

PAGA SETTLEMENT

Jason Hernandez et al. v. Oakland Paper & Supply, Inc. dba Cogent Solutions & Supplies

This Private Attorneys General Act Settlement Agreement and Release (“Settlement” or “Agreement”) is made pursuant to the Private Attorneys General Act, Labor Code section 2698 *et seq.* (“PAGA”) by and between Plaintiffs Jason Hernandez and LaMonte Cole (“Plaintiffs”) on behalf of themselves and as a private attorneys general on behalf of the California Labor and Workforce Development Agency (“LWDA”) on behalf of all other allegedly aggrieved employees, on the one hand, and Defendant Oakland Paper & Supply, Inc. dba Cogent Solutions & Supplies (“Defendant”) on the other hand. Plaintiffs and Defendant are collectively referred to herein jointly as “the Parties” or, in the singular, “Party.” This Agreement, and the settlement embodied herein, shall be binding on Plaintiffs, the PAGA Members (defined below), the California LWDA, and Defendant, subject to the approval of the Court.

RECITALS

WHEREAS, on or about February 22, 2021, Plaintiff Hernandez served notice to the LWDA and to Defendant of Plaintiff’s intent to pursue a representative action pursuant to PAGA, as codified in California Labor Code sections 2698 *et seq.*, on behalf of himself and the State of California, as well as on behalf of a group of PAGA Members.

WHEREAS, on or about February 23, 2021, Plaintiff Hernandez filed a class action complaint in Contra Costa Superior Court against Defendant, alleging: (1) failure to pay minimum and regular rate wages in violation of Labor Code sections 204, 1194, 1194.2, and 1197; (2) failure to pay overtime compensation in violation of Labor Code sections 1194 and 1198; (3) failure to provide meal periods in violation of Labor Code sections 226.7 and 512; (4) failure to authorize and permit rest breaks in violation of Labor Code section 226.7; (5) failure to timely pay wages at termination in violation of Labor Code sections 201-203; (6) failure to provide accurate itemized wage statements in violation of Labor Code section 226; and (7) unfair business practices in violation of Business & Professions Code sections 17200 *et seq.*

WHEREAS, on May 11, 2021, Plaintiff Hernandez filed a First Amended Complaint in Contra Costa Superior Court alleging the same causes of action and adding a claim for civil penalties under PAGA (Labor Code section 2699 *et seq.*) based on the same underlying Labor Code claims.

WHEREAS, the Parties agreed to mediation with Kelly Knight of Judicate West, which took place on October 28, 2022.

WHEREAS, for the purposes of mediation, Defendant produced wage and hour policies, redacted copies of its meal period waiver form, arbitration agreement, settlement agreement with putative class members and allegedly aggrieved employees, and redacted time and pay data.

WHEREAS, after Plaintiff Hernandez filed the Action, Defendant reached individual settlements with 159 of its current and former employees. There are 24 current and former employees of

Defendant, including Plaintiff Hernandez, who worked for Defendant during the putative class period with whom Defendant has not settled.

WHEREAS, Plaintiff Hernandez filed the operative Second Amended Complaint adding Plaintiff Cole as a named plaintiff (collectively, the “Action”).

WHEREAS, Defendant denies and continues to deny any liability or wrongdoing of any kind associated with the claims alleged by Plaintiffs, and contends that it has complied at all times with the California Labor Code, the Wage Orders of the Industrial Welfare Commission (“Wage Orders”), and all applicable California laws.

WHEREAS, the Parties believe and agree that this Settlement provides for a fair, adequate, and reasonable resolution of Plaintiffs’ claims, and have arrived at the settlement in extensive, arms-length negotiations, taking into account all relevant factors, present and potential. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement.

WHEREAS, based on their own independent investigations and evaluations, Plaintiffs and PAGA Counsel (as defined below) are of the opinion that the amount and terms of the Settlement are in the best interests of Plaintiffs, the PAGA Members, and the LWDA in light of all known facts and circumstances and the risks inherent in litigation, including the potential for appellate issues. Further, PAGA Counsel believe that the settlement amount entered into is in the best interests of the PAGA Members and that the settlement for each PAGA Member is fair, reasonable, and adequate, given the facts, defenses, and inherent risk of litigation.

NOW, THEREFORE, in consideration of the promises and agreements contained herein, and to avoid the uncertainty, risks, costs, and delays associated with further litigation, the Parties agree to, and seek approval, pursuant to Labor Code section 2699 *et seq.*, of the following settlement terms.

