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Attorneys for Plaintiff and the Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

PEDRO CORTEZ, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

BG TRUCKING, INC., an California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 37-2021-00010743-CU-OE-CTL

[Assigned for All Purposes to Hon. Joel R.
Wohlfeil, Dept. C-73]

**DECLARATION OF KRISTEN M. AGNEW IN
SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS AND
REPRESENTATIVE ACTION SETTLEMENT**

Date: June 30, 2023
Time: 9:00 a.m.
Dept.: C-73

Reservation Number: 2967791

Complaint Filed: March 10, 2021

1 I, Kristen Agnew, declare as follows:

2 1. I am an attorney at law, duly licensed to practice before all Courts in the State of
3 California, and am with the law firm Diversity Law Group, P.C., counsel of record for Plaintiff
4 Pedro Cortez (“Plaintiff”). I have personal knowledge of the facts set forth below and if called to
5 testify I could and would do so competently.

6 **SUMMARY OF THE PLEADINGS**

7 2. From the inception of the case, Class Counsel has zealously represented the
8 interests of the putative class.

9 3. On February 12, 2021, Plaintiff submitted written notice to the California Labor
10 and Workforce Development Agency (“LWDA”), alleging that Defendant BG Trucking, Inc.
11 (“Defendant”) violated Labor Code sections 201, 202, 203, 204, 226, 226.2, 226.7, 227.3 510, 558,
12 1194, 1197, and 1197.1, pursuant to Labor Code section 2699 (“PAGA Notice”).

13 4. On March 10, 2021, Plaintiff commenced a putative class and representative action
14 against Defendant in San Diego County Superior Court. The initial complaint asserted class action
15 claims for: (1) violation of Labor Code sections 226.2, 510, 558, 1194, 1197, and 1197.1; (2)
16 violation of Labor Code sections 226.2 and 226.7; (3) violation of Labor Code sections 510, 558,
17 and 1194; (4) violation of Labor Code section 226; (5) violation of Labor Code section 227.3; and
18 (6) violation of Business and Professions Code section 17200, *et seq.*

19 5. On April 12, 2021, Plaintiff filed a first amended complaint, adding a representative
20 action claim for violation of Labor Code section 2698, *et seq.* (“PAGA”) predicated on
21 Defendant’s violation of Labor Code sections 201, 202, 203, 204, 226, 226.2, 226.7, 227.3 510,
22 558, 1194, 1197, and 1197.1.

23 6. On December 16, 2022, Plaintiff filed the operative Second Amended Class and
24 Representative Action Complaint (“SAC” or “Second Amended Complaint”). As alleged in the
25 Second Amended Complaint, Plaintiff contends that Defendant (1) failed to pay all minimum,
26 regular, and overtime wages owed for time spent completing non-productive tasks, in violation of
27 Labor Code sections 226.2, 510, 558, 1194, 1197, and 1197.1; (2) failed to provide paid rest
28 periods, in violation of Labor Code sections 226.2 and 226.7; (3) failed to pay all wages owed

1 upon separation of employment, in violation of Labor Code sections 201, 202, and 203; (4) failed
2 to provide accurate, itemized wage statements, in violation of Labor Code section 226; and (5)
3 engaged in Unfair Business Practices in violation of the UCL, the California Labor Code and the
4 applicable IWC Wage Orders. Plaintiff seeks to represent the Class and other Aggrieved
5 Employees, and seeks damages, penalties, attorneys' fees, and costs.

6 7. As set forth in the SAC, Plaintiff contends that he and other employees who were
7 compensated on a mileage/piece-rate basis, did not receive minimum, regular or overtime wages
8 for time spent working for Defendant completing non-productive tasks. These non-productive
9 tasks include, but are not limited to, pre-trip inspections, fueling the truck and loading/unloading
10 the truck. In addition, because Plaintiff and other mileage/piece-rate employees did not receive an
11 hourly wage, any duty-free rest breaks were not "paid" breaks. Due to the underpayment and/or
12 nonpayment of wages and rest period premiums, the wage statements provided to Plaintiff and
13 other mileage/piece-rate employees displayed inaccurate rates of pay, net and gross wages earned,
14 and total hours worked, in violation of Labor Code section 226(a). As a separate, independent
15 violation of Labor Code section 226(a), the wage statements issued to these employees did not
16 identify the applicable rates or miles used to calculate their wages. Rather, the wage statements
17 simply listed the gross sum of the wages without any explanation. Plaintiff further alleges that
18 Defendant failed to pay the underpaid minimum, regular and overtime wages, and rest premium
19 compensation at separation of employment. Thus, Defendant is liable for waiting time penalties
20 under Labor Code section 203 to Plaintiff and other mileage/piece-rate employees who separated
21 employment

22 **DISCOVERY AND INVESTIGATION**

23 8. Plaintiff and Defendant (collectively, the "Parties") engaged in an extensive
24 exchange of documents and information, through both formal and informal discovery.

25 9. On July 22, 2021, Plaintiff propounded Requests for Production of Documents (Set
26 One) and Special Interrogatories (Set One). Amongst other relevant topics, the discovery required
27 Defendant to provide documents and information relevant to class certification, including the
28 number of putative class members, payroll records of putative class members, Defendant's wage

1 and hour policies. More specifically, the discovery called for Defendant to produce its policies
2 with respect to the payment of wages to piece-rate employees for time spent completing non-
3 productive tasks, the payment of wages to piece-rate employees for duty-free rest periods, meal
4 and rest periods provided to Defendant's drivers, the calculation of the regular rate of payment for
5 purposes of paying overtime wages, and the display of the applicable rates of pay on wage
6 statements. On or about November 1, 2021, Defendant served responses to the written discovery.

7 10. On January 18, 2022, Plaintiff propounded Special Interrogatories (Set Two). The
8 discovery required Defendant to produce additional information regarding the size of the putative
9 class. On or about February 28, 2022, Defendant served responses to the discovery.

10 11. I met and conferred with defense counsel regarding Defendant's discovery
11 responses. In connection with these discussions, the Parties extensively discussed the factual
12 allegations and the merits of their respective claims and defenses. Defense counsel represented
13 that Defendant employed approximately twelve truck drivers during the liability period. According
14 to counsel, most of the truck drivers who worked in Defendant's Calexico Yard were employed
15 by a separate trucking company that was registered in Mexico. The drivers employed by the
16 Mexican trucking company were Mexican nationals. These drivers were permitted to transport
17 goods across the border under the North American Free Trade Agreement.

18 12. Defense counsel also argued that the rest period claim is partially preempted by the
19 Federal Motor Carrier Safety Administration's ("FMCSA") regulations. The FMCSA regulations
20 preempt California's meal and rest break statutes for interstate commercial motor vehicle drivers.
21 Defense counsel also argued that Wage Order 9 exempts certain drivers from California's overtime
22 laws.

23 13. In or around June 2022, the Parties agreed to participate in a private global
24 mediation with Michael Loeb, a respected and experienced mediator knowledgeable of both the
25 wage and hour laws and the claims at issue in this Action.

26 14. Prior to the mediation, Defendant produced updated data relevant to the potential
27 value of the claims, including the number of employees paid of mileage/piece-rate basis, the
28 average hourly rates of mileage/piece-rate employees, the number of pay periods worked by

1 mileage/piece-rate employees, the number of pay periods in which mileage/piece rate employees
2 worked a shift lasting 3.5 hours or longer, the number of mileage/piece rate employees whose
3 employment separated during the liability period, and the number of wage statements at issue.
4 Defendant also provided information regarding the amount of time drivers spent conducting non-
5 productive tasks, including, pre-trip inspections. Using the data provided by Defendant, I
6 conducted a full damage analysis.

7 MEDIATION

8 15. On September 30, 2022, the Parties engaged in an all-day mediation session before
9 Mr. Loeb.

10 16. During the mediation, counsel zealously advocated on behalf of their respective
11 clients. The Parties spoke at length about the strengths and weaknesses of each sides' claims and
12 defenses, the certifiability of the claims, and the scope of Defendant's liability. The Parties gained
13 valuable insight and exchanged significant information about their respective positions.

14 17. After a full day of negotiation, the Parties were able to reach an agreement for
15 settlement and executed a MOU. The Parties thereafter worked to memorialize the terms of the
16 settlement in a long-form settlement agreement.

17 18. As a condition of settlement, Plaintiff agreed to withdraw the class and
18 representative PAGA claims predicated on Defendant's alleged failure to calculate the regular rate
19 of pay for purposes of paying overtime wages and penalties for untimely payment of vacation
20 wages. The Parties further agreed to stipulate to the filing of the operative Second Amended
21 Complaint.

22 19. On or about January 10, 2023, the Parties executed the Joint Stipulation of Class
23 and Representative Action Settlement ("Settlement Agreement" or "Settlement") resolving all
24 claims alleged in the Second Amended Complaint. Attached hereto as **Exhibit A** is true and correct
25 copy of the Settlement Agreement.

1 **SUMMARY OF THE MONETARY TERMS OF THE PROPOSED SETTLEMENT**

2 20. As defined by the Settlement Agreement, the proposed Class consists of the
3 following group of employees: all current and former non-exempt employees of Defendant in the
4 State of California who were paid on a mileage basis at any time from March 10, 2017, through
5 September 30, 2022. *See* Settlement Agreement (“SA”) § A-4. There are approximately 35
6 employees that comprise the Class. *See id.* at § C-9. Class Members may opt-out of the settlement
7 of the class claims, if they so choose. *See id.* at §§ C-15, C-17.

