records, Defendant's records will control unless inconsistent with paycheck stub(s) (or bona fide copies thereof) provided by the Settlement Class member, in which case the paycheck stub(s) will control. Any Party may seek Court intervention to resolve a workweek dispute that cannot be resolved by the Parties.

XI. COMPUTATION AND DISTRIBUTION OF PAYMENTS

A. Distribution Formula.

Members of the Settlement Class not opting out, together with all PAGA Members

(regardless of whether they opt out of the class settlement or not) will receive a lump sum payment as good and valuable consideration for the waiver and release of claims set forth in Section VII(A), above, in an amount determined by the Settlement Administrator in accordance with the provisions of this Agreement.

The lump sum payment to each member of the Settlement Class not excluding him/herself and to each PAGA Member will be determined in accordance with the procedure set forth in Section X.

B. Funding of Resolution.

Within thirty (30) calendar days following the date on which the settlement becomes Final, Defendant will deposit the full Settlement Amount, together with Employer Taxes, into an interest-bearing trust account for the benefit of the participating Settlement Class members and Class Counsel, through the Settlement Administrator. At no time prior to Final Approval of the Resolution shall Defendant be required to escrow any portion of the Settlement Amount.

C. Time for Distribution.

The Settlement Administrator shall cause the Settlement Amount (inclusive of the Net Settlement Amount, the Court approved attorney's fees and Litigation costs, Court approved enhancement to Named Plaintiff, and PAGA Settlement) and the Employer Taxes to be mailed within ten (10) calendar days following the date on which the settlement is funded in accordance with section XI(B).

If a check is returned to the Settlement Administrator as undeliverable, the Settlement Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace search and, if another address is identified, shall mail the check to the newly identified address. Any settlement checks remaining uncashed after one hundred eighty (180) days shall be paid to the California State Controller's Office – Unclaimed Property Fund, to be held on behalf of the Class Member. Pursuant to C.C.P. section 384(b)(1), the Parties believe, and will recommend to the Court, that this distribution of uncashed checks best serves the interest of the Class by avoiding a forfeiture of their settlement proceeds.

///

XII. NO CONTRIBUTIONS TO EMPLOYEE BENEFIT PLAN

The amounts paid under this Agreement do not represent a modification of any previously credited hours of service under any employee benefit plan, policy or bonus program sponsored by Defendant. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under, benefit plans (self-insured or not) sponsored by Defendant, policies or bonus programs. Any payments made under the terms of this Resolution shall not be applied retroactively, currently or on a going forward basis as salary, earnings, wages, or any other form of compensation for the purposes of Defendant's benefit plan, policy or bonus program. Defendant retains the right to modify the language of their benefit plans, policies and bonus programs to effect this intent and to make clear that any amounts paid pursuant to this Resolution are not for "hours worked," "hours paid," "hours of service," or any similar measuring term as defined by applicable plans, policies and bonus programs for purpose of eligibility, vesting, benefit accrual or any other purpose, and that additional contributions or benefits are not required by this Resolution.

XIII. CLASS COUNSEL ATTORNEYS' FEES AND LITIGATION COSTS

Defendant shall not oppose an application by Class Counsel for, and Class Counsel shall not seek or receive an amount in excess of 33 1/3% of the Settlement Amount (projected to be \$146,333.33) for all past and future attorneys' fees necessary to prosecute, settle and administer the Litigation and this Settlement. Additionally, Defendant shall not oppose an application by Class Counsel for, and Class Counsel shall not seek or receive an amount in excess of \$12,000.00, which represents all past and future Litigation costs and expenses necessary to prosecute, settle and administer the Litigation and this Settlement. Any attorneys' fees or Litigation costs awarded to Class Counsel by the Court as part of the Settlement Amount shall be deducted from the Settlement Amount for the purpose of determining the Net Settlement Amount. The "future" aspect of these amounts include, without limitation, all time and expenses expended by Class Counsel in defending the Settlement and securing preliminary and Final Approval (including any appeals therein). There will be no additional charge of any kind to either the members of the Settlement Class or request for additional consideration from Defendant for such work. This

1 amount shall include all attorneys' fees, Litigation costs, and expenses for which Named Plaintiff
2 and Class Counsel could claim under any legal theory whatsoever. Within ten (10) calendar days
3 following the date on which the settlement is funded in accordance with section XI(B), the
4 Settlement Administrator shall disburse payment from the Settlement Amount for the amount of
5 attorneys' fees and Litigation costs approved by the Court to Class Counsel. Should the Court
6 approve a lesser percentage or amount of fees and/or Litigation costs than the amount that Class
7 Counsel ultimately seeks, then any such unapproved portion or portions shall revert into the Net
8 Settlement Amount to be distributed between the participating Settlement Class Members on a
9 pro-rata basis.

10 **XIV. ENHANCEMENT TO THE NAMED PLAINTIFF**

11 Defendant shall not oppose an application by Named Plaintiff, and Named Plaintiff shall
12 not seek or receive an amount in excess of \$10,000.00, for his participation in and assistance with
13 the Litigation (*i.e.*, Named Plaintiff's class representative enhancement / service award). Any
14 enhancement awarded to Named Plaintiff by the Court as part of the Settlement Amount shall be
15 deducted from the Settlement Amount for the purpose of determining the Net Settlement
16 Amount, and shall be reported on IRS Form 1099. If the Court approves an enhancement of less
17 than \$10,000.00 to Named Plaintiff, then the unapproved portion or portions shall revert into the
18 Net Settlement Amount to be distributed between the participating Settlement Class Members on
19 a pro-rata basis.

20 **XV. TAXATION AND ALLOCATION**

21 The Parties agree that all employment taxes and other legally required withholdings will
22 be withheld from payments to the members of the Settlement Class and Named Plaintiff based
23 on the Parties stipulated allocation of the Net Settlement Amount as provided for in this Section.

24 In Defendant's sole discretion, and to which Named Plaintiff and Class Counsel do not
25 object, the amount of federal income tax withholding will be based upon a flat withholding rate
26 for supplemental wage payments in accordance with Treas. Reg. § 31.3402(g)-1(a)(2) as
27 amended or supplemented. Income tax withholding will also be made pursuant to applicable
28 state and/or local withholding codes or regulations.

For withholding tax characterization purposes and payment of taxes, the Net Settlement Amount shall be deemed and is allocated by the Parties as follows ("Net Settlement Allocation"):

- (1) 15% as wages;
- (2) 10% as expenses;
- (3) 50% as penalties; and
- (4) 25% as interest.

Forms W-2 and/or Forms 1099 will be distributed at times and in the manner required by the Internal Revenue Code of 1986 (the "Code") and consistent with this Agreement, by the Settlement Administrator. If the Code, the regulations promulgated thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes set forth in this Section may be modified in a manner to bring Defendant into compliance with any such changes.