DEFINITIONS

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

1. “Action” means the action filed in the Superior Court of California, County of Contra Costa, entitled *Jason Hernandez et al. v. Oakland Paper & Supply Inc. dba Cogent Solutions & Supplies*, Case No. C21-00363.
2. “PAGA Members” shall be defined to include any non-exempt hourly employees of Defendant who worked for Defendant in California during the Settlement Period (as defined below).
3. “Effective Date” means the date of Final Judgment.
4. “Final Judgment” shall be after all appeals and/or petitions for writ review of the Court’s approval order and/or judgment have been exhausted, but if no appeal or petition for a writ

are filed, Final Judgment shall be sixty-one (61) days after Notice of Entry of Judgment is served/filed.

5. “Settlement Period” means the time period from February 23, 2020 through the date of Court approval of the Settlement.

6. “PAGA Counsel” means counsel for Plaintiff, Moon & Yang, APC.

SETTLEMENT TERMS

1. **Persons Covered By the Settlement.** This Settlement covers all PAGA Members during the Settlement Period. PAGA Members are not able to opt-out of the Settlement as it is a PAGA settlement and PAGA does not provide for notice or opt out rights.

2. **Duties of the Parties Prior to Approval.**

a. Plaintiffs shall file a request to dismiss their class claims pursuant to California Rules of Court 3.770, without prejudice, within fourteen (14) days of the date on which Plaintiffs sign this Agreement.

b. Plaintiffs shall apply to the Court for the entry of an order approving this Settlement as required by Labor Code section 2699(l) (the “Motion for Approval”) no later than sixty (60) days after the Parties execute this Agreement. The Motion for Approval will request Court’s approval of the following: (1) the terms of this Settlement, (2) the amount of PAGA Counsel fees and costs, and (3) entry of an Order and Judgment. In conjunction with the Motion for Approval, Plaintiffs shall submit a proposed Order approving the Settlement and a corresponding proposed Judgment for the Total Settlement Amount.

3. **Notice to LWDA.** Pursuant to California Labor Code section 2699(l)(1), Plaintiffs shall submit to the LWDA a copy of this Settlement prior to the date that Plaintiffs submit the Settlement to the Court for approval. Plaintiffs shall be responsible for complying with all such notification requirements.

4. **Total Settlement Amount.** In accordance with the terms set forth herein, Defendant agrees to pay the total sum of Two Hundred Thousand Dollars and Zero Cents (\$200,000.00) (the “Total Settlement Amount”) in full settlement of the Action. Sixty Thousand Dollars and Zero Cents (\$60,000.00) of the Total Settlement Amount shall be credited to Defendant to reflect the amount Defendant already paid to PAGA Members to resolve their individual claims (“Settlement Credit”). Accordingly, Defendant will deposit a total of One Hundred Forty Thousand Dollars and Zero Cents (\$140,000.00) with the Settlement Administrator. With the exception of the provision outlined in subsection 9(c) of this Agreement, the Total Settlement Amount is the maximum Defendant can be required to pay under this Settlement, including all (1) penalty payments to the PAGA Members by virtue of payments through the Settlement Administrator (as defined below); (2) PAGA Counsel’s fees; (3) PAGA Counsel’s costs; (4) payment of the third party Settlement Administrator; (5) PAGA penalties paid to the State of California (LWDA); and (6) Service Awards (as defined below) to Plaintiffs. All payments to Plaintiffs and PAGA Members shall be made as an IRS Form 1099-MISC payment

and each PAGA Member shall be responsible for paying any taxes due on their settlement payment, if any. Subject to approval by the Court, these amounts shall be paid and allocated as set forth below.

a. **Attorneys' Fees and Costs.** Subject to Court approval, one-third of the Total Settlement Amount shall be paid to PAGA Counsel for payment of attorneys' fees, and PAGA Counsel shall seek reimbursement for out-of-pocket costs, according to proof, incurred on behalf of Plaintiffs and the PAGA Members. Defendant shall not oppose PAGA Counsel's request for attorneys' fees up to 33.33% of the Total Settlement Amount (\$66,666.66). Defendant shall not oppose PAGA Counsel's request for reimbursement of litigation costs up to fifteen thousand dollars (\$15,000.00). Any fees or costs award approved by the Court shall constitute a full and complete satisfaction of all claims Plaintiffs, PAGA Members, and the LWDA may have for costs and attorneys' fees for work performed on claims arising during the Settlement Period. PAGA Counsel shall submit a declaration to the Court detailing the costs incurred and/or expected to be incurred in the Action. If the Court awards fees or costs of less than the amount requested by PAGA Counsel, the unawarded amounts shall become part of the Net Settlement Amount (defined below). This Settlement is not contingent upon the Court awarding PAGA Counsel any particular amount in attorneys' fees or costs.