8 21. As defined in the Settlement, “Aggrieved Employees” means “all current and
9 former non-exempt employees of Defendant in the State of California who were paid on a mileage
10 basis at any time from February 12, 2020, through September 30, 2022.” *See* SA § A-19. In light
11 of the binding nature of a PAGA judgment on non-party employees, any Class Member, who is
12 also an Aggrieved Employee and opts out of the Settlement Agreement for purpose of the proposed
13 class action settlement, will still be bound by the release of the PAGA claims. *Id.* at §C-18.

14 22. The Settlement Agreement requires Defendant to pay the Gross Settlement Amount
15 of One Hundred Thirty Thousand Dollars (\$130,000.00). *See* SA §§ A-19, C-1. The amount of the
16 Gross Settlement Amount was calculated with, and is premised on, Defendant’s representation that
17 the Class is composed of 35 individuals who worked 2,279 pay periods during the Class Period.
18 *See id.* at § C-9. If the actual number of pay periods at issue exceeds 2,279 by ten percent or more,
19 the Gross Settlement Amount shall be increased proportionally to the amount of the total increase.
20 *See id.*

21 23. The Settlement allocates Five Thousand Dollars (\$5,000.00) of the Gross
22 Settlement Amount to PAGA penalties (“PAGA Payment”). *See id.* at §§ A-23, C-6. Pursuant to
23 the PAGA, seventy-five percent of the PAGA Payment, *i.e.*, the sum of Three Thousand Seven
24 Hundred Fifty Dollars (\$3,750.00), shall be paid to the LWDA. *See id.* at § C-6. The remaining
25 twenty-five percent of the PAGA Amount, *i.e.*, the sum of One Thousand Two Hundred Fifty
26 Dollars (\$1,250.00), shall be distributed to Aggrieved Employees. *See id.*

27 24. The balance of the Gross Settlement Amount remaining after deduction of the
28 approved Enhancement Payment to Plaintiff, Settlement Administration Costs, the PAGA

1 Payment, and Class Counsel Award constitutes the “Net Settlement Amount.” *See* SA § A-20. The
2 Net Settlement Amount will be available for distribution to Settlement Class Members (*i.e.*, Class
3 Members who do not opt-out). *See* SA §§ A-35, C-8. The amount allocated to each Settlement
4 Class Member will be based on the number of pay periods worked by the employee during the
5 Class Period. *See id.* at § C-8. Class Members do not need to do anything should they wish to
6 receive their share of the settlement funds. *See id.* at §§ C-15, C-17.

7 25. As part of the Settlement Agreement, Defendant does not object to Plaintiff’s
8 request for an Enhancement Payment in the amount of Five Thousand Dollars (\$5,000.00). *See* SA
9 § C-4. This amount is intended to compensate Plaintiff for his efforts and work in prosecuting this
10 case, including meeting and communicating with counsel, reviewing the pleadings in this case,
11 and for executing a general release under California Civil Code section 1542. Plaintiff expressly
12 acknowledges that the Court has final discretion in any Enhancement Payment.

13 26. Pursuant to the Settlement Agreement, Defendant also agrees to not oppose Class
14 Counsel’s request for attorney’s fees up to one-third of the Gross Settlement Amount, *i.e.*, the sum
15 of Forty-Three Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents
16 (\$43,333.33), plus up to Fifteen Thousand Dollars (\$15,000.00) for reimbursement of litigation
17 costs, subject to the Court finally approving this Settlement. *See* SA §§ A-6, C-3. Any portion of
18 the requested attorneys’ fees and/or litigation costs not awarded to Class Counsel shall be added
19 to the Net Settlement Amount *See id.* at § C-3. Class Counsel expressly acknowledges that the
20 Court has final discretion in any fee award.

21 27. Finally, the Settlement Agreement provides for the payment of the fees and
22 expenses reasonably incurred by the Settlement Administrator. The Parties have received a quote
23 from Phoenix Settlement Administrators for a fee of Three Thousand Two-Hundred Fifty Dollars
24 (\$3,250.00). *See* SA § C-5. Any portion of the Settlement Administration Costs not used or
25 approved by the Court shall be added to the Net Settlement Fund. *See id.* The Parties believe that
26 the administration fee is reasonable and should be approved.

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29. Based on the size of the Class (35 employees), the number of pay periods at issue (2,279) and the amount of the estimated Net Settlement Amount, employees will be entitled to recover, on average, up to \$1,669.04 each, or \$25.63 for each pay period worked during the Class Period. The amount any particular Class Member will be entitled to recover will be greater or lower than this average depending on the number of pay periods he or she worked, with some entitled to receive more, and others less. This is fair, as it directly allocates greater recovery to individual Class Members who have allegedly suffered greater harm.

31. In addition to the Individual Settlement Amounts, Class Members who are also Aggrieved Employees are entitled to receive a pro-rate share of twenty-five percent of the PAGA Amount (the “Aggrieved Employee Amount”). *See* SA § C-6. As detailed in the Settlement, the amount of the payment shall be allocated proportionately to Aggrieved Employees based on the number of pay periods the employee worked during the PAGA Period, regardless of whether the employee submits a timely and valid Request for Exclusion from the Settlement Agreement. *See id.* at § C-7. The Individual PAGA Payments shall be allocated as 100% penalties. *See id.* at § C-27.

32. This is a non-reversionary settlement as the entirety of the Gross Settlement Amount will be fully paid out. *See* SA § C-1. Settlement Class Members and Aggrieved Employees will have 180 days from the mailing of the settlement payment to cash the check. *See id.* at § C-24. After the expiration of 180 days, the funds represented by uncashed settlement checks will be paid out pursuant to California Code of Civil Procedure section 384 to Legal Aid at Work, the designated *cy pres* recipient. *Id.* I do not have an interest in and/or relationship with the *cy pres*

1 recipient.

2 **STRENGTHS AND WEAKNESSES OF PLAINTIFF'S CLAIMS AND POTENTIAL**
3 **RECOVERABLE DAMAGES AND PENALTIES**

4 33. Based on an analysis of the facts and legal contentions in this case, documents and
5 information from Defendant, I negotiated the settlement with a clear understanding of the value of
6 the class and representative PAGA claims. I took into account the risk of not having the claims
7 certified and the risk of not prevailing at trial, even if the claims are certified.

8 34. **Non-Productive Time/Unpaid Wages.** Plaintiff and Class Members are truck
9 drivers. Defendant compensates Class Members on a piece-rate basis. Under Defendant's
10 compensation system, Class Members are paid a flat rate for each recorded mile based on the size
11 of the load. As a result of this compensation structure, Class Members did not receive minimum,
12 regular or overtime wages for time spent completing non-productive tasks, including, but not
13 limited to, pre-trip inspections, fueling the truck and loading/unloading the truck.

14 35. Defendant contends that the claim is not suitable for class treatment because there
15 is no common method of proof to establish liability. As argued by defense counsel, there are no
16 centralized records that will establish the number hours worked by each Class Member. Thus,
17 according to Defendant, it would be necessary to determine for each individual employee the
18 amount and nature of the uncompensated work, including whether Defendant knew or should have
19 known that employee was engaged in work-related tasks. Therefore individual, rather than
20 common, questions would predominate.

21 36. The data produced by Defendant indicates that there are approximately 35 Class
22 Members. These employees worked 2,279 pay periods during the Class Period, with an average
23 hourly rate of \$17.50. According to Defendant, employees spend up to approximately thirty-
24 minutes conducting pre-trip inspections. Assuming that Class Members spend 2.5 hours per pay
25 period [30 minutes x 5 days] on non-productive tasks, at an hourly rate of \$17.50, I estimate that
26 Defendant's exposure on this claim is \$99,706.25.

27 37. **Rest Period Violation.** In addition, because Class Members did not receive an
28 hourly wage, any duty-free rest breaks were not "paid" breaks. As set forth above, Defendant

1 contends that the rest period claim is preempted by the FMCSA regulations.

2 38. Assuming that Class Members were entitled to 1.66 hours of paid rest periods per
3 pay period [20 minutes x 5 days] on non-productive tasks, at an hourly rate of \$17.50, I estimate
4 that Defendant's exposure on this claim is \$66,204.95.

5 39. **Wage Statement Violation.** Section 226(a) is clear and unequivocal in its mandate
6 that employers furnish wage statements that include, among other items of information, "the
7 number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-
8 rate basis." Cal. Lab. Code § 226(a)(3). Here, Plaintiff contends that the wage statements provided
9 to Class Members did not identify the applicable rates or miles used to calculate their wages. Thus,
10 a reasonable employee reviewing his or her wage statement would not understand how their gross
11 wages were calculated. .

12 40. Plaintiff's claims are contested. Defense counsel argues that, even if Plaintiff
13 established a technical violation of the statute, the alleged violation was not a "knowing and
14 intentional failure" by Defendant to comply with Labor Code section 226(a), and penalties are
15 therefore unwarranted. Furthermore, as framed by defense counsel, there was no injury because
16 employees could promptly and easily determine the number of miles and applicable mileage rate,
17 and no employees were underpaid for any hours worked.

18 41. The data produced by Defendant indicates that there are approximately 28 Class
19 Members received a wage statement during the period of March 10, 2020 through September 30,
20 2022. Assuming that each employees is entitled to receive the statutory maximum penalty of
21 \$4,000, I estimate that the Section 226(e) penalties total \$112,000.