XVI. PRIVATE ATTORNEYS GENERAL ACT ALLOCATION

In order to implement the terms of this Settlement and to settle claims alleged under the PAGA, the Parties agree to allocate \$20,000.00 from the Settlement Amount as penalties authorized by the PAGA. Seventy-five percent (75%) of this amount will be paid to the Labor and Workforce Development Agency ("LWDA") and 25% of this amount will be distributed equally to the PAGA Members, regardless of whether they exclude themselves from the Settlement or not. Within ten (10) calendar days following the date on which the settlement is funded in accordance with section XI(B), the Settlement Administrator shall disburse the PAGA Settlement to the LWDA and Class Counsel will provide notice to the LWDA of the fact that the settlement has been approved by the court along with a copy of the settlement agreement and the court order confirming the approval of the settlement through the appropriate LWDA/DIR website.

XVII. COURT APPROVAL

This Agreement and the Settlement is contingent upon Final Approval by the Court and the entry of judgment. Named Plaintiff and Defendant agree to take all steps as may be reasonably necessary to secure both Preliminary Approval and Final Approval of the Settlement, to the extent not inconsistent with the terms of this Agreement, and will not take any action

1 adverse to each other in obtaining court approval, and, if necessary, appellate approval, of the
2 Settlement in all respects. Named Plaintiff and Defendant expressly agree that they will not file
3 any objection to the terms of the Settlement or assist or encourage any person or entity to file any
4 such objection.

5 In the event it becomes impossible to secure approval of the Settlement, the Parties shall
6 be restored to their respective positions in the Litigation, as of the date of the hearing on the
7 Motion for Preliminary Approval, except as otherwise provided in Section XVIII, below.

8 **XVIII. MISCELLANEOUS PROVISIONS**

9 **A. Stay of Litigation.**

10 Named Plaintiff and Defendant agree to the stay of all discovery in the Litigation, pending
11 Final Approval of the Resolution by the Court.

12 **B. Filing of First Amended Complaint**

13 Named Plaintiff shall seek leave to file the First Amended Complaint in connection with
14 the Motion for Preliminary Approval. If for any reason this Agreement does not receive Final
15 Approval from the Court, the First Amended Complaint shall be deemed withdrawn and the
16 Complaint shall once again become the operative pleading.

17 **C. Interpretation of the Agreement.**

18 This Agreement constitutes the entire agreement between Named Plaintiff and Defendant.
19 Except as expressly provided herein, this Agreement has not been executed in reliance upon any
20 other written or oral representations or terms, and no such extrinsic oral or written representations
21 or terms shall modify, vary or contradict its terms. In entering into this Agreement, the Parties
22 agree that this Agreement is to be construed according to its terms and may not be varied or
23 contradicted by extrinsic evidence. The Agreement will be interpreted and enforced under the
24 laws of the State of California, both in its procedural and substantive aspects, without regard to
25 its conflict of laws provisions. Any claim arising out of or relating to the Agreement, or the
26 subject matter hereof, will be resolved solely and exclusively in the Superior Court of the State
27 of California for the County of Los Angeles, and Named Plaintiff and Defendant hereby consent
28 to the personal jurisdiction of the Court over them solely in connection therewith. The foregoing

1 is only limited to disputes concerning this Agreement and in no way limits or negates the
2 enforceability and effect of the underlying arbitration agreements signed by employees of
3 Defendant, specifically including but not limited to Named Plaintiff, obligating them to arbitrate
4 any and all claims on an individual (and not on a class, collective, or representative) basis.
5 Named Plaintiff, on their own behalf and on behalf of the Settlement Class, and Defendant
6 participated in the negotiation and drafting of this Agreement and had available to them the
7 advice and assistance of independent counsel. As such, neither Named Plaintiff nor Defendant
8 may claim that any ambiguity in this Agreement should be construed against the other.

9 The terms and conditions of this Agreement constitute the exclusive and final
10 understanding and expression of all agreements between Named Plaintiff and Defendant with
11 respect to the Resolution of the Litigation. The Agreement may be modified only by a writing
12 signed by the original signatories and approved by the Court.

13 **D. Further Cooperation.**

14 Named Plaintiff and Defendant and their respective attorneys shall proceed diligently to
15 prepare and execute all documents, to seek the necessary approvals from the Court, and to do all
16 things reasonably necessary or convenient to consummate the Agreement as expeditiously as
17 possible.

18 **E. Confidentiality of Documents.**

19 After the expiration of any appeals period, Named Plaintiff, the Settlement Administrator,
20 and Class Counsel shall maintain the confidentiality of all documents, deposition transcripts,
21 declarations and other information obtained in the lawsuit, unless necessary for appeal or such
22 documents are ordered to be disclosed by the Court or by a subpoena.

23 **F. Counterparts.**

24 The Agreement may be executed in one or more actual or non-original counterparts, all
25 of which will be considered one and the same instrument and all of which will be considered
26 duplicate originals.

27 **G. Authority.**

28 Each individual signing below warrants that he or she has the authority to execute this

1 Agreement on behalf of the party for whom or which that individual signs.

2 **H. No Third-Party Beneficiaries.**

3 Named Plaintiff, members of the Settlement Class, and Defendant are direct beneficiaries
4 of this Agreement, but there are no third-party beneficiaries.

5 **I. Force Majeure.**

6 The failure of any party to perform any of its obligations hereunder shall not subject such
7 party to any liability or remedy for damages, or otherwise, where such failure is occasioned in
8 whole or in part by acts of God, fires, accidents, earthquakes, other natural disasters, explosions,
9 floods, wars, interruptions or delays in transportation, power outages, labor disputes or shortages,
10 shortages of material or supplies, governmental laws, restrictions, rules or regulations, sabotage,
11 terrorist acts, acts or failures to act of any third parties, or any other similar or different
12 circumstances or causes beyond the reasonable control of such party.

13 **J. Deadlines Falling on Weekends or Holidays.**

14 To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday,
15 or legal holiday, that deadline shall be continued until the following business day.

16 **K. Severability.**

17 In the event that any one or more of the provisions contained in this Agreement shall for
18 any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
19 unenforceability shall in no way effect any other provision if Defense Counsel and Class Counsel,
20 on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed as if such
21 invalid, illegal, or unenforceable provision had never been included in this Agreement.

22 **L. Opt-Out Threshold.**

23 If 10% of more of the members of the Settlement Class exercise their rights to exclude
24 themselves and opt out of the Resolution, Defendant may, in its sole discretion, unilaterally
25 withdraw from and terminate the Resolution no later than five (5) days prior to the date of the
26 Final Approval Hearing. In the event of Defendant's withdrawal, no party may use the fact that
27 the Parties agreed to the Resolution for any reason, and Defendant shall pay all administration
28 expenses incurred through the date of its termination of the Resolution.

1 **L. Modification.**

2 This Agreement may not be changed, altered, or modified, except in a writing signed by
3 the Parties, and approved by the Court. Notwithstanding the forgoing, the Parties agree that any
4 dates contained in this Agreement may be modified by agreement of the Parties in writing without
5 Court approval if the Parties agree and cause exists for such modification. This Agreement may
6 not be discharged except by performance in accordance with its terms or by a writing signed by
7 the Parties.