b. **Administration Costs.** The Parties agree to use ILYM Group, Inc. as settlement administrator (the "Settlement Administrator") for claims administration. Reasonable settlement administration expenses shall be deducted from the Total Settlement Amount for the payment of the third-party settlement administrator (the "Settlement Administrator Fees"). Any unused portion of the Settlement Administrator Fees shall become part of the Net Settlement Amount.

c. **Named Plaintiffs' Service Payment.** Defendant agrees not to oppose Plaintiffs' request for a service payment of up to Five Thousand Dollars and Zero Cents (\$5,000.00) each to named Plaintiffs (the "Service Award"). The Service Award is to compensate Plaintiffs for Plaintiffs' service as named PAGA representatives. Any Service Award will be paid out of the Total Settlement Amount. If the Court reduces the amount of Plaintiff's Service Award in the course of the settlement approval process, only the amount approved by the Court will be paid to Plaintiff as a Service Award. Any amount of the Service Award not approved by the Court shall become part of the Net Settlement Amount.

d. **Net Settlement Amount.** The remaining and any unused funds (the Total Settlement Amount less the Settlement Credit, Settlement Administrator Fees, PAGA Counsel's fees and costs, and Service Award) shall be referred to as the "Net Settlement Amount." The Net Settlement Amount shall be designated as PAGA penalties to be allocated between the LWDA and PAGA Members pursuant to Labor Code section 2699(i).

5. **PAGA Release.** As of the Effective Date, pursuant to the terms of this Settlement and the subsequent agreements and motions in support thereof, Plaintiffs, the LWDA, and the PAGA Members agree to release any and all claims they have arising out of or in connection with any claim, theory, or primary right asserted in the Action, or which could have been asserted in the Action based on such facts, claims, theories, or primary rights alleged in the Action, for civil

penalties and all available relief under the California Private Attorneys General Act of 2004 (“Released Claims”) for the Settlement Period.

As of the Effective Date, Plaintiffs, the PAGA Members, and the LWDA fully and finally release Defendant, and each of its past, present, and future agents, employees, servants, officers, directors, partners, trustees, representatives, shareholders, stockholders, attorneys, parents, subsidiaries, equity sponsors, related or affiliated companies/corporations and/or partnerships (defined as a company/corporation and/or partnership that is, directly or indirectly, under common control with Defendant or any of its parents and/or affiliates), divisions, assigns, predecessors, successors, insurers, consultants, any actual or alleged joint employers, and alter-egos, and all of its respective past, present, and future employees, directors, officers, agents, attorneys, stockholders, fiduciaries, parents, subsidiaries, insurers, and assigns (collectively, the “Released Parties”) from all “Released Claims,” as defined herein.

“Released Claims” means any and all claims alleged in the Action, and all claims arising out of or in connection with the facts, theories, primary rights, or claims alleged in the Action, and includes all claims under PAGA associated with all claims for or arising in connection with: (a) unpaid wages, including failure to pay minimum wages; failure to pay straight time compensation, overtime compensation, double-time compensation; failure to timely pay wages upon termination or otherwise; and/or interest; (b) missed, late, short or interrupted meal and/or rest periods, including any claim for any alleged failure to pay premiums for missed, late, short or interrupted meal or rest periods, or to pay such premiums at the regular rate of compensation; (c) unlawful deduction of pay; (d) penalties arising out of or related to any or all of the aforementioned claims including, but not limited to, recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; (e) inaccurate or otherwise improper wage statements and/or failure to keep or maintain accurate records; (f) failure to timely pay all wages due at termination; (g) failure to timely pay all wages due during employment; and (h) attorneys’ fees and costs. For purposes of clarification, the claims released by the PAGA Members and the LWDA include any and all claims under PAGA that arise out of or in connection with the claims, facts, theories, or primary rights alleged in the Action, and any claims which could have been asserted in the Action arising from the alleged facts, claims, theories, and/or primary rights alleged to have been invaded to the fullest extent permitted by law. Without limitation by any other language in this Agreement, the release includes claims under PAGA alleging violation of the Wage Orders; and/or alleging violation of California Labor Code §§ 201-204, 210, 218.5, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1175, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2698 *et seq.* This release is limited to claims for civil penalties brought solely under PAGA.