22 42. **Waiting Time Penalties.** Plaintiff seeks waiting time penalties predicated on
23 Defendant's alleged underpayment/non-payment of wages. The waiting time penalties claim is
24 contested on a number of grounds. Defendant contends that the claim is not suitable for class
25 treatment because there is no common method of proof to establish liability for the violation of the
26 underlying wage claim. Defense counsel further argues that Plaintiff would need to prove that
27 Defendant willfully delayed each final payment, and this this is an "inherently fact intensive
28 inquiry," which is not susceptible to class-wide adjudication.

1 43. Based on the data provided by Defendant, there are 27 Class Members who
2 separated employment during the period of March 10, 2018, through September 30, 2022.
3 Applying an average hourly rate of \$17.50, I estimate that the waiting time penalty claim is worth
4 approximately \$113,400 [27 x (\$17.50 x 8 x 30)].

5 44. **PAGA Violations.** Based on the data provided by Defendant, Aggrieved
6 Employees worked approximately 1,021 pay periods during the PAGA Period. Applying the
7 standard civil penalty of \$100 per pay period, yields \$102,100 in potential liability. However, I
8 believe it is unrealistic to assume that the Court will award the full amount of PAGA penalties if
9 Plaintiff prevails at trial. Indeed, the potential recovery is uncertain because the Court can decline
10 to award the full amount of PAGA penalties where "...if, based on the facts and circumstances of
11 the particular case, to do otherwise, would result in an award that is unjust, arbitrary and
12 oppressive, or confiscatory." See Cal. Labor Code § 2699(e)(2).

13 45. Under the facts of this case, I appreciate the risk that Defendant could present a
14 persuasive argument to reduce the amount of PAGA penalties at trial. Defendant points to the
15 absence of willfulness as grounds for the Court to award modest, if not nominal, penalties .
16 Additionally, as shown in the Court of Appeal's decision in *Carrington v. Starbucks Corp.*, while
17 the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum PAGA
18 penalty amount by 90%, citing the employer's good faith attempt at complying with the law. 30
19 Cal. App. 5th 504, 517 (2018), Upon review, the Court of Appeal found such reduction to be
20 proper. *Id.* at 539; see *O'Connor*, 2016 WL 4398271, at *17 (noting that even if PAGA penalties
21 amounted to \$1 billion, such award "could well be reduced, as a court may reduce the penalty
22 when to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
23 confiscatory"). Thus, assuming that the Court uses *Carrington* as a benchmark and assesses
24 PAGA penalties of approximately 10% of the total maximum, a more realistic estimate of the
25 PAGA penalties at issue is \$10,210.

26 46. Based on the class data provided by Defendant, I estimate that Defendant's
27 maximum liability exposure is approximately \$493,411.20.

1 **THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE**

2 47. The Gross Settlement Amount is approximately 26.98 % of the maximum recovery
3 of the class and representative PAGA claims.

4 48. Based on my own independent investigation and evaluation, I am of the opinion
5 that the settlement for the consideration and on the terms set forth in the Settlement Agreement is
6 fair, reasonable, and adequate and that the settlement is in the best interests of the Class, in light
7 of all known circumstances and the expenses and risks inherent in litigation. I also believe in the
8 fairness of the settlement based on factoring in the uncertainty and risks to Plaintiff involved in
9 not prevailing on the class claims at trial and the possibility of appeal.

10 **NOTICE TO THE LWDA**

11 49. Concurrent with the filing of the Motion for Preliminary Approval of Class Action
12 and PAGA Settlement, my office uploaded the Motion, Settlement Agreement, and proposed order
13 to the LWDA's website.

14 **ATTORNEY EXPERIENCE**

15 50. Class Counsel has a great deal of experience in wage and hour class action litigation
16 and has been approved as class counsel in a number of class actions. My co-counsel and I can and
17 will adequately represent the Class Members in this action. I have no conflicts with the Class and
18 will adequately represent the Class.

19 51. My qualifications are as follows: I was the 2003 recipient of the Spelman
20 Presidential Scholarship to Emory University School of Law. During law school, I was a summer
21 associate at the law firm of Sonnenschein, Nath and Rosenthal, and clerked with the Atlanta office
22 of the Equal Employment Opportunity Commission. I received my J.D. from Emory University in
23 2006 and was admitted to the California Bar in December 2006. Following law school, I was an
24 associate at Sonnenschein from September 2006 to May 2009.

25 52. Since 2009, my primary area of practice has been employment litigation. I have
26 practiced law at two preeminent employment defense firms. From May 2009 to June 2011, I was
27 an associate at Ogletree, Deakins, Nash, Smoak & Stewart, P.C. I was also an associate, and then
28 senior associate, in the labor and employment practice group of Seyfarth Shaw, LLP from June

1 2011 to May 2016. At both Ogletree and Seyfarth, I represented a wide array of fortune 500
2 companies in employment litigation in both state and federal courts, as well as before government
3 agencies, including the California Department of Labor. My practice included the defense of single
4 plaintiff and multi-plaintiff lawsuits involving claims under the California Fair Employment and
5 Housing Act, the California Labor Code and the Fair Labor Standards Act. I also handled a number
6 of wage and hour class actions.

7 53. As an associate at Ogletree and Seyfarth, I served as the lead associate on a number
8 of wage and hour class actions, including *Martha Cardenas v. Gold's Gym*, Los Angeles County
9 Superior Court Case No. BC445112; *Nathaniel Werner v. Crown Equipment Corporation*, Los
10 Angeles County Superior Court Case No. BC439428; *Christopher Williams v. Allstate Insurance*
11 *Co.*, Los Angeles County Superior Court Case No. BC382577; *Hwang v. Caltech*, Los Angeles
12 County Superior Court Case No. BC464894; *Melissa Roberts v. Zale Delaware, Inc.*, Los Angeles
13 Superior Court Case No. BC523610; *Michael Oliver v. Konica Minolta Business Solutions U.S.A.,*
14 *Inc.*, Santa Clara County Superior Court Case No. 114-CV-263183; *Tessa Hodge v. Zale*
15 *Delaware, Inc., d/b/a Piercing Pagoda*, San Bernardino Superior Court Case No CIVVS1301632;
16 *Warren v. Paychex, Inc.*, N.D. Cal. Case No. 3:10-cv-02006; *Tapia v. Zale Delaware Inc. et al*,
17 S.D. Cal. Case No. 3:13-cv-01565; and *Benjamin Burgess et al v. Tesoro Refining and Marketing*
18 *Company et al*, C.D. Cal. Case No. 2:10-cv-05870.

19 54. I also second chaired two jury trials where I represented the prevailing defendant.
20 Both cases involved employees who brought claims against their former employers pursuant to
21 the Fair Employment & Housing Act. The cases are: *Jeff Cowell v. Eaton Aerospace LLC et al*,
22 Los Angeles County Superior Court Case No. BC401543; and *Richard Gulden v. Pratt & Whitney*
23 *Rocketdyne Inc. et al.*, Los Angeles County Superior Court Case No. BC468909.

24 55. In June 2016, I joined Diversity Law Group, P.C. where I spend most of my time
25 handling employment cases. I primarily represent employees.

26 56. I have been approved as class counsel in numerous wage/hour class actions that
27 have been granted class certification and final approval, including: *Antonio Becerra-Mata v. PSC*
28 *Industrial Outsourcing, LP*, San Benito County Superior Court Case No. CU-15-00030; *Kosal So*

1 v. *Owens-Brockway Glass Container, Inc.*, Los Angeles County Superior Court Case No.
2 BC608609; *Sarah Rodriguez v. Manpower, Inc.*, Santa Clara County Superior Court Case No. 1-
3 16-CV-294904; *Shannon Sanchez v. American Para Professional Systems, Inc.*, Santa Clara
4 County Superior Court Case No. 17CV306751; *Foaad Hanna v. Equinix, LLC*, Santa Clara County
5 Superior Court Case No. 18CV339365; *Alicia Harris v. 24 Seven LLC*, Los Angeles County
6 Superior Court Case No. BC720144; *Mary Della Maggiora v. Watsonville Community Hospital*,
7 Santa Cruz Superior Court Case No. 18CV00191; *Michael Randolph v. Pacific Racing*
8 *Association*, Alameda County Superior Court Case No. RG18908139; *Cody Wirbick v. Sundt*
9 *Construction, Inc.*, U.S. District Court for the Eastern District of California Case No. 2:19-cv-
10 02067-MCE-CKD; *Jose Vasquez Ruiz v. Perdue Foods, LLC*, Sonoma County Superior Court
11 Case No. SCV 264649; *Delmer Wood III v. Reeve Trucking Company Inc.*, San Joaquin Superior
12 Court Case No. STK-CV-UOE-2018-0004414; *Eric Chavez v. Converse, Inc.*, U.S. District Court
13 for the Northern District of California Case No. 15-cv-03746-NC; *Jharett Siron v. Raypak, Inc.*,
14 Ventura County Superior Court Case No. 56-2019-00527959-CU-OE-VTA; *Prexxie Pascual and*
15 *Arturo Fonseca v. Satellite Healthcare, Inc.*, Santa Clara Superior Court Case No. 19CV345211;
16 and *Markham v. Quik Stop Markets, Inc.*, Santa Clara Superior Court Case No. 19CV341582.

17 I declare under penalty of perjury under the laws of the State of California that the
18 foregoing is true and correct.