8 In addition to the above, this Agreement will be modified based on the final size of the
9 Settlement Class. Defendant's best estimate of the Settlement Class size is 439 persons as of
10 September 20, 2021 who worked no more than 37,972 workweeks during the Settlement Period
11 as of November 1, 2021. If, as of the end of the Settlement Period, the actual Class size or
12 weekweeks is more than 10% of this estimate (i.e., 483 or more Class Members or 41,770 or
13 more workweeks), Defendant shall increase the Maximum Settlement Amount on a pro-rata basis
14 equal to the increase in the number of Class Members or workweeks over the 10% grace (e.g., if the
15 number of Class members increases by 11% to 483 Class Members, Defendant will increase the
16 Maximum Settlement Amount by $11 - 10 = 1\%$). The greater increase will control the change to the
17 Maximum Settlement Amount.

18 January 28, 2022
19 Date: _____, 2022

HERIBERTO MARQUEZ, on behalf of
himself and all others similarly situated

20
21 By: _____
22 HERIBERTO MARQUEZ, Plaintiff

23
24 Date: February 22, 2022

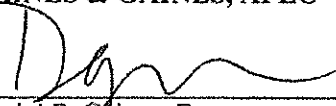
P&B INTERMODAL SERVICES, LLC

25
26 By: Dele B. Bentley
27 Name: Dele B. Bentley
28 Position: COO
 For P&B INTERMODAL SERVICES,
 LLC, Defendant

1 APPROVED AS TO FORM:

2 Date: 1-28-2022, 2022

GAINES & GAINES, APLC

4 By: 

Daniel F. Gaines, Esq.
Alex P. Katofsky, Esq.
Evan S. Gaines, Esq.
Attorneys for Plaintiff

7 Date: February 22, 2022

FISHER & PHILLIPS LLP

9 By: 

Cheryl L. Schreck, Esq.
Joel Moon, Esq.
Attorneys for Defendant

EXHIBIT A

**NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION
AND HEARING DATE FOR FINAL COURT APPROVAL**

*Heriberto Marquez v. P&B Intermodal Services Limited Liability Company, et al.
Los Angeles County Superior Court Case No. 21PSCV00224*

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT
ACT. PLEASE READ THIS NOTICE CAREFULLY.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	To receive a cash payment from the Settlement, you do not have to do anything. Your estimated Individual Settlement Payment is: \$<< __ >>. See the explanation in Section 5 below. After final approval by the Court, the payment will be mailed to you at the same address as this Class Notice. In exchange for the settlement payment, you will release claims against the Defendant as detailed in Section 4 below. If your address has changed, you must notify the Settlement Administrator as explained in Section 6 below.
Exclude Yourself	To exclude yourself, you must send a written request for exclusion to the Settlement Administrator as provided below. If you request exclusion, you will receive no money from the Settlement. Instructions are set forth in Section 7 below.
Object	Write to the Court about why you do not agree with the settlement or appear at the Final Approval Hearing to make an oral objection. Directions are provided in Section 8 below.

1. Why did I get this Notice?

A proposed class action settlement (the "Settlement") of the above-captioned action pending in the Superior Court of the State of California, in and for the County of Los Angeles (the "Court") has been reached between Plaintiff Heriberto Marquez ("Plaintiff") and Defendant P&B Intermodal Services, LLC ("Defendant") and has been granted preliminary approval by the Court. You may be entitled to receive money from this Settlement.

You have received this Class Notice because you have been identified as a member of the Class, which is defined as:

All persons who are or were employed by P&B Intermodal Services, LLC in the State of California in a non-exempt position during the period from March 17, 2017 to November 1, 2021 (the "Class Period").

This Class Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you read this Class Notice carefully as your rights may be affected by the Settlement.

2. What is this class action lawsuit about?

On March 17, 2021, Plaintiff filed a Complaint in the Superior Court of the State of California, County of Los Angeles (the "Complaint"), alleging violations of the Private Attorneys General Act (Labor Code §§ 2698, *et seq.*) ("PAGA"). On [INSERT DATE OF FAC FILING], Plaintiff filed a First Amended Class Action Complaint alleging the following class action claims against Defendant: (1) failure to pay all wages due (Labor Code sections 510 and 1194); (2) failure to reimburse business expenses (Labor Code section 2802); (3) failure to comply with itemized employee wage statement provisions (Labor Code section 226(a), (e), (h)); (4) failure to pay wages due at separation of employment (Labor Code sections 201-203); (5) violation of Business and Professions Code section 17200 *et seq.*; and (6) PAGA civil penalties pursuant to Labor Code section 2698 *et seq.* for violations of Labor Code sections 201, 202, 204, 226(a), 510, 1194, and 2802 and pursuant to Labor Code section 2699(a) for violations of Labor Code sections 210, 226.3 and 558 (the "Action").

Defendant denies and disputes all such claims. Specifically, Defendant contends Plaintiff and the Class Members were properly compensated for wages under California law, including, but not limited to required minimum wages and overtime compensation; Defendant did not fail to pay to Plaintiff or any Class Members any wages allegedly due at the time of their termination; Defendant complied with California wage statement requirements; Defendant properly reimbursed all business expenses; Defendant did not violate the Business and Professions Code; and Defendant is not liable for any of the penalties claimed or that could be claimed in the Action; and this Action cannot be maintained as a class action.

The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>>. At that time, the Court also preliminarily approved the Plaintiff to serve as the Class Representative, and the lawyers at GAINES & GAINES, APLC to serve as Class Counsel.

Neither the Court nor any other fact finder has decided whether the claims brought by the Class Representative or Defendant's defenses to those claims, are meritorious. By approving the Settlement and issuing this Class Notice, the Court is not suggesting which side would win or lose this case if it went to trial. Rather, the Court has determined only that there is sufficient evidence to suggest that the proposed Settlement might be fair, adequate, and reasonable, and any final determination of those issues will be made at the Final Approval Hearing. Defendant reserves the right, if for any reason the Settlement is not approved, to contest any factual or legal allegations in the Action including whether this Action should proceed as a class action.

3. What are the terms of the Settlement?

Gross Settlement Amount. Defendant has agreed to pay an "all in" maximum amount of \$439,000.00 (the "Gross Settlement Amount") to fund the settlement of this Action. The Gross Settlement Amount includes all Individual Settlement Payments to Class Members contemplated by the Settlement, the Settlement Administration Costs, the Class Representative Enhancement Award, Class Counsels' attorney's fees and costs, and the PAGA Settlement Amount for civil penalties, 75% of which will be allocated to the LWDA (the "LWDA Payment") and 25% of which will be distributed as Individual PAGA Payments to all current and former California non-exempt, hourly employees of Defendant from January 11, 2020 through November 1, 2021 ("PAGA Members" and the "PAGA Period"), including those who submit a valid and timely Request for Exclusion, who will nevertheless bound by the release of PAGA claims ("PAGA Members"). Any

employer-side payroll taxes on the portion of the Individual Settlement Payments allocated to wages shall be separately paid by Defendant.