ADMINISTRATION OF SETTLEMENT

6. **Settlement Administrator**. The Settlement Administrator shall be responsible for sending the explanatory letters, for calculating Individual Settlement Payments, and preparing all checks and mailings in compliance with all requirements set forth in Paragraph 9. The Settlement Administrator Fees (including settlement administration costs) shall be paid out of the Total Settlement Amount. Defendant is not responsible or liable for any errors in the calculation of pay periods or settlement amount to be awarded to each PAGA Member. Defendant is also not liable or responsible for any errors made by the Settlement Administrator in the administration of the settlement.

7. **Distribution of the Net Settlement Amount.** The Net Settlement Amount shall be allocated pursuant to Labor Code section 2699(i) with seventy-five percent (75%) paid to the LWDA, and twenty-five percent (25%) paid to Plaintiffs and PAGA Members. The twenty-five percent (25%) of the Net Settlement Amount paid to Plaintiffs and PAGA Members shall be referred to as “PAGA Member Payment.” The PAGA Member Payment shall be divided among the PAGA Members based on the number of total pay periods in the Settlement Period to establish the amount of the settlement allocation for each PAGA Pay Period (“Pay Period Amount”).

8. **Individual Settlement Payment Calculation.** Plaintiffs and each of the PAGA Members shall receive a pro rata value equal to the number of PAGA pay periods Plaintiffs and the PAGA Members worked during the Settlement Period, as provided by Defendant to the Settlement Administrator, multiplied by the Pay Period Amount (the “Individual Settlement Payments”). Each PAGA Member’s number of pay periods will be derived from the hire and termination dates contained in the records kept by Defendant in the ordinary course of business during the Settlement Period. All Individual Settlement Payments made to PAGA Members will be reported on an IRS Form 1099-MISC, if such reporting is required. The Individual Settlement Payments shall be allocated 100% as penalties.

9. **PAGA Settlement Payment Procedures.**

a. Within thirty (30) calendar days of the Effective Date, Defendant shall: (1) deposit with the Settlement Administrator the Total Settlement Amount less the Settlement Credit; and (2) within fifteen (15) days after the Effective Date, Defendant shall provide to the Settlement Administrator a list of the PAGA Members that identifies for each PAGA Member their full name, social security number, last known address, last known telephone number(s), and the number of pay periods for each PAGA Member during the Settlement Period.

b. Defendant agrees to consult with the Settlement Administrator as required to provide the list of PAGA Members in a format reasonably acceptable for the performance of the duties of the Settlement Administrator. The Settlement Administrator will keep the list confidential, use it only for the purposes described herein, take adequate safeguards to protect confidential or private information and return or certify the destruction of the information upon completion of the Settlement Administration process. The list of PAGA Members shall not be shared with Plaintiffs or Plaintiffs’ counsel, including PAGA Counsel.

c. Defendant has estimated that the PAGA Members worked approximately 4,600 pay periods from February 23, 2020 to October 28, 2022. Within ten (10) days of receipt of the PAGA Member list, the Settlement Administrator shall provide to all Parties the exact number of pay periods worked during the Settlement Period. To the extent the number of pay periods increases beyond 6,375 by more than twenty percent (20%) (i.e., to more than 7,438 total pay periods), Defendant shall have the option to increase the Total Settlement Amount by a proportionate amount. If Defendant chooses not to increase the Total Settlement Amount pursuant to this paragraph, the Parties agree that the Settlement Period shall close at the date on which the total number of pay periods equals 7,438.

d. Within fifteen (15) calendar days after receipt of the list of PAGA Members, the Settlement Administrator shall run all the addresses of PAGA Members through the United

States Postal Service NCOA database to obtain current address information, and shall remit (1) Settlement Administrator Fees to itself, (2) PAGA Counsel's fees and costs to PAGA Counsel, (3) any Service Award to Plaintiffs; (4) the PAGA Member Payment to PAGA Members; and (5) seventy-five percent (75%) of the Net Settlement Amount to the LWDA. The Parties are to jointly inform Settlement Administrator of the date which triggers the Settlement Administrator to perform its duties under this paragraph.