19 Executed on January 30, 2023, at Los Angeles, California.

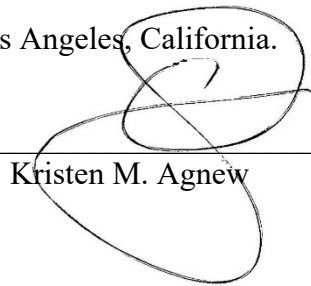
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EXHIBIT A

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

PEDRO CORTEZ, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

BG TRUCKING, INC., an California
 corporation; and DOES 1 through 50,
 inclusive,

Defendants.

Case No.: 37-2021-00010743-CU-OE-CTL

(Assigned to the Honorable Joel R. Wohlfeil, Dept.
C-73)

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

Complaint Filed:	March 10, 2021
FAC Filed:	April 12, 2021
SAC Filed:	_____
Trial Date:	None Set

1 **JOINT STIPULATION OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT**

2 This Joint Stipulation of Class and Representative Action Settlement (“Agreement” or
3 “Settlement Agreement”) is made and entered into by and between Plaintiff Pedro Cortez
4 (“Plaintiff”) and Defendant BG Trucking, Inc. (“Defendant”). Plaintiff and Defendant collectively
5 are referred to in the Agreement as “the Parties.”

6 **A. DEFINITIONS**

7 The following definitions are applicable to this Agreement. Definitions contained
8 elsewhere in this Agreement shall also be effective:

9 1. “Action” means *Pedro Cortez v. BG Trucking, Inc.*, filed on March 10, 2021, in the
10 Superior Court of the State of California, County of San Diego, Case No. 37-2021-00010743-CU-
11 OE-CTL.

12 2. “Aggrieved Employee(s)” means all current and former non-exempt employees of
13 Defendant in the State of California who were paid on a mileage basis at any time from February
14 12, 2020, through September 30, 2022.

15 3. “Agreement” or “Settlement Agreement” means this Joint Stipulation of Class and
16 Representative Action Settlement.

17 4. “Class” or “Class Member(s)” means all current and former non-exempt employees
18 of Defendant in the State of California who were paid on a mileage basis at any time from March
19 10, 2017, through September 30, 2022.

20 5. “Class Counsel” means Larry W. Lee, Kristen M. Agnew, and Nicholas Rosenthal
21 of Diversity Law Group, P.C.

22 6. “Class Counsel Award” means such award of fees and costs and expenses as the
23 Court may authorize to be paid to Class Counsel for the services they have rendered and will render
24 to Plaintiff and the Class in the Action. Defendant agrees not to oppose Class Counsel Award of
25 up to one-third (33.33%) of the Gross Settlement Amount (\$130,000.00), *i.e.*, the sum of Forty-
26 Three Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$43,333.33), and
27 costs in the amount of up to Fifteen Thousand Dollars (\$15,000.00), subject to the Court finally
28 approving this Settlement.

1 7. “Class Data and List” means a true and complete list of all Class Members that
2 Defendant will compile, based on its business records, and provide to the Settlement Administrator
3 within five (5) days after the Court grants preliminary approval of the Settlement. The Class List
4 shall be formatted in Microsoft Office Excel and shall include each employee’s full name, his or
5 her last known home address, telephone number, Social Security Number, beginning and ending
6 dates of employment, number of pay periods worked during the Class Period, and number of pay
7 periods worked during the PAGA Period.

8 8. “Class Representative” or “Plaintiff” means Plaintiff Pedro Cortez.

9 9. “Complaint” means the operative Second Amended Class and Representative
10 Action Complaint filed by Plaintiff in this Action.

11 10. “Counsel for Defendants” or “Defense Counsel” means Hillary Arrow Booth and
12 Allan P. Bareng of Booth LLP.

13 11. “Court” means the Superior Court for the State of California, County of San Diego,
14 or any other court taking jurisdiction of the Action.

15 12. “Class Period” means the period from March 10, 2017, through September 30,
16 2022.

17 13. “Defendant” means BG Trucking, Inc.

18 14. “Effective Date” shall be the latest of the following dates: (a) the Court’s final
19 approval of the Settlement, if no objections by or on behalf of Class Members have been filed and
20 not withdrawn; (b) if an objection is filed, the time for appeal has expired and no appeal has been
21 filed or withdrawn; or (c) if a timely appeal is filed, the final resolution of that appeal (including
22 any requests for rehearing and/or petitions for certiorari), resulting in final judicial approval of the
23 Settlement/

24 15. “Enhancement Payment” or “Service Payment” means the amount that the Court
25 authorizes to be paid to Plaintiff, in addition to his Individual Settlement Payment, in recognition
26 of his efforts and risks in assisting with the prosecution of the Action. Subject to the Court granting
27 final approval, the Parties agree that Plaintiff shall be paid up to Five Thousand Dollars (\$5,000.00)
28 from the Gross Settlement Amount.

1 16. “Final Approval” means that the Final Approval Order and Judgment have been
2 entered by the Court.

3 17. “Individual PAGA Payment” means each Aggrieved Employee’s portion of the
4 PAGA Payment calculated in accordance with the calculations described in Paragraph C-7 of this
5 Settlement.

6 18. “Individual Settlement Payment” means the amount payable from the Net Class
7 Settlement Amount to each Settlement Class Member.

8 19. “Gross Settlement Amount” means the Gross Settlement Amount of One Hundred
9 Thirty Thousand Dollars (\$130,000.00) to be paid by Defendant as a result of this Agreement. The
10 Gross Settlement Amount includes all Individual Settlement Payments, the Enhancement Payment
11 to Plaintiff, Settlement Administration Costs to the Settlement Administrator, the PAGA Payment,
12 and Class Counsel Award.

13 20. “Net Settlement Amount” means the balance of the Gross Settlement Amount
14 remaining after deduction of the approved Enhancement Payment to Plaintiff, Settlement
15 Administration Costs, the PAGA Payment, and Class Counsel Award. The entire Net Settlement
16 Amount is the maximum amount that will be available for distribution to Settlement Class
17 Members.

18 21. “Notice of Objection” means a Class Member’s valid and timely written objection
19 to the Settlement. For the Notice of Objection to be valid, it must include: (a) the objector’s full
20 name, signature, address, and telephone number; (b) a written statement of basis for the objection;
21 and (c) any copies of papers, briefs, or documents upon which the objection is based. The Notice
22 of Objection must be returned by mail to the Settlement Administrator at the specified address
23 indicated in the Notice Packet and must be postmarked by the Response Deadline.

24 22. “Notice Packet” means the Notice of Proposed Class Action Settlement,
25 substantially in the form attached as Exhibit A.

26 23. “PAGA Payment” means the portion of the Gross Settlement Amount that the
27 Parties have agreed will be allocated to resolve all claims, penalties, and remedies under the Private
28 Attorneys General Act of 2004 (Cal. Lab. Code § 2698, *et seq.*, “PAGA”). Subject to Court

1 approval pursuant to California Labor Code § 2699(l), the Parties agree that the PAGA Payment
2 shall be Five Thousand Dollars (\$5,000.00).

3 24. “PAGA Period” means the period from February 12, 2020, through September 30,
4 2022.

5 25. “Parties” means Plaintiff, on behalf of himself and Settlement Class Members, and
6 Defendant collectively.

7 26. “Preliminary Approval” means the Court’s order granting preliminary approval of
8 the Settlement.

9 27. “Released Class Claims” means all claims, including penalties, interest, costs, and
10 attorneys’ fees related thereto, that were or could have been brought under the facts and allegations
11 made in the operative Second Amended Complaint for violation of Labor Code sections 201, 202,
12 203, 204, 226, 226.2, 226.7, 510, 558, 1194, 1197, and 1197.1 during the Class Period.

13 28. “Released PAGA Claims” means all claims for penalties under the California
14 Private Attorneys General Act, including interest, costs and attorneys’ fees related thereto,
15 predicated on the violation of Labor Code sections 201, 202, 203, 204, 226, 226.2, 226.7, 510,
16 558, 1194, 1197, and 1197.1 that accrued during the PAGA Period and were alleged in the PAGA
17 Notice and operative Second Amended Complaint.

18 29. “Released Parties” means Defendant, and its parents, predecessors, successors,
19 subsidiaries, affiliates, partners, and trusts, and all of its employees, officers, agents, attorneys,
20 stockholders, fiduciaries, clients, other service providers, and assigns.

21 30. “Request for Exclusion” means a timely letter submitted by a Class Member
22 indicating a request to be excluded from the Settlement. The Request for Exclusion must: (1)
23 clearly state that the Class Member does not wish to be included in the Settlement; (2) set forth the
24 name, address, telephone number, and last four digits of the Social Security Number of the Class
25 Member requesting exclusion; (3) be signed by the Class Member; (4) be returned by mail to the
26 Settlement Administrator at the specified address indicated in the Notice Packet; and (5) be
27 postmarked on or before the Response Deadline.

28 31. “Response Deadline” means forty-five (45) days after the Settlement Administrator

1 initially mails the Notice Packet to Class Members, and the last date on which Class Members may
2 submit Requests for Exclusion or Notices of Objections to the Settlement.

3 32. "Settlement" means the agreement among the Parties to resolve the Action, as set
4 forth in this Stipulation.

5 33. "Settlement Administration Costs" means the fees and expenses reasonably
6 incurred by the Settlement Administrator as a result of the procedures and processes expressly
7 required by this Agreement, which are estimated at Three Thousand Two Hundred Fifty Dollars
8 (\$3,250.00). Any portion of the Settlement Administration Costs not used or approved by the Court
9 shall be added to the Net Class Settlement Amount.

10 34. "Settlement Administrator" means Phoenix Settlement Administrators.