Amounts to be Paid From the Gross Settlement Amount. The Settlement provides for certain payments to be made from the Gross Settlement Amount as follows, which will be subject to final Court approval, and which will be deducted from the Gross Settlement Amount before Individual Settlement Payments are made to Class Members who do not request exclusion ("Participating Class Members"):

- Settlement Administration Expenses. Payment to the Settlement Administrator, estimated not to exceed \$7,500.00, for expenses, including without limitation expenses of notifying the Class Members of the Settlement, processing opt outs, and distributing Individual Settlement Payments and tax forms, and handling inquiries and uncashed checks.
- Class Counsels' attorney's fees and costs. Payment to Class Counsel of reasonable attorneys' fees not to exceed one-third (33 1/3%) of the Gross Settlement Amount, which is presently \$146,333.33 and an additional amount to reimburse actual litigation costs incurred by the Plaintiff not to exceed \$12,000.00. Class Counsel has been prosecuting the Action on behalf of Plaintiff and the Class on a contingency fee basis (that is, without being paid any money) and has been paying all litigation costs and expenses.
- Class Representative Enhancement Award. Class Representative Enhance Award in an amount not to exceed \$10,000.00 to the Plaintiff, or such lesser amount as may be approved by the Court, to compensate him for services on behalf of the Class in initiating and prosecuting the Action, and for the risks he undertook.
- PAGA Payment. A payment of \$20,000.00 relating to the claim for penalties under the Private Attorney Generals Act ("PAGA"), \$15,000.00 of which will be paid to the State of California's Labor and Workforce Development Agency ("LWDA Payment"). The remaining \$5,000.00 will be distributed as individual PAGA Payments equally to PAGA Members.

Calculation of Individual Settlement Payments to Class Members. After all of the payments of the court-approved Class Counsels' attorney's fees and costs, the Class Representative Enhancement Award, the PAGA Settlement Payment Amount, and the Settlement Administration Expenses are deducted from the Gross Settlement Amount, the remaining portion is called the "Net Settlement Amount" and shall be distributed as Individual Settlement Payments to the Participating Class Members. The Settlement Administrator will pay an Individual Settlement Payment from the Net Settlement Amount to each Participating Class Member. The Individual Settlement Payment for each Participating Class Member will be calculated by (a) dividing the Net Settlement Amount by the total number of qualifying workweeks worked for all Participating Class Members that occurred during the Class Period and (b) multiplying the result by each individual Participating Class Member's qualifying workweeks worked that occurred during the Class Period. In addition, PAGA Members will each be paid an equal share of the PAGA Payment allocated to PAGA Members in the estimated amount of \$_____ each.

If the Settlement is approved by the Court and you do not exclude yourself, you will automatically be mailed a check for your Individual Settlement Payment to the same address as this Class Notice. You do not have to do anything to receive a payment. If your address

has changed, you must contact the Settlement Administrator to inform them of your correct address to ensure you receive your payment.

Tax Matters. Fifteen percent (15%) of each Participating Class Member's Individual Settlement Payment is in settlement of wage claims (the "Wage Portion"). Accordingly, the Wage Portion is subject to wage withholdings, and shall be reported on IRS Form W-2. Eighty-five percent (85%), the remainder of each Participating Class Member's Individual Settlement Payment is in settlement of claims for expenses (10%), interest (25%), and penalties (50%) allegedly due to employees (collectively the "Non-Wage Portion"). The Non-Wage Portion and the Individual PAGA Payment shall not be subject to wage withholdings, and shall be reported on IRS Form 1099 (there shall be no tax reporting for the expense portion of the Individual Settlement Payments). The employee portion of all applicable income and payroll taxes will be the responsibility of the Participating Class Members. Neither Class Counsel nor Defendant's Counsel intend anything contained in this Notice to constitute advice regarding taxes or taxability. The tax issues for each Participating Class Member are unique to him/her, and each Participating Class Member may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order granting final approval of the Settlement and entering the Judgment.

4. What Do I Release Under the Settlement?

Released Class Claims. Upon the Date of Final Approval, and subject to the occurrence of the Effective Date and Defendant's payment of all sums required, Named Plaintiff and all members of the Settlement Class, except those that make a valid and timely request to be excluded from the Class, waive, release, discharge, and promise never to assert in any forum any and all claims against Defendant, and its divisions, affiliates, predecessors, successors, shareholders, officers, directors, employees, agents, trustees, representatives, administrators, fiduciaries, assigns, attorneys, consultants, subrogees, executors, partners, parents, subsidiaries, joint employers, insurers, and related corporations, or any of them, that were alleged in the Litigation or which could have been alleged based on the facts asserted in the Litigation (including Named Plaintiff's LWDA Letter and operative Complaint) and which arose during the Settlement Period during their employment in California in a non-exempt position. These claims include, under any legal theory of liability, but are not limited to: Failure to Pay Wages, Double Time and Overtime Compensation; Failure to Timely Pay Wages Due At Termination; Failure to Provide Accurate Itemized Employee Wage Statements; Indemnification for Business Expenses; Claims under Labor Code Sections 201-204, 210, 226, 226.3, 510, 558, 1194 and 2802; Violation of Business & Professions Code § 17200, *et seq.* based on the foregoing facts and claims; Penalties Pursuant to PAGA (Labor Code § 2698 *et seq.*) based on the foregoing facts and claims; and any other applicable provisions of state or federal law, including the applicable IWC wage order.

This means that, if you do not timely exclude yourself from the settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant and any other Released Party about the legal issues resolved by this Settlement. It also means that all of the Court's orders in this Action will apply to you and legally bind you.

Released PAGA Claims. Upon the Date of Final Approval, and subject to the occurrence of the Effective Date and Defendant's payment of all sums required hereunder, Plaintiff and all PAGA

Members release the Released Parties all claims under the California Labor Code Private Attorneys General Act of 2004 (Labor Code section 2698 et seq.) that were alleged or reasonably could have been alleged based on the facts and legal theories contained in the Named Plaintiff's LWDA Letter/PAGA Notice and First Amended Complaint in the Action which arose during the PAGA Period (from January 11, 2020 to November 1, 2021 ("PAGA Period").

In light of the binding nature of a PAGA judgment on non-party employees pursuant to *Arias v. Superior Ct. (Dairy)*, 46 Cal. 4th 969 (2009), PAGA Members employed by Defendant on or after January 11, 2020, who exclude themselves from the Class shall still receive a share of the PAGA allocation (an "Individual PAGA Payment") as calculated by the Settlement Administrator. PAGA Members will not have the opportunity to opt out of, or object to, the PAGA Released Claims. Further, the PAGA Members are bound by the Released PAGA Claims regardless of whether they cash and/or otherwise negotiate their Individual PAGA Payment.

5. How much will my payment be?

According to Defendant's records, the number of qualifying workweeks worked by you during the Class Period is <<____>>. The records show that you [are/are not] a PAGA Member because you [were/were not] employment by Defendant in California between January 11, 2020 and November 1, 2021.

Based on this information, your estimated Individual Settlement Payment is <<____>> and your estimated individual PAGA Payment is <<____>>.