e. PAGA Members shall not be required to make claims, but shall simply be delivered a check for Individual Settlement Payments. The Settlement Administrator shall send Individual Settlement Payments to each PAGA Member by U.S. First Class mail to the PAGA Member's address with directions to the Postmaster to forward the payment checks and return all undeliverable payment checks to the Settlement Administrator. The Settlement Administrator shall send the PAGA Members an explanatory letter, which will be mutually approved by the Parties, with the Individual Settlement Payment checks. It will be conclusively presumed that a PAGA Member's Individual Settlement Payment check was received if the payment check has not been returned within thirty (30) days of the original mailing of the payment check.

f. Individual Settlement Payment checks issued to PAGA Members pursuant to this Settlement will expire one hundred and eighty (180) calendar days from the date of issuance. Funds represented by settlement checks returned as undeliverable and those settlement checks remaining un-cashed for more than one hundred eighty (180) days will be tendered by the Settlement Administrator to the State Controller's Office, Unclaimed Property Division, in the name of each PAGA Member.

g. Neither Defendant nor Plaintiffs shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.

10. **Dismissal of Pending Action.** Plaintiffs shall do all things necessary to expediently have the Action dismissed with prejudice as to their individual claims and without prejudice as to the class claims.

11. **Tax Treatment of Settlement Amounts.** With regard to the Service Awards to Plaintiffs and, if applicable, the Individual Settlement Payments to PAGA Members, IRS Form 1099-MISCs will be issued. Nothing in this Settlement is intended to constitute legal or tax advice regarding federal, state, and/or local tax obligations. Plaintiffs acknowledge that Plaintiffs have obtained no tax advice from Defendant or any of the Released Parties, and that neither Defendant nor its attorneys have made any representation concerning the tax consequences, if any, of the settlement payments in this Settlement or any payment to be made pursuant to this Settlement. To the extent that this Settlement or any of its attachments is interpreted to contain or constitute advice regarding any state or federal tax issue, such advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding penalties under the Internal Revenue Code. Defendant is not responsible for any employee tax obligations regarding the allocation of the settlement payments. Payment of PAGA Counsel's fees and costs will be reflected in an IRS Form 1099-MISC to PAGA Counsel who shall assume full responsibility and liability for the payment of taxes due on such payments and shall defend and indemnify Defendant with respect to any and all such taxes, penalties, interests and/or costs.

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

MISCELLANEOUS

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

14. **Non-Admission of Wrongdoing.** The Parties agree that this Settlement does not constitute an admission by Defendant or any of the Released Parties, of any of the matters alleged in the Action or of any violation by any of them of any federal, state or local law, ordinance or regulation, or of any violation of any policy or procedure, or of any liability or wrongdoing whatsoever. Neither this Settlement nor anything in this Settlement shall be construed to be or shall be admissible in any proceeding as evidence of liability or wrongdoing by Plaintiffs, Defendant, or the Released Parties.

15. **No Credit Toward Benefit Plans.** Payments to PAGA Members as referenced herein will not be utilized to calculate any additional benefits under any benefit plans to which any PAGA Members may be eligible including, but not limited to, profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties’ intention that this Settlement will not affect any rights, contributions, or amounts to which any PAGA Member may be entitled under any benefit plans.

16. **Nullification of PAGA Settlement.** In the event that: (i) the Court does not approve the Settlement as provided herein; or (ii) the Settlement does not become final for any other reason, this Settlement, and any documents generated to bring it into effect, will be null and void, and the Parties will be returned to their original respective positions, after which neither this Settlement nor any of its terms will be usable or admissible for any purpose whatsoever.

17. **No Claim for Distributions or Payments.** No person shall have any claim against Defendant, Defendant's counsel, Plaintiffs, PAGA Members, PAGA Counsel or the Settlement Administrator based on distributions and payments made in accordance with this Settlement.

18. **Nondisclosure and Nonpublication.** The Parties and their counsel agree that they will not issue any press releases, initiate any contact with the press, respond to any press inquiry, or have any communications with the press about the facts, amount, or terms of the Settlement prior to approval. Plaintiffs and PAGA Counsel agree that, prior to court-approval of the Settlement, they will keep the terms of the Settlement confidential except for purposes of communicating with Plaintiffs only, their spouse (if any), or their tax professionals. The terms of this Settlement shall be kept strictly confidential until such time as the Settlement is submitted to the Court and the LWDA. Plaintiffs and PAGA Counsel agree not to publicize the Settlement, the fact of the Settlement, its terms or contents, and the negotiations underlying the Settlement, in any manner or form, at any time, directly or indirectly, to any person or entity, beyond filing the Settlement with the Court and submitting a copy to the LWDA. Plaintiffs and PAGA Counsel further agree that they shall not discuss or communicate the terms of this Settlement with any current or former employee of any of Defendant or the Released Parties prior to the date of Court approval.