11 35. "Settlement Class" or "Settlement Class Members" means all Class Members who
12 do not submit valid and timely Requests for Exclusion.

13 36. "Settlement Payment Check" means the payment of the Individual Settlement
14 Payment to Settlement Class Members and Individual PAGA Payment to Aggrieved Employees.

15 **B. FACTUAL BACKGROUND**

16 1. On February 12, 2021, Plaintiff filed a written notice to the California Labor &
17 Workforce Development Agency ("LWDA") alleging that Defendant violated Labor Code
18 sections 201, 202, 203, 204, 226, 226.2, 226.7, 227.3 510, 558, 1194, 1197, and 1197.1, pursuant
19 to Labor Code section 2699 ("PAGA Notice").

20 2. On March 10, 2021, Plaintiff initiated this action in San Diego County Superior
21 Court. The initial complaint asserted class action claims for: (1) violation of Labor Code sections
22 226.2, 510, 558, 1194, 1197, and 1197.1; (2) violation of Labor Code sections 226.2 and 226.7;
23 (3) violation of Labor Code sections 510, 558, and 1194; (4) violation of Labor Code section 226;
24 (5) violation of Labor Code section 227.3; and (6) violation of Business and Professions Code
25 section 17200, *et seq.*

26 3. On April 12, 2021, Plaintiff filed a first amended complaint, adding a representative
27 action claim for violation of Labor Code section 2698, *et seq.*

28 4. In or about June 2022, the Parties agreed to participate in private mediation. In

1 connection with the mediation, Defendant produced data relating to the number of Class Members
2 and pay periods in which Class Members were paid on a mileage basis during the Class Period,
3 which allowed Plaintiff's counsel to conduct a full damage analysis.

4 5. On September 30, 2022, the Parties engaged in mediation with Michael J. Loeb,
5 Esq., an experienced wage and hour class action mediator. After the exchange of further
6 information and extended negotiations, Plaintiff and Defendant reached the present class-wide
7 settlement. The settlement discussions were conducted at arm's-length.

8 6. In connection with the Settlement, the Parties agreed to the filing of a second
9 amended complaint to withdraw Plaintiff's claims of failure to calculate the regular rate of pay for
10 purposes of paying overtime wages and penalties for untimely payment of vacation wages.

11 7. On December 16, 2022, Plaintiff filed the Second Amended Class and
12 Representative Action Complaint. As alleged in the Second Amended Class and Representative
13 Action Complaint, Plaintiff contends that Defendant (a) failed to pay all minimum, regular, and
14 overtime wages owed for time spent completing non-productive tasks, in violation of Labor Code
15 sections 226.2, 510, 558, 1194, 1197, and 1197.1; (b) failed to provide paid rest periods, in
16 violation of Labor Code sections 226.2 and 226.7; (c) failed to pay all wages owed upon separation
17 of employment, in violation of Labor Code sections 201, 202, and 203; (d) failing to provide
18 accurate, itemized wage statements, in violation of Labor Code section 226; and (e) engaged in
19 Unfair Business Practices in violation of the UCL, the California Labor Code and the applicable
20 IWC Wage Orders. Plaintiff seeks to represent the Class and other Aggrieved Employees, and
21 seeks damages, penalties, attorneys' fees, and costs. The Second Amended Class and
22 Representative Action Complaint is the operative Complaint ("Complaint").

23 8. The Parties recognize the risk, expense, and delay in continuing the Action, and
24 therefore believe the Settlement to be fair, reasonable, and adequate. Accordingly, the Parties
25 desire to settle, compromise, and discharge all disputes and claims arising from or relating to the
26 Action.

27 **C. PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF SETTLEMENT**

28 1. Settlement Consideration. Defendant shall pay the sum of the Gross Settlement

Amount as specified in this Agreement, which shall be used to pay: (1) Individual Settlement Payments; (2) Class Counsel Award; (3) Enhancement Payment; (4) Settlement Administration Costs; and (5) the PAGA Payment. The Parties agree that this is a non-reversionary Settlement and that no portion of the Gross Settlement Amount shall revert to Defendant. In no event shall Defendant be required to pay more than the Gross Settlement Amount as specified in this Agreement, with the exception of employer-side payroll taxes owed on Individual Settlement Payments classified as wages.

2. Funding of the Gross Settlement Amount. Within thirty (30) days of the Effective Date, Defendant shall make a one-time deposit of the Gross Settlement Amount into a Qualified Settlement Fund to be established by the Settlement Administrator.

3. Class Counsel Award. Defendant agrees not to oppose or impede any application or motion by Class Counsel for attorneys' fees of up to one-third (33.33%) of the Gross Settlement Amount (\$150,000.00), *i.e.*, the sum of Forty-Three Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$43,333.33), and costs in the amount of up to Fifteen Thousand Dollars (\$15,000.00), which shall be paid from the Gross Settlement Amount. It is understood by Class Counsel that the Court has final discretion in any fee award. The Settlement Administrator shall issue an IRS Form 1099 to Class Counsel reflecting the awarded attorneys' fees, costs, and expenses. Any portion of the Class Counsel Award not awarded to Class Counsel shall be added to the Net Class Settlement Amount and shall be distributed to Settlement Class Members as provided in this Agreement. Notwithstanding any other provision of this Agreement, if the Court should fail to award attorneys' fees to Class Counsel in the full amount provided for in this Agreement, no order of the Court or modification of any order of the Court concerning the amount of any attorneys' fees to be paid by Defendant to Class Counsel pursuant to this settlement shall constitute grounds for cancellation or termination of the Agreement or grounds for limiting any other provision of the Judgment. It is agreed that no order of the Court, including any order concerning attorneys' fees, may alter or otherwise increase the Gross Settlement Amount.

4. Class Representative Enhancement Payment. Defendant agrees not to oppose or impede any application or motion by Plaintiff for an Enhancement Payment of up to Five Thousand

Dollars (\$5,000.00). The Enhancement Payment shall be paid from the Gross Settlement Amount, and shall be paid in addition to Plaintiff's Individual Settlement Payment as a Settlement Class Member and Individual PAGA Payment as an Aggrieved Employee. It is understood by Class Counsel and Plaintiff that the Court has final discretion in any Enhancement Payment. The Settlement Administrator shall issue an IRS Form 1099 to Plaintiff reflecting the Enhancement Payment. Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on his Enhancement Payment and shall hold harmless Defendant from any claim or liability for taxes, penalties, or interest arising as a result of the Enhancement Payment. Any portion of the Enhancement Payment not awarded to Plaintiff shall be added to the Net Class Settlement Amount and shall be distributed to Class Members as provided in this Agreement.

5. Settlement Administration Costs. The Settlement Administrator shall be paid for the reasonable costs of administration of the Settlement from the Gross Settlement Amount, currently estimated at Three Thousand Two Hundred Fifty Dollars (\$3,250.00). These costs, which shall be paid from the Gross Settlement Amount, shall include, *inter alia*, the required tax reporting on the Individual Settlement Payments and Individual PAGA Payments, the issuing of W-2 and 1099 IRS Forms, establishing a Qualified Settlement Fund, administering and distributing the Gross Settlement Amount and Class Counsel Award, and providing necessary reports and declarations. Any portion of the Settlement Administration Costs not allowed shall be added to the Net Class Settlement Amount and shall be distributed to Class Members as provided in this Agreement.

6. PAGA Payment. Subject to Court approval, the Parties agree that the amount of Five Thousand Dollars (\$5,000.00) of the Gross Settlement Amount shall be designated for satisfaction of claims for civil penalties under the PAGA. The Settlement Administration shall pay seventy-five percent (75%) of the PAGA Payment, *i.e.*, the sum of Three Thousand Seven Hundred Fifty Dollars (\$3,750.00), to the LWDA. The remaining twenty-five percent (25%), *i.e.*, the sum of One Thousand Two Hundred Fifty Dollars (\$1,250.00), shall be distributed to Aggrieved Employees ("Aggrieved Employee Amount").

7. Individual PAGA Payment Calculation. The Aggrieved Employee Amount shall be

1 allocated proportionally to Aggrieved Employees on a pro rata basis, based on the number of pay
2 periods they worked during the PAGA Period. The Settlement Administrator will allocate the
3 Individual PAGA Payments by first dividing the Aggrieved Employee Amount by the total
4 number of pay periods worked by all Aggrieved Employees during the PAGA Period. That value
5 will then be multiplied by the number of pay periods that each respective Aggrieved Employee
6 worked during the PAGA Period. Aggrieved Employees are entitled to 100% of the Aggrieved
7 Employee Amount. Defendant maintains no reversionary right to any portion of the Aggrieved
8 Employee Amount.

9 8. Net Settlement Amount. The Net Settlement Amount shall be used to satisfy
10 Individual Settlement Payments to Settlement Class Members in accordance with the terms of this
11 Agreement. The Settlement Administrator will allocate the Individual Settlement Payments by
12 first dividing the Net Settlement Amount by the total number of pay periods worked by all Class
13 Members during the Class Period. That value will then be multiplied by the number of pay
14 periods that each respective Class Member worked during the Class Period. Settlement Class
15 Members are entitled to 100% of the Net Settlement Amount. Defendant maintains no
16 reversionary right to any portion of the Net Settlement Amount. If there are any timely submitted
17 Requests for Exclusion, the Settlement Administrator shall proportionately increase the
18 Individual Settlement Payments for each Settlement Class Member so that the amount actually
19 distributed to Settlement Class Members equals 100% of the Net Settlement Amount.