If you wish to challenge the information set forth above, then you must submit a written, signed dispute challenging the information along with supporting documents, to the Settlement Administrator at the address provided in this Class Notice no later than [INSERT DATE FOURTY FIVE (45) DAYS AFTER THE MAILING OF THE CLASS NOTICE]. A Workweek Dispute Form is attached here for your convenience.

6. How can I get a payment?

To get money from the settlement, you do not have to do anything. Checks for your Individual Settlement Payments will be mailed automatically to the same address as this Class Notice. If your address is incorrect or has changed, you must notify the Settlement Administrator. The Settlement Administrator is: ILYM, GROUP INC. _____.

The Court will hold a Final Approval Hearing on _____, 2021 at _____ to decide whether to approve the Settlement. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed approximately three months after this hearing. If there are objections or appeals, resolving them can take time, usually more than a year. Please be patient.

7. What if I don't want to be a part of the Settlement?

If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement or "opt out." If you opt out, you will not receive an Individual Settlement Payment from the Settlement, and you will not be bound by its terms. If you wish to object to the Settlement, you cannot opt out of the Settlement.

To opt out, you must submit a written request to opt out to the Settlement Administrator via fax

or at the address below requesting to be excluded from the Settlement. To be considered valid, your opt out request must (1) state your name, address, telephone number, and last four digits of your social security number or employee identification number; (2) state your intention to exclude yourself from or opt-out of the Settlement (e.g. "I wish to be excluded from the settlement class in *Heriberto Marquez v. P&B Intermodal Services Limited Liability Company, et al.*, Los Angeles County Superior Court Case No. 21PSCV00224."); (3) be signed by you or your lawful representative; and (4) be addressed to the Settlement Administrator. To be considered timely, your opt out request must be faxed or postmarked no later than _____, 2022. Late opt out requests will not be considered.

If you timely mail a complete and valid opt out request, you will no longer be a member of the class and you will not be eligible to object to the terms of the Settlement or receive money under the Settlement except for that portion of the settlement allocated to PAGA penalty payments. Except for the PAGA release, you will not be bound by the terms of the Settlement, and may pursue any valid claims you may have, at your own expense, against Defendant. Individuals otherwise meeting the definition of Class Members who exclude themselves from the class pursuant and were employed during the PAGA Period will still receive a payment for the amount of each such individual's estimated share of the PAGA Payment.

8. How do I tell the Court that I don't agree with the Settlement?

Any Class Member who has not opted out and believes that the Settlement should not be finally approved by the Court for any reason may object to the proposed Settlement, the Class Counsels' attorney's fees and costs, and/or the Class Representative Enhancement Payment, either in writing or in person. Objections that are in writing must state (1) the case name (e.g. *Heriberto Marquez v. P&B Intermodal Services Limited Liability Company, et al.*) and case number 21PSCV00224; (2) the objecting person's or his/her attorney's full name, address, and telephone number; (3) the words "Notice of Objection" or "Formal Objection;" (4) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (5) list identifying witness(es) the objector may call to testify at the Final Approval Hearing; (6) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval Hearing; (7) state whether the objection applies only to the objector, to a specific subset of the Class, or to the entire Class; and (8) state whether the objector or his/her attorneys will attend the Final Approval Hearing.

All written objections must be mailed to the Settlement Administrator at _____, no later than [INSERT DATE FOURTY-FIVE (45) DAYS AFTER THE MAILING OF THE CLASS NOTICE].

Alternatively, Class Members may appear at the Final Approval Hearing on _____ at _____ to make an oral objection, even without submitting a written objection.

To object to the Settlement, you must not opt out, and if the Court approves the Settlement despite your objection, you will be bound by the terms of the Settlement in the same way as Class Members who do not object and you will still be mailed a check for your Individual Settlement Payment. Any Class Member who does not object in the manner provided in this Notice shall have waived any objection to the Settlement, whether by appeal or otherwise.

The addresses for Parties' counsel are as follows:

Class Counsel:

Daniel F. Gaines
Alex P. Katofsky
Evan S. Gaines
GAINES & GAINES, APLC
27200 Agoura Road, Suite 101
Calabasas, CA 91301
Telephone: 866-550-0855
Facsimile: 818-703-8984

Counsel for Defendant:

Cheryl Schreck
Joel Moon
FISHER & PHILLIPS LLP
444 South Flower Street, Suite 1500
Los Angeles, California 90071
Telephone: (213) 330-4500
Facsimile: (213) 330-4501

9. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at _____ on _____, 2021, in Department O of the Superior Court of California, County of Los Angeles, 400 Civic Center Plaza, Pomona, CA 91766. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement. If there are objections, the Court will consider them. This hearing may be rescheduled by the Court without further notice to you. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

10. How do I get more information about the Settlement?

You may call the Settlement Administrator at _____ or write to the Settlement Administrator, c/o _____.

This Class Notice summarizes the proposed settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, the Final Judgment or other Settlement documents by examining the Court's file via the Case Access for the California Superior Court for the County of Los Angeles (<http://www.lacourt.org/casesummary/ui/index.aspx>) (Civil Case & Document Access) and entering the Case No. 21PSCV00224. You may also call Class Counsel, who can help you obtain these documents.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- You must inform the Settlement Administrator of any change of address to ensure receipt of your settlement payment.
- Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall pay all unclaimed funds to California State Controller's Office – Unclaimed Property Fund, to be held on your behalf. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

EXHIBIT B

Heriberto Marquez v. P&B Intermodal Services Limited Liability Company, et al.
Los Angeles County Superior Court Case No. 21PSCV00224

WORKWEEK DISPUTE FORM

According to Defendant's records, the number of workweeks worked by you in California from March 17, 2017 to November 1, 2021 is _____ and you [did/did not] work for Defendant in California from January 11, 2020 to November 1, 2021.

Based on this number of workweeks, your estimated Individual Settlement Payment is \$ _____ and your share of the PAGA Payment is \$ _____.

If you disagree with the information listed above, you must:

1. Set forth below the reasons why you disagree with the number of workweeks or employment dates listed above;
2. Sign and date this page; and
3. Mail this signed page, along with any supporting documentation that you have to: [INSERT ADMINISTRATOR NAME AND ADDRESS].

I disagree with the information listed above because:

Please enclose all documentation supporting your dispute of the Workweeks.

Dated: _____

Signed: _____

Print Name: _____

Last four digits of Social Security No.: _____

**DO NOT RETURN THIS FORM IF YOU DO NOT DISPUTE THE EMPLOYMENT
INFORMATION LISTED ABOVE.**

YOU MUST COMPLETE AND RETURN THIS FORM BY [INSERT DATE]

EXHIBIT C

1 DANIEL F. GAINES, ESQ. SBN 251488
daniel@gaineslawfirm.com
2 ALEX P. KATOFISKY, ESQ. SBN 202754
alex@gaineslawfirm.com
3 EVAN S. GAINES, ESQ. SBN 287668
evan@gaineslawfirm.com
4 **GAINES & GAINES, APLC**
27200 Agoura Rd., Suite 101
5 Calabasas, CA 91301
Telephone: (818) 703-8985
6 Facsimile: (818) 703-8984

7 Attorneys for Plaintiff Heriberto Marquez, on behalf of himself and all "aggrieved employees"
pursuant to Labor Code § 2698 *et seq.*

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES**

12 HERIBERTO MARQUEZ, on behalf of
himself and all "aggrieved employees"
13 pursuant to Labor Code § 2698 *et seq.*,

14 Plaintiffs,

15 v.