19. **Use and Return of Aggrieved Employee Data.** Information provided to PAGA Counsel pursuant to California Evidence Code section 1152, and all copies and summaries of the PAGA data provided to PAGA Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and for no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than ninety (90) days after the Settlement Administrator discharges its obligation to pay out all of the Settlement funds, Plaintiffs shall destroy all paper and electronic versions of PAGA Member data received from Defendant unless, prior to the Administrator's payment of all Settlement funds, Defendant makes a written request to PAGA Counsel for the return, rather than the destruction, of PAGA Member data.

20. **Waiver and Amendment.** The Parties may not waive, amend, or modify any provision of this Settlement except by a written agreement signed by all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement will not constitute a waiver of any other provision.

21. **Communications.** All communications to be provided concerning this Settlement shall be in writing by e-mail to the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

To Defendant: Brooke Purcell and Rachel Moroski of Sheppard, Mullin, Richter & Hampton, LLP, Four Embarcadero Center, 17th Floor, San Francisco, CA 94111, bpurcell@sheppardmullin.com and rmoroski@sheppardmullin.com.

To Plaintiffs: Kane Moon, Allen Feghali, and Edwin Kamarzarian of Moon & Yang APC, 1055 W. Seventh St., Suite 1880, Los Angeles, CA 90017, kane.moon@moonyanglaw.com, allen.feghali@moonyanglaw.com and edwin.kamarzarian@moonyanglaw.com.

22. **Entire Settlement.** This Settlement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof. The Parties are not relying on any representations (or omissions of fact) not expressly stated in this Settlement. Any representation, promise, or agreement not specifically included in this Settlement shall not be binding upon or enforceable against either Party. This is a fully integrated agreement. No other promises or agreements shall be binding or shall modify this Settlement unless in writing and signed by the Parties or their successors-in-interest.

23. **Waiver of Certain Appeals/Appellate rights.** The Parties agree to waive appeals; except, however, that either Party may appeal any court order that approves the Settlement but materially alters the Settlement's terms, so long as the appealing Party provides written notice to counsel for the other Party of their intent to appeal within ten (10) business days after entry of the judgment.

24. **Invalidity and Severability.** Before any provision of this Settlement is declared invalid, the Parties shall jointly request that the Court shall first attempt to construe the provisions to be valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Settlement valid and enforceable, including minimally reforming any offending provision to make it valid and enforceable to the extent permitted by law. If any provision of this Settlement or the application thereof is held invalid or unenforceable, the invalidity or unenforceability shall not affect other provisions or applications of the Settlement which can be given effect without the invalid or unenforceable provision(s) or application, and to this end the provisions of this Settlement are declared to be severable. Notwithstanding the foregoing, no portion of any release contained herein may be deemed severed or deleted from this Settlement, except upon waiver in writing by Defendant.

25. **Authorization to Enter Into Settlement.** Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement to effectuate its terms and to execute any other documents required to effectuate the terms of this Settlement. The Parties and their counsel will cooperate with each other and use their best efforts to implement the Settlement. If the Parties are unable to reach agreement on the form or content of any document to implement the Settlement, or any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may first seek the assistance of a mediator, and in the event that does not resolve the dispute, then the Court to resolve such disagreement.

26. **No Construction Against the Drafter.** Each Party has cooperated in the drafting and preparation of this Settlement. Hence, in any construction to be made of this Settlement, the same shall not be construed against any Party on the basis that the Party was the drafter.

27. **Calendar Days.** Unless otherwise noted, all references to “days” in this agreement shall be to calendar days. In the event any date or deadline set forth in this agreement falls on a weekend or court holiday, such date or deadline shall be on the first court day thereafter.

28. **Choice of Law.** This Settlement shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the Parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of California without regard to principles of conflict of laws.

29. **Counterparts.** This Settlement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Photographic, electronic or facsimile copies of any such signed counterparts may be used in lieu of the original for any said purpose.