20 9. Calculation of Gross Settlement Amount. The Gross Settlement Amount was
21 calculated with, and is premised on, Defendant's representation that 35 Class Members worked
22 2,279 pay period during the Class Period. In the event the number of pay periods at issue exceeds
23 2,279 by ten percent (10%) or more (*i.e.*, 2,507), the Gross Settlement Amount shall be increased
24 proportionally to the amount of the total increase. For instance, a twelve percent (12%) increase in
25 the number of pay periods will result in a two percent (2%) increase in the Gross Settlement
26 Amount.

27 10. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
28 Settlement Class Members, the Individual PAGA Payments made to Aggrieved Employees, the

Enhancement Payment made to Plaintiff, as well as any other payments made pursuant to this Agreement, shall not be utilized to calculate any additional benefits under any benefit plans to which any Class Members and Aggrieved Employees 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 plans. Rather, it is the Parties' intention that this Settlement will not affect any rights, contributions, or amounts to which any Class Members may be entitled under any benefit plans.

11. Settlement Administration Process. The Parties agree to cooperate in the administration of the Settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in the administration of the Settlement. The Settlement Administrator shall provide the following services:

- a. Establish and maintain a Qualified Settlement Fund account;
- b. Calculate the amount of the Settlement each Class Member/Aggrieved Employee is eligible to receive;
- c. Verify the last known address for each Class Member through a generally utilized, national address update database prior to mailing the Notice Packet;
- d. Print and mail the Notice Packet;
- e. Establish and maintain a toll-free informational telephone support line to assist Class Members who have questions regarding the Notice Packet;
- f. Conduct additional address searches for mailed Notice Packets that are returned as undeliverable and, to the extent new and more current addresses are found, also reprint and re-mail Notice Packets accordingly;
- g. Calculate Settlement Class Members/Aggrieved Employees' settlement share, field inquiries from Class Members, and administer any Requests for Exclusion. This service will include settlement proceed calculations, printing and issuance of checks, and preparation of W-2 and 1099 Forms; and
- h. Provide declarations and/or other information to the Court as requested.

1 12. Delivery of the Class Data and List. Within five (5) business days of Preliminary
2 Approval, Defendant shall provide the Class Data and List to the Settlement Administrator.

3 13. Notice by First-Class U.S. Mail. Within ten (10) business days after receiving the
4 Class Data and List from Defendant, the Settlement Administrator shall mail a Notice Packet to
5 all Class Members via regular First-Class U.S. Mail, using the most current, known mailing
6 addresses identified in the Class List.

7 14. Confirmation of Contact Information in the Class List. Prior to mailing, the
8 Settlement Administrator shall perform a search based on the National Change of Address
9 Database for information to update and correct for any known or identifiable address changes.

10 15. Notice Packets. All Class Members will be mailed a Notice Packet. Each Notice
11 Packet will provide: (1) information regarding the nature of the Action; (2) a summary of the
12 Settlement's principal terms; (3) the Class definition; (4) each Class Member's estimated
13 Individual Settlement Payment and the formula for calculating Individual Settlement Payments, if
14 they do not request to be excluded; (5) each Aggrieved Employee's estimated Individual PAGA
15 Payment and the formula for calculating Individual PAGA Payments; (6) the dates that comprise
16 the Class Period and PAGA Period; (7) instructions on how to submit valid Requests for Exclusion,
17 or objections; (8) the deadlines by which the Class Member must submit a Request for Exclusion
18 or Notice of Objection to the Settlement; (9) the date for the final approval hearing; and (10) the
19 claims to be released. The Notice Packet will also inform Class Members that, in order to receive
20 the Individual Settlement Payment and Individual PAGA Payment, they do not need to do anything
21 except keep the Settlement Administrator apprised of their current mailing addresses.

22 16. Re-Mailing of Returned Notices. Any Notice Packets returned to the Settlement
23 Administrator as non-deliverable on or before the Response Deadline shall be re-sent promptly via
24 regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement
25 Administrator shall indicate the date of such re-mailing on the Notice Packet. If no forwarding
26 address is provided, the Settlement Administrator shall promptly attempt to determine the correct
27 address using a skip-trace, or other search using the name, address and/or Social Security Number
28 of the Class Member involved and shall then perform a re-mailing. Those Class Members who

1 receive a re-mailed Notice Packet shall have their Response Deadline extended fifteen (15) days
2 from the original Response Deadline.

3 17. Request for Exclusion Procedures. Any Class Member, other than Plaintiff, may
4 opt-out from the Settlement by submitting a written Request for Exclusion to the Settlement
5 Administrator postmarked by the Response Deadline. A Request for Exclusion must: (1) clearly
6 state that the Class Member does not wish to be included in the Settlement; (2) set forth the name,
7 address, telephone number, and last four digits of the Social Security Number of the Class Member
8 requesting exclusion; (3) be signed by the Class Member; (4) be returned by mail to the Settlement
9 Administrator at the specified address indicated in the Notice Packet; and (5) be postmarked on or
10 before the Response Deadline. The date of the postmark shall be the exclusive means to determine
11 whether a Request for Exclusion is timely. By submitting such a Request for Exclusion, a Class
12 Member shall be deemed to have exercised his or her option to opt out of the Settlement and not
13 be bound by this Agreement. Provided, however, that no Class Member may opt out of or be
14 excluded from participating in the settlement of the Released PAGA Claims. At no time shall any
15 of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit a
16 Request for Exclusion. Class Counsel shall not represent any Class Members with respect to any
17 such request.

18 18. No PAGA Opt-Out. No Class Member may opt out of or be excluded from
19 participating in the settlement of the Released PAGA Claims. All Class Members shall be bound
20 by the judgment entered herein and will have released the Released PAGA Claims upon the final
21 approval of this Settlement and the payment of the Maximum Settlement Payment.

22 19. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class
23 Member who does not affirmatively opt-out of the Settlement by submitting a valid and timely
24 Request for Exclusion shall be bound by all terms of the Settlement to the fullest possible extent,
25 including those pertaining to the Released Class Claims and Released PAGA Claims, as well as
26 any Judgment that may be entered by the Court.

27 20. Objection Procedures. Any Class Member who does not opt-out of this Settlement
28 shall be entitled to object to the Settlement. To object to the Settlement, a Class Member must

1 return by mail a written statement of objection to the Settlement Administrator at the specified
2 address by the Response Deadline. The Notice of Objection must include: (1) the objector's full
3 name, signature, address, and telephone number; (2) a written statement of the basis for the
4 objection; and (3) any copies of papers, briefs, or documents upon which the objection is based.
5 At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class
6 Members to submit written objections to the Settlement or appeal from the Order and Judgment.
7 Class Counsel shall not represent any Class Members with respect to any such objections to this
8 Settlement. Any Class Member who submits a valid Request for Exclusion shall not be allowed to
9 object to this Settlement. No later than five (5) days after the Response Deadline, the Settlement
10 Administrator shall provide Defense Counsel with a complete list of all Class Members who have
11 timely and properly requested exclusion from the Class.

12 21. Defendant's Right to Rescind. If more than five (5) Class Members submit a timely
13 and valid Request for Exclusion, Defendant will have the right, but not the obligation, to revoke
14 and void this Agreement at its discretion. Defendant must exercise the option to rescind within ten
15 (10) business days of Defense Counsel receiving notification from the Settlement Administrator
16 that more than five (5) Class Members have submitted timely and valid Requests for Exclusion
17 from the Settlement. If Defendant exercises this right to void the Agreement, then the Parties will
18 have no further obligations under the Agreement, including, without limitation, any obligation by
19 Defendant to pay the Gross Settlement Amount, or any amounts that otherwise would have been
20 owed under this Agreement, except that Defendant shall pay all Settlement Administration Costs
21 incurred by the Settlement Administrator up to the date of Defendant's notice to rescind. In the
22 event the Settlement is terminated, the Parties shall proceed in all respects as if this Agreement
23 had not been executed. The Parties agree that they will not encourage any Class Member to object
24 to the Settlement or to opt out.

25 22. Settlement Administrator's Reports of Information. The Settlement Administrator
26 shall provide Defense Counsel and Class Counsel a weekly report which certifies the number of
27 Class Members who have submitted valid Requests for Exclusion. Additionally, the Settlement
28 Administrator will provide to counsel for both Parties any updated reports regarding the

administration of the Settlement as needed or requested. The Settlement Administrator shall also forward to Parties' counsel any Notices of Objection received immediately upon receipt. Further, the Settlement Administrator shall immediately forward any Request for Exclusion to the Parties' counsel so that they can determine whether the Request for Exclusion is valid and timely.

23. Distribution of Payments. Within fifteen (15) calendar days of Defendant funding the Gross Settlement Amount, the Settlement Administrator shall pay: (1) the Individual Settlement Payments to Settlement Class Members; (2) the Individual PAGA Payments to Aggrieved Employees; (3) seventy-five percent (75%) of the PAGA Payment to the Labor and Workforce Development Agency; (4) the Enhancement Payment to Plaintiff; and (5) Class Counsel Award to Class Counsel. The Settlement Administrator shall also issue a payment to itself for services performed in connection with the Settlement.

24. Non-Negotiated Settlement Checks. Any checks issued by the Settlement Administrator to Settlement Class Members and Class Members shall be negotiable for one hundred and eighty (180) calendar days. Those funds represented by settlement checks returned as undeliverable and the funds which correspond with the settlement checks that are not negotiated within one hundred and eighty (180) calendar days after issuance shall be paid out pursuant to California Code of Civil Procedure § 384 to the following *cy pres* recipient: Legal Aid at Work.