16 P & B INTERMODAL SERVICES LIMITED
17 LIABILITY COMPANY, a New Jersey
limited liability company, and DOES 1
18 through 10, inclusive,

19 Defendants.

Case No.: 21PSCV00224

*Assigned For All Purposes to the Honorable
Judge Peter A. Hernandez, Dept. O*

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. **FAILURE TO PAY ALL WAGES DUE
(LABOR CODE §§ 510 AND 1194)**
2. **FAILURE TO REIMBURSE BUSINESS
EXPENSES (LABOR CODE § 2802)**
3. **FAILURE TO COMPLY WITH
ITEMIZED EMPLOYEE WAGE
STATEMENT PROVISIONS (LABOR
CODE § 226(a), (e), (h))**
4. **FAILURE TO PAY WAGES DUE AT
SEPARATION OF EMPLOYMENT
(LABOR CODE §§ 201-203)**
5. **VIOLATION OF BUSINESS AND
PROFESSIONS CODE § 17200 ET SEQ.**
6. **CIVIL PENALTIES PURSUANT TO
LABOR CODE § 2698 ET SEQ. FOR
VIOLATIONS OF LABOR CODE §§ 201,
202, 204, 226(a), 510, 1194, AND 2802 AND
PURSUANT TO LABOR
CODE § 2699(a) FOR VIOLATIONS OF
LABOR CODE §§ 210, 226.3, AND 558**

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DEMAND FOR JURY TRIAL

Complaint Filed: March 17, 2021

Plaintiff HERIBERTO MARQUEZ ("Plaintiff"), individually and on behalf of all similarly situated individuals (the "Class" or "Plaintiff Class"), on behalf of the general public, and as an "aggrieved employee" under the Labor Code Private Attorneys General Act of 2004, complains of Defendants, and each of them, as follows:

I.

INTRODUCTION AND FACTUAL BACKGROUND

1. This is a Class Action and Representative Action, pursuant to Code of Civil Procedure § 382 and Labor Code § 2698 *et seq.*, on behalf of Plaintiff and other non-exempt employees who work or formerly worked for P & B INTERMODAL SERVICES LIMITED LIABILITY COMPANY, a New Jersey limited liability company, and any subsidiaries or affiliated companies (hereinafter collectively referred to as "Defendants") within the State of California.

2. For at least four (4) years prior to the filing of this action and continuing to the present (the "liability period"), Defendants have had a consistent policy of failing to pay all wages due to Class Members (as defined below), including all minimum and overtime wages due; reimburse business expenses; provide accurately itemized wage statements to Class Members; and to timely pay wages during employment and upon separation of employment to Class Members.

3. Plaintiff, on behalf of himself and the members of the Class, brings this action pursuant to Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.3, 510, 558, 1194 and 2802, seeking compensation for all unpaid wages, reimbursement of business expenses, statutory penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs.

4. Plaintiff, on behalf of himself and Class Members and pursuant to Business & Professions Code §§ 17200-17208, seeks injunctive relief, restitution, and disgorgement of all benefits Defendants enjoyed from their failure to pay all wages due to Class Members.

5. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395 because Defendants employed Plaintiff and Class Members in Los Angeles County, California.

6. Plaintiff, on behalf of himself and all aggrieved employees pursuant to Labor Code §§ 2698 *et seq.*, seeks penalties for Defendants' various violations of the California Labor Code.

II.

PARTIES

A. Plaintiff

7. Plaintiff HERIBERTO MARQUEZ was employed by Defendants from January 2019 to October 2020 as a non-exempt employee in Los Angeles County, California.

8. During his work with Defendants, Plaintiff was:

- a. Willfully denied the payment of all wages due;
- b. Willfully denied the timely payment of all wages on designated pay days;
- c. Willfully denied the payment of all business expense reimbursement due;
- d. Willfully denied accurately itemized wage statements; and
- e. Denied the timely payment of wages upon separation of his employment.

B. Defendants

9. Defendant P & B INTERMODAL SERVICES LIMITED LIABILITY COMPANY, is a New Jersey limited liability company. Defendant P & B INTERMODAL SERVICES LIMITED LIABILITY COMPANY. employed Plaintiff and Class Members throughout the State of California, including Los Angeles County, California.

10. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

11. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,

1 business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally
2 attributable to the other Defendants.

3 12. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting
4 on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more
5 provisions of the California Labor Code as alleged herein.

6 **III.**

7 **CLASS ACTION ALLEGATIONS**

8 13. Plaintiff brings this action on behalf of himself, and all others similarly situated as a
9 Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent the
10 following class composed of and defined as follows:

11 **THE CLASS**

12 All non-exempt employees employed by Defendant P & B
13 INTERMODAL SERVICES LIMITED LIABILITY COMPANY in
14 California at any time between March 17, 2017 and November 1, 2021.

15 14. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend or
16 modify these class descriptions with greater specificity or further division into subclasses or limitation
17 to particular issues.

18 15. This action has been brought and may properly be maintained as a class action under
19 the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of
20 interest in the litigation and the proposed Class is easily ascertainable.

21 **A. Numerosity**

22 16. The potential members of the Class as defined are so numerous that joinder of all Class
23 Members is impracticable. While the precise number of members of the Class has not been
24 ascertained at this time, Plaintiff is informed and believes, and based thereon alleges, that Defendants
25 currently employ, and during the relevant time periods employed, over 75 persons in the State of
26 California who fall within the Class definition.

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1 17. Accounting for employee turnover during the relevant period necessarily increases this
2 number. Plaintiff alleges Defendants' employment records would provide information as to the
3 number and location of members of the Class. Joinder of members of the Class is not practicable.

4 **B. Commonality**

5 18. There are questions of law and fact common to the Class that predominate over any
6 questions affecting only individual Class Members. These common questions of law and fact include,
7 without limitation:

- 8 a. Whether Defendants failed to pay Plaintiff and Class Members all wages due,
9 in violation of Labor Code §§ 510 and 1194;
- 10 b. Whether Defendants failed to timely pay wages to Plaintiff and Class Members
11 during employment, in violation of Labor Code §§ 204 and 210;
- 12 c. Whether Defendants failed to reimburse Plaintiff and Class Members for
13 necessary business expenses incurred in direct consequence of the discharge
14 of their duties, in violation of Labor Code § 2802;
- 15 d. Whether Defendants failed to provide Plaintiff and Class Members with
16 accurately itemized wage statements, in accordance with Labor Code § 226(a);
- 17 e. Whether Defendants failed to timely pay Plaintiff and Class Members all
18 wages due and owing at the separation of their employment, in violation of
19 Labor Code §§ 201-203; and
- 20 e. Whether Plaintiff and Class Members are entitled to equitable relief pursuant
21 to Business & Professions Code § 17200 *et seq.*

22 **C. Typicality**

23 19. The claims of the named Plaintiff are typical of the claims of members of the Class.
24 Plaintiff and members of the Class sustained injuries and damages arising out of and caused by
25 Defendants' common course of conduct in violation of laws, regulations that have the force and effect
26 of law, and statutes as alleged herein.