30. **Cooperation.** Each Party, on behalf of themselves, and their respective business entities, heirs, executors, and assigns, agrees that they will abide by this Settlement and will do all such acts, and prepare, execute, and deliver all such documents, as may be reasonably required to carry out the stated objectives of this Settlement.

31. **Enforcement Actions.** In the event that one or more of the Parties to this Settlement institutes any legal action or other proceeding against any other party or parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful party or parties shall be entitled to recover from the unsuccessful party or parties reasonable attorney's fees and costs, including expert witness fees incurred in connection with any enforcement actions. For purposes of this Section 31, the term “successful party or parties” shall mean the party or parties whose position or positions are upheld by the Court.

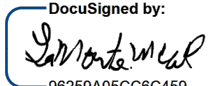
IN WITNESS THEREOF, the Parties each acknowledge that they/it have read the foregoing Settlement, accepts and agrees to the provisions contained in this Settlement and hereby executes it voluntarily and with full understanding of its consequences.

PLAINTIFFS:

Dated: _____

By: _____
JASON HERNANDEZ

Dated: 6/29/2023

DocuSigned by:

By: _____
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LAMONTE COLE

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28. **Choice of Law.** This Settlement shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the Parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of California without regard to principles of conflict of laws.

29. **Counterparts.** This Settlement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Photographic, electronic or facsimile copies of any such signed counterparts may be used in lieu of the original for any said purpose.

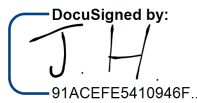
30. **Cooperation.** Each Party, on behalf of themselves, and their respective business entities, heirs, executors, and assigns, agrees that they will abide by this Settlement and will do all such acts, and prepare, execute, and deliver all such documents, as may be reasonably required to carry out the stated objectives of this Settlement.

31. **Enforcement Actions.** In the event that one or more of the Parties to this Settlement institutes any legal action or other proceeding against any other party or parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful party or parties shall be entitled to recover from the unsuccessful party or parties reasonable attorney's fees and costs, including expert witness fees incurred in connection with any enforcement actions. For purposes of this Section 31, the term “successful party or parties” shall mean the party or parties whose position or positions are upheld by the Court.

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

PLAINTIFFS:

Dated: 6/29/2023

By: 
JASON HERNANDEZ

Dated: _____

By: _____
LAMONTE COLE

EXHIBIT A

[DATE]

NOTICE OF PAGA SETTLEMENT

Re: *Hernandez et al. v. Oakland Paper & Supply, Inc. dba Cogent Solutions & Supplies*
Contra Costa County Superior Court, Case No. MSC21-00363

Cogent Solutions Settlement
c/o ILYM Group, Inc.
14751 Plaza Drive, Suite J
Tustin, CA 92780

To: *All non-exempt hourly employees of Cogent Solutions & Supplies, which shall mean Oakland Paper & Supply, Inc. doing business as Cogent Solutions & Supplies (referred to herein as “Cogent”), who worked in California at any time from February 23, 2020 until [APPROVAL DATE] (referred to herein as “PAGA Members”):*

A settlement has been reached in the above-referenced lawsuit.

On [approval date], the Contra Costa County Superior Court approved the settlement of claims brought by Plaintiffs Jason Hernandez and LaMonte Cole (referred to herein as “Plaintiffs”) pursuant to the Private Attorneys General Act of 2004 (“PAGA”), in the amount of \$140,000.00. After accounting for the court-approved amounts for Plaintiffs’ attorneys’ fees and costs of litigation, service awards to Plaintiffs, and settlement administration costs, the State of California will receive 75% of the remaining amount as required by law and PAGA Members will receive a pro rata share of the remaining 25%. Each PAGA Member’s pro rata share is based upon the number of pay periods worked for Cogent in California from February 23, 2020 through [approval date].

You are receiving money under the settlement because you are or were a PAGA Member (as defined above). By way of this settlement, Cogent has been released from claims for civil penalties that the State of California can pursue for certain Labor Code violations allegedly committed against you, regardless of whether you cash the enclosed check.

According to Cogent’s employment records, your settlement amount is \$[Amount]. Your enclosed check is non-negotiable, and will be valid for one hundred and eighty (180) days from the date of its issuance. After that date, you cannot cash the check and it will be null and void. Funds attributable to such uncashed checks will be sent to the unclaimed property fund of the State Controller’s Office, Unclaimed Property Division, in the name of each PAGA Member who did not cash his or her check in time.