25. Certification of Completion. Upon completion of administration of the Settlement, the Settlement Administrator shall provide a written declaration under oath to certify such completion to the Court and counsel for all Parties.

26. Administration Costs if Settlement Fails or is Delayed. If an objection to the Settlement is filed with the Court, regardless of the ultimate outcome of any appeals taken, or if the Settlement is voided or rescinded, any costs incurred by the Settlement Administrator shall be borne equally by Defendant and Plaintiff, unless otherwise specified in this Agreement.

27. Tax Allocation of Individual Settlement Shares and Individual PAGA Payments. All Individual Settlement Payments shall be allocated as 90% penalties and interest, and 10% as wages. Individual PAGA Payments shall be allocated as 100% as penalties. The amount of payment shall be reported on IRS Forms W-2 and 1099, as appropriate, by the Settlement

1 Administrator.

2 28. Administration of Taxes by the Settlement Administrator. The Settlement
3 Administrator shall be responsible for issuing to Plaintiff, Settlement Class Members, Aggrieved
4 Employees, and Class Counsel, W-2 and 1099 Forms or other tax forms as may be required by law
5 for all amounts paid pursuant to this Agreement.

6 29. Tax Liability. Defendant, Defense Counsel, the Settlement Administrator, and
7 Class Counsel make no representation as to the tax treatment or legal effect of the payments called
8 for hereunder, and Plaintiff, Settlement Class Members and Aggrieved Employees are not relying
9 on any statement, representation, or calculation by Defendant, Defense Counsel, Class Counsel,
10 or by the Settlement Administrator in this regard. Plaintiff, Settlement Class Members and
11 Aggrieved Employees understand and agree that they will be solely responsible for the payment
12 of any and all taxes and penalties assessed on their respective payments described herein and will
13 defend, indemnify, and hold Defendant, Defense Counsel, Class Counsel, and the Settlement
14 Administrator free and harmless from and against any claims resulting from treatment of such
15 payments as non-taxable penalties/damages.

16 30. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
17 PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY
18 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER
19 PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
20 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR
21 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS
22 INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE
23 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE
24 MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR
25 PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
26 EXCLUSIVELY UPON HIS OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL
27 FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT,
28 (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE

1 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO
2 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
3 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
4 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
5 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
6 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
7 OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF
8 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
9 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
10 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
11 AGREEMENT.

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

16 32. Release of Claims by Plaintiff. As a condition to obtaining the Enhancement
17 Payment provided for herein, Plaintiff (on behalf of himself and his spouse, heirs, executors,
18 administrators, trustees, and/or permitted assigns) also agrees to a general release of any and all
19 claims against the Released Parties (as defined above)—which shall include without limitation any
20 and all claims which in any way relate to his employment with Defendant, under State or Federal
21 law, in tort, common law, statute, contract, or equity, whether pled in the Complaint or not,
22 including but not limited to any claims under the FLSA, Title VII, ADA, FEHA, ADEA, PAGA,
23 California Labor Code, or any Industrial Welfare Commission Wage Order—now existing or
24 arising in the future, based on any act, omission, event, occurrence, or nonoccurrence from the
25 beginning of time to the date of execution hereof, except for those claims that may be prohibited
26 by law, such as claims for workers' compensation benefits. Plaintiff further expressly waives and
27 relinquishes, to the fullest extent permitted by law, the provisions, rights and benefits of Section
28 1542 of the California Civil Code, which provides: "**A general release does not extend to claims**

1 that the creditor or releasing party does not know or suspect to exist in his or her favor at
2 the time of executing the release and that, if known by him or her, would have materially
3 affected his or her settlement with the debtor or released party.”

4 33. Release of Claims by Settlement Class Members. Upon the payment of the Gross
5 Settlement Amount, Plaintiff and all Settlement Class Members, as well as their spouses, heirs,
6 executors, administrators, trustees, and/or permitted assigns, hereby do and shall be deemed to
7 have fully, finally and forever released, settled, compromised, relinquished and discharged, to the
8 fullest extent possible, any and all of the Released Parties of and from any and all Released Class
9 Claims.

10 34. Release of Claims by Aggrieved Employees. Upon the payment of the Gross
11 Settlement Amount, Plaintiff and all Aggrieved Employees, as well as their spouses, heirs,
12 executors, administrators, trustees, and/or permitted assigns, hereby do and shall be deemed to
13 have fully, finally, and forever released, settled, compromised, relinquished, and discharged, to the
14 fullest extent possible, any and all of the Released Parties of and from any and all Released PAGA
15 Claims.

16 35. Nullification of Settlement. In the event that the Settlement does not become final
17 for any reason, then this Agreement, and any documents generated to bring it into effect, shall be
18 null and void. Any order or judgment entered by the Court in furtherance of this Agreement shall
19 likewise be treated as void from the beginning.

20 36. Disputes Regarding Individual Settlement Payments. In the event that Class
21 Members have a dispute as to the data provided by the Defendant, Class Members will have the
22 opportunity to provide documentation and/or an explanation. If there is a dispute, the Settlement
23 Administrator will consult with the Parties to determine whether an adjustment is warranted. The
24 Settlement Administrator shall determine the eligibility for, and the amounts of, any Individual
25 Settlement Payments or Individual PAGA Payments under the terms of this Agreement, and that
26 determination shall be binding.

27 37. Disputes Regarding Administration of Settlement. Any disputes not resolved by the
28 Settlement Administrator concerning the administration of the Settlement will be resolved by the

1 Court under the laws of the State of California. Prior to any such involvement of the Court, counsel
2 for the Parties will confer in good faith to resolve the disputes without the necessity of involving
3 the Court.

4 38. Preliminary Approval Hearing. Plaintiff shall obtain a hearing before the Court to
5 request the Preliminary Approval of the Settlement, conditional certification of the Class, and the
6 entry of a Preliminary Approval Order: (i) approving of the proposed Settlement, and (ii) setting a
7 date for a Final Approval/Settlement Fairness Hearing. The Preliminary Approval Order shall
8 provide for the Notice Packet to be sent to all Class Members as specified herein. In conjunction
9 with the Preliminary Approval hearing, Plaintiff shall submit this Agreement, which sets forth the
10 terms of this Settlement, and will include the proposed Notice Packet, attached to this Agreement
11 as Exhibit A.

12 39. Final Settlement Approval Hearing. Upon expiration of the deadlines to submit
13 Requests for Exclusion or Notices of Objections to the Settlement, and with the Court's
14 permission, a Final Approval/Settlement Fairness Hearing shall be conducted to determine the
15 Final Approval of the Settlement along with the amounts properly payable for (i) Individual
16 Settlement Payments; (ii) the PAGA Payment; (ii) the Class Counsel Award; (iii) the Enhancement
17 Payment; and (iv) Settlement Administration Costs. Class Counsel will be responsible for drafting
18 all documents necessary to obtain final approval. Class Counsel will also be responsible for
19 drafting the attorneys' fees and costs application to be heard at the Final Approval Hearing.

20 40. Entry of Judgment and Continued Jurisdiction of the Court. Concurrent with the
21 Motion for Final Approval, the Parties shall also jointly seek the entry of Judgment consistent with
22 the terms of this Agreement. After entry of the Judgment, the Court shall have continuing
23 jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms
24 of the Settlement, (ii) Settlement administration matters, and (iii) such post-Judgment matters as
25 may be appropriate under court rules or as set forth in this Agreement.

26 41. Exhibits Incorporated by Reference. The terms of this Agreement include the terms
27 set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth
28 herein. Any Exhibits to this Agreement are an integral part of the Settlement.

42. Confidentiality Preceding Preliminary Approval. 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, post information on any social media or website, or have any communication with the press about the fact, amount, or terms of the Settlement.

43. Entire Agreement. This Agreement and any attached Exhibits constitute the entirety of the Parties' Settlement terms. No other prior or contemporaneous written or oral negotiations or agreements may be deemed binding on the Parties.

44. Disputes Regarding Language of Final Settlement Agreement. If the Parties have a dispute with regard to the language of the Agreement, the Parties agree to attempt to informally resolve the dispute by engaging Michael J. Loeb to mediate such dispute.

45. Amendment or Modification. This Agreement may be amended or modified only by a written instrument signed by the Parties or their successors-in-interest.

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

47. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the successors, heirs, or assigns of the Parties hereto, as previously defined.

48. California Law Governs. All terms of this Agreement and Exhibits hereto shall be governed by and interpreted according to the laws of the State of California.

49. Execution and Counterparts. This Agreement is subject only to the execution of all Parties. However, the Agreement may be executed in one or more counterparts. All executed

1 counterparts and each of them, including facsimile and scanned copies of the signature page, shall
2 be deemed to be one and the same instrument provided that counsel for the Parties shall exchange
3 among themselves original signed counterparts.

4 50. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe
5 this Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this
6 Settlement after arm's-length negotiations, mediation, and in the context of adversarial litigation,
7 taking into account all relevant factors, present and potential. The Parties further acknowledge that
8 they are each represented by competent counsel and that they have had an opportunity to consult
9 with their counsel regarding the fairness and reasonableness of this Agreement.

10 51. Invalidity of Any Provision. Before declaring any provision of this Agreement
11 invalid, the Court shall first attempt to construe the provision as valid to the fullest extent possible
12 consistent with applicable precedents so as to define all provisions of this Agreement valid and
13 enforceable. Any invalid, illegal, or unenforceable provision determined by the Court shall in no
14 way affect any other provision if Defendant and Class Counsel, on behalf of the Parties and the
15 Settlement Class, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable
16 provision had never been included in this Agreement.