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1 **D. Adequacy of Representation**

2 20. Plaintiff will fairly and adequately represent and protect the interests of members of
3 the Class. Counsel who represents Plaintiff are competent and experienced in litigating large
4 employment class actions.

5 **E. Superiority of Class Action**

6 21. A class action is superior to other available means for the fair and efficient adjudication
7 of this controversy. Individual joinder of all proposed members of the Class is not practicable, and
8 questions of law and fact common to the proposed Class predominate over any questions affecting
9 only individual members of the proposed Class. Each member of the proposed Class has been
10 damaged and is entitled to recovery by reason of Defendants' illegal policies and/or practices.

11 22. Class action treatment will allow those similarly situated persons to litigate their
12 claims in the manner that is most efficient and economical for the parties and the judicial system.
13 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
14 action that would preclude its maintenance as a class action.

15 **IV.**

16 **CAUSES OF ACTION**

17 **FIRST CAUSE OF ACTION**

18 **PLAINTIFF AND CLASS AGAINST ALL DEFENDANTS**

19 **FAILURE TO PAY ALL WAGES DUE, INCLUDING MINIMUM AND OVERTIME**

20 **WAGES**

21 **(LABOR CODE §§ 510 AND 1194)**

22 23. Plaintiff incorporates paragraphs 1 through 22 of this Complaint as though fully set
23 forth herein.

24 24. Labor Code § 510 provides that, "any work in excess of eight hours in one workday
25 and any work in excess of 40 hours in any one workweek and the first eight hours worked on the
26 seventh day of work in any one workweek shall be compensated at the rate of no less than one and
27 one-half times the regular rate of pay for an employee." Labor Code § 1194 provides that "any
28 employee receiving less than the legal minimum wage or the legal overtime compensation applicable

1 to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this
2 minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and
3 costs of suit."

4 25. During the liability period, Defendants failed to pay Plaintiff and Class Members all
5 wages due, in violation of Labor Code §§ 510 and 1194. Defendants paid Plaintiff and Class Members
6 bonuses and other forms of non-base hourly wages that were not included in their regular rate of pay
7 for purposes of computing the proper overtime rate. As a result, these employees were not properly
8 compensated for work performed in excess of eight (8) hours in a workday and work performed in
9 excess of forty (40) hours in a workweek at a rate of no less than one and one-half times the regular
10 rate of pay. For example, Defendants paid Plaintiff and other Class Members incentive payments for
11 surpassing projected production levels, but these payments were not included in their regular rate of
12 pay for purposes of computing the proper overtime rate. These failures to pay all overtime wages due
13 constitute violations of Labor Code §§ 510 and 1194.

14 26. As a result of the unlawful acts of Defendants in willfully failing to pay all wages,
15 Plaintiff and Class Members have been deprived of wages in amounts to be determined at trial, and
16 are entitled to restitution and recovery of such amounts, plus interest thereon, attorneys' fees, and
17 costs pursuant to Labor Code § 1194.

18 Wherefore, Plaintiff and the Class he seeks to represent request relief as described below.

19 V.

20 **SECOND CAUSE OF ACTION**

21 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

22 **FAILURE TO REIMBURSE EXPENSES**

23 **(LABOR CODE § 2802)**

24 27. Plaintiff incorporates paragraphs 1 through 26 of this Complaint as though fully set
25 forth herein.

26 28. Pursuant to California Labor Code § 2802, Defendants are required to fully reimburse
27 Plaintiff and Class Members for all out-of-pocket expenses incurred by them in the performance of
28 their job duties.

29. Plaintiff and Class Members were required to use their own personal cellular phones to perform work for Defendants, but were not fully reimbursed by Defendants for these expenses.

VI.

THIRD CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO COMPLY WITH ITEMIZED EMPLOYEE WAGE STATEMENT

PROVISIONS

(LABOR CODE § 226(a), (e), (h))

32. Plaintiff incorporates paragraphs 1 through 31 of this Complaint as though fully set forth herein.

33. Section 226(a) of the California Labor Code requires Defendants to provide wage statements to employees. In those wage statements, Defendants must provide an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee . . . , (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer . . . , and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Defendants have failed to comply with Labor Code § 226(a).

34. Defendants failed to issue Plaintiff and Class Members wage statements that fully and accurately itemized the requirements set forth in Labor Code § 226(a). Plaintiff and Class Members were not paid all wages due. As such, the wage statements provided by Defendants failed to accurately state all gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5), and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, in violation of Labor Code § 226(a)(9).

35. As a consequence of Defendants' willful conduct in failing to provide Class Members with accurate itemized wage statements, Plaintiff and Class Members have been injured because they have not been paid all wages due and were issued wage statements which do not reflect, and fail to accurately state, all information required by Labor Code § 226(a). The missing information cannot be discerned at all from the face of the wage statements themselves. As a result, Plaintiff and Class Members are entitled to penalties pursuant to Labor Code § 226(e) to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000 per employee, and are entitled to an award of costs and reasonable attorneys' fees pursuant to Labor Code § 226(h).

Wherefore, Plaintiff and the Class he seeks to represent request relief as described below.

VII.

FOURTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO TIMELY PAY WAGES DUE AT

SEPARATION OF EMPLOYMENT

(LABOR CODE §§ 201-203)

36. Plaintiff incorporates paragraphs 1 through 35 of this Complaint as though fully set forth herein.

37. California Labor Code § 201 and § 202 require Defendants to pay employees all wages due within 72 hours after resignation of employment or the day of termination of employment. Labor Code § 203 provides that if an employer willfully fails to timely pay such wages, the employer must,

1 as a penalty, continue to pay the subject employee's daily wages until the back wages are paid in full
2 or an action is commenced. The penalty cannot exceed 30 days of wages.

3 38. Defendants paid Plaintiff and Class Members their final wages beyond the time frames
4 set forth in Labor Code §§ 201 and 202, in violation of Labor Code § 203. Plaintiff and Class
5 Members were not paid all wages due and owing throughout the course of their employment, as
6 detailed above. Consequently, at the time of their separation from employment with Defendants, they
7 were not paid all final wages due and owing for the entirety of their employment.

8 39. More than 30 days have passed since Plaintiff and Class Members have left
9 Defendants' employ.

10 40. As a consequence of Defendants' willful conduct in not paying wages owed timely
11 upon separation of employment, Plaintiff and Class Members are entitled to up to 30 days' wages as
12 a penalty under Labor Code § 203 for Defendants' failure to timely pay legal wages at separation of
13 employment.

14 Wherefore, Plaintiff and the Class he seeks to represent request relief as described below.

15 **VIII.**

16 **FIFTH CAUSE OF ACTION**

17 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

18 **UNFAIR COMPETITION PURSUANT TO**

19 **BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.**

20 41. Plaintiff incorporates paragraphs 1 through 43 of this Complaint as though fully set
21 forth herein.

22 42. This is a Class Action for Unfair Business Practices. Plaintiff, on his own behalf and
23 on behalf of the general public, and on behalf of others similarly situated, bring this claim pursuant
24 to Business & Professions Code § 17200 *et seq.* The conduct of all Defendants as alleged in this
25 Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general public,
26 and Class Members. Plaintiff seeks to enforce important rights affecting the public interest within
27 the meaning of Code of Civil Procedure § 1021.5.

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1 43. Plaintiff is a “person” within the meaning of Business & Professions Code § 17204,
2 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other
3 appropriate equitable relief.

4 44. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business
5 practices.

6 45. Wage and hour laws express fundamental public policies. Properly providing
7 employees with all wages and expense reimbursement due are fundamental public policies of this
8 State and of the United States. Labor Code § 90.5(a) articulates the public policies of this State to
9 enforce vigorously minimum labor standards, to ensure that employees are not required or permitted
10 to work under substandard and unlawful conditions, and to protect law-abiding employers and its
11 employees from competitors who lower their costs by failing to comply with minimum labor
12 standards.

13 46. Defendants have violated statutes and public policies. Through the conduct alleged in
14 this Complaint, Defendants, and each of them, have acted contrary to these public policies, have
15 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
16 business practices in violation of Business & Professions Code § 17200 *et seq.* depriving Plaintiff,
17 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
18 guaranteed to all employees under law.

19 47. Defendants’ conduct, as alleged herein, constitutes unfair competition in violation of
20 §17200 *et seq.* of the Business & Professions Code.

21 48. Defendants, by engaging in the conduct herein alleged, either knew or in the exercise
22 of reasonable care should have known that the conduct was unlawful. As such, it is a violation of §
23 17200 *et seq.* of the Business & Professions Code.

24 49. As a proximate result of the above-mentioned acts of Defendants, Plaintiff and others
25 similarly situated have been damaged in a sum as may be proven.

26 50. Unless restrained by this Court, Defendants will continue to engage in the unlawful
27 conduct, as alleged above. Pursuant to Business & Professions Code § 17200 *et seq.*, this Court
28 should make such orders or judgments, including the appointment of a receiver, as may be necessary

1 to prevent the use or employment, by Defendants, its agents, or employees, of any unlawful or
2 deceptive practice prohibited by the Business & Professions Code, and/or, including but not limited
3 to, disgorgement of profits which may be necessary to restore Plaintiff and Class Members to the
4 money Defendants have unlawfully failed to pay.

5 **IX.**

6 **SIXTH CAUSE OF ACTION**

7 **PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS**
8 **CIVIL PENALTIES PURSUANT TO LABOR CODE § 2698 ET SEQ. FOR VIOLATIONS**
9 **OF LABOR CODE §§ 201, 202, 203, 204, 226, 510, 1194, AND 2802 AND PURSUANT TO**
10 **LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 210, 226.3, AND 558**

11 51. Plaintiff incorporates paragraphs 1 through 50 of this Complaint as though fully set
12 forth herein.

13 52. As a result of the acts alleged above, including the Labor Code violations set forth
14 herein, Plaintiff seeks penalties pursuant to Labor Code § 2698 *et seq.* Independent of the above
15 allegations, Defendants failed to timely pay all wages due and owing to Plaintiff and Aggrieved
16 Employees during employment, in violation of Labor Code §§ 204 and 210. Defendants paid Plaintiff
17 and Aggrieved Employees on a bi-weekly basis but failed to issue them all their wages within seven
18 calendar days of the conclusion of the payroll period, as required by Labor Code § 204(d); some
19 wages, including certain incentive payments, were issued eight or more days after the conclusion of
20 the pay period. This subjects Defendants to penalties as authorized by Labor Code § 210.

21 53. For each such violation, Plaintiff and all other Aggrieved Employees are entitled to
22 penalties in an amount to be shown at the time of trial subject to the following formula:

- 23 a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for
24 each subsequent violation of Labor Code §§ 201, 202, 204, 226, 510, 1194 and
25 2802; and
26 b. Pursuant to Labor Code § 2699(a), the civil penalties as authorized by Labor
27 Code §§ 210, 226.3, and 558.

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54. Penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

55. On January 11, 2021, Plaintiff sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendant, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of January 11, 2021. Plaintiff may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

Wherefore, Plaintiff and the Aggrieved Employees he seeks to represent request relief as described below.

XI.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For compensatory damages pursuant to Labor Code § 1194 in the amount of all unpaid wages due to Plaintiff and Class Members;
2. For penalties pursuant to Labor Code § 226(e) for Plaintiff and Class Members;
3. For penalties pursuant to Labor Code § 203 for Plaintiff and Class Members;
4. For reimbursement of all expenses incurred by Plaintiff and Class Members pursuant to Labor Code § 2802;
5. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.* for Plaintiff and Class Members;
6. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other Aggrieved Employees;
7. An award of prejudgment and post-judgment interest;
8. An award providing for payment of costs of suit;
9. An award of attorneys' fees; and
10. Such other and further relief as this Court may deem just and proper.

///

1 Dated: February 16, 2022

Respectfully submitted,

2 GAINES & GAINES
3 A Professional Law Corporation

4 By: _____
5 DANIEL F. GAINES
6 EVAN S. GAINES
7 Attorney for Plaintiff

8 **DEMAND FOR JURY TRIAL**

9 Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

10 Dated: February 16, 2022

Respectfully submitted,

11 GAINES & GAINES
12 A Professional Law Corporation

13 By: _____
14 DANIEL F. GAINES
15 EVAN S. GAINES
16 Attorney for Plaintiff
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Journal Technologies Court Portal

Court Reservation Receipt

Reservation

Reservation ID:
985275804395

Status:
RESERVED

Reservation Type:
Motion for Order (Motion for Preliminary Approval)

Number of Motions:
1

Case Number:
21PSCV00224

Case Title:
HERIBERTO MARQUEZ, ON BEHALF OF HIMSELF
AND ALL AGGRIEVED EMPLOYEES PURSUANT TO
LABOR CODE 2698 ET SEQ vs P & B INTERMODAL
SERVICES LIMITED LIABILITY COMPANY, A NEW
JERSEY LIMITED LIABILITY COMPANY, AND DOES 1
THROUGH 10, INCLUSIVE

Filing Party:
HERIBERTO MARQUEZ, on behalf of himself and all
aggrieved employees pursuant to Labor Code 2698 et
seq (Plaintiff)

Location:
Pomona Courthouse South - Department O

Date/Time:
April 26th 2022, 9:30AM

Confirmation Code:
CR-2YPZKAVDYBYGS26NZ

Fees

Description	Fee	Qty	Amount
Motion for Order (name extension)	60.00	1	60.00
Credit Card Percentage Fee (2.75%)	1.65	1	1.65
TOTAL			\$61.65

Payment

Amount:
\$61.65

Type:
Visa

Account Number:
XXXX6645

Authorization:
05866G

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