17 52. Waiver of Certain Appeals. The Parties agree to waive appeals; except, however,
18 that Plaintiff or Class Counsel may appeal any reduction in the Class Counsel Award below the
19 amount Class Counsel requests, and either Party may appeal any order that materially alters the
20 Agreement's terms.

21 53. Class Action Certification. The Parties are agreeing to class certification for
22 settlement purposes only. This Agreement shall not constitute, in this or any other proceeding, an
23 admission of any kind by Defendant, including without limitation, that certification of a class for
24 trial or any other purpose is appropriate or proper or that Plaintiff or any Class Member can
25 establish any of the requisite elements for class treatment of any of the claims in this Action. If,
26 for any reason, the Settlement is not finally approved, this Agreement will be void and the Parties
27 will be restored to their respective positions in the lawsuit as if they had not entered into this
28 Agreement. The Parties further agree that this Agreement or any documents or orders issued

1 related to this Settlement will not be admissible, other than according to the Settlement's terms, in
2 this or any other proceeding as evidence that either: (i) a class action should be certified, or (ii)
3 Defendant is liable to Plaintiff or any Class Member.

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

18 55. Captions. The captions and section numbers in this Agreement are inserted for the
19 reader's convenience, and in no way define, limit, construe, or describe the scope or intent of the
20 provisions of this Agreement.

21 56. Waiver. No waiver of any condition or covenant contained in this Agreement or
22 failure to exercise a right or remedy by any of the Parties hereto shall be considered to imply or
23 constitute a further waiver by such party of the same or any other condition, covenant, right, or
24 remedy.

25 57. Enforcement Actions. In the event that one or more of the Parties institutes any
26 legal action or other proceeding against any other Party or Parties to enforce the provisions of this
27 Settlement, or to declare rights and/or obligations under this Settlement, the prevailing Party or
28 Parties shall be entitled to recover from the non-prevailing Party or Parties reasonable attorneys'

1 fees and costs, including expert witness fees incurred in connection with any enforcement actions.

2 58. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms
3 and conditions of this Agreement. Accordingly, this Agreement shall not be construed more strictly
4 against one Party than another merely by virtue of the fact that it may have been prepared by
5 counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations
6 between the Parties, all Parties have contributed to the preparation of this Agreement.

7 59. Representation by Counsel. The Parties acknowledge that they have been
8 represented by counsel throughout all negotiations that preceded the execution of this Agreement,
9 and that this Agreement has been executed with the consent and advice of counsel. Further,
10 Plaintiff and Class Counsel warrant and represent that there are no liens on the Agreement.

11 60. Cooperation and Execution of Necessary Documents. All Parties shall cooperate in
12 good faith and execute all documents to the extent reasonably necessary to effectuate the terms of
13 this Agreement.

14 61. Binding Agreement. The Parties warrant that they understand and have full
15 authority to enter into this Agreement, and further intend that this Agreement shall be fully
16 enforceable and binding on all Parties, and agree that it shall be admissible and subject to
17 disclosure in any proceeding to enforce its terms.

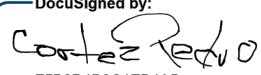
18 IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this
19 Joint Stipulation of Class and Representative Action Settlement Between Plaintiff and Defendant
20 as of the date(s) set forth below:

21 **SIGNATURES**

22
23 **READ CAREFULLY BEFORE SIGNING**

24
25 DATED: 12/28/2022

PLAINTIFF PEDRO CORTEZ

26 DocuSigned by:
27 
28 F9B8D1E2C1EB4A3...
Plaintiff Pedro Cortez

DATED: January 10, 2023

DEFENDANT BG TRUCKING, INC.

DocuSigned by:

Carlos Guillen

38E4AF15FC02463...

President

Please Print Name of Authorized Signatory

APPROVED AS TO FORM

DATED: December 28, 2022

DIVERSITY LAW GROUP, P.C.

Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

Attorneys for Plaintiff and the Class

DATED: January 11, 2023

BOOTH LLP

Hillary Arrow Booth

Allan P. Bareng

Attorneys for Defendant BG Trucking, Inc.

EXHIBIT A

NOTICE OF CLASS ACTION SETTLEMENT (“NOTICE”)

IF YOU ARE A CURRENT OR FORMER NON-EXEMPT EMPLOYEE OF BG TRUCKING, INC. IN THE STATE OF CALIFORNIA AND WERE PAID ON A MILEAGE BASIS AT ANY TIME FROM FEBRUARY 12, 2020, THROUGH SEPTMEBER 30, 2022 (THE “CLASS”) YOU MAY BE ABLE TO COLLECT MONEY FROM A CLASS ACTION SETTLEMENT.

The San Diego County Superior Court (“Court”) authorized this Notice to be sent by Phoenix Settlement Administrators (“Settlement Administrator”). This is not an advertisement. This is not a solicitation from a lawyer.

DEFENDANT CANNOT AND WILL NOT RETALIATE AGAINST YOU IN ANY WAY FOR PARTICIPATING IN THIS SETTLEMENT.

«BarcodeString»
SIMID «SIMID»

ATTN: «FirstName» «LastName»
«Address1» «Address2»
«City» «Abbrev» «Zip»

**YOU ARE ESTIMATED TO RECEIVE
APPROXIMATELY**

Individual PAGA Payment: \$ _____

Individual Settlement Payment: \$ _____

**THROUGH THIS CLASS ACTION
SETTLEMENT**

- Pedro Cortez (“Named Plaintiff”) has sued BG Trucking, Inc. (“Defendant” or “BG Trucking”) on behalf of himself and all other similarly situated employees.
- The parties to the lawsuit have reached a tentative settlement, and the Court has preliminarily approved it.
- The settlement resolves the lawsuit.
- Your legal rights are affected whether you act or do not act. Read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT

You Can DO NOTHING

You will receive a payment from the settlement. If you do nothing, you continue your participation in this lawsuit, and you will be impacted by the outcome of this case. You will receive a settlement payment; however, you will **lose** any rights to sue Defendant separately for the same legal claims made in the lawsuit. The estimated amount of your settlement payment is shown above. To receive your settlement payment, all you need to do is keep the Settlement Administrator informed of your current mailing address. Once the Court grants final approval of the settlement, the Settlement Administrator will mail your check to the address on file for you.

**You Can ASK TO BE
EXCLUDED FROM THE
CLASS SETTLEMENT**

**(Deadline: [RESPONSE
DEADLINE])**

If you ask to be excluded from the class settlement, you will get no payment from the class settlement, but you will keep any rights to sue Defendant separately for the same legal claims made in this lawsuit. However, you may not request exclusion from the settlement of the PAGA claim. **Important: You cannot ask to be excluded and still get a class settlement payment.**

You Can OBJECT TO THE SETTLEMENT

(Deadline: **RESPONSE DEADLINE**)

If you do not like the class settlement, you can send a written objection to the Settlement Administrator by the deadline. However, you may not object to the settlement of the PAGA claim. If your objection is overruled, you will still be bound by the terms of the settlement and will receive a settlement payment. **Important: If you object to the settlement, you cannot also ask to be excluded.**

THESE RIGHTS AND OPTIONS—AND THE DEADLINES TO EXERCISE THEM—ARE EXPLAINED IN THIS NOTICE.

The Court is in charge of this lawsuit and still has to decide whether to approve the settlement. Payments will be made if the Court approves the settlement and after appeals, if any, are resolved. **Please be patient.**

1. Why Should You Read this Notice?

You should read this Notice because you may be entitled to money from a class action settlement.

2. What is this Lawsuit About?

In the lawsuit, the Named Plaintiff claimed that Defendant failed to pay employees who were paid on a mileage/piece-rate basis for time spent working for Defendant on non-productive tasks, including but not limited to pre-trip inspections, fueling the truck, and loading/unloading the truck. In addition, because employees were paid on a mileage/piece-rate basis, Plaintiff claimed that any duty-free breaks were not paid breaks. Plaintiff further claimed that, as a result of the underpayment and/or nonpayment of wages and rest break premiums, the wage statements provided to employees displayed inaccurate rates of pay, net and gross wages earned, and total hours worked. Moreover, Plaintiff claimed that the wage statements provided to piece-rate employees did not identify the applicable rates or pay or miles used to calculate their wages.

Defendant denies the allegations in the lawsuit and denies it has engaged in any wrongdoing. Defendant asserts that it complied with all legal requirements but is resolving this action in order to avoid the costs of further legal proceedings.

3. Why is this a Class Action?

This lawsuit is a class action. In a class action, one or more persons, called a class representative (in this case, Pedro Cortez), sue on behalf of people who allegedly have similar claims. All these people are a class or class members. One case resolves the issues for all class members, except for those who exclude themselves from the class. The San Diego County Superior Court is in charge of the case. The lawsuit is known as *Pedro Cortez v. BG Trucking, Inc.*, Case No. 37-2021-000107423-CU-OE-CTL.

4. Why is There a Settlement?

The Court did not decide in favor of Named Plaintiff or Defendant. Named Plaintiff thinks he could have won at trial. Defendant thinks that it would have won at trial. But there was no trial. Instead, both parties agreed to a settlement. That way, they avoid the cost of litigation, and the individuals potentially affected will get compensation. The class representative and the attorneys think the settlement is best for Class Members.

5. How Do I Know If I Am Part of the Settlement?

The Court has decided that any current or former non-exempt employee of BG Trucking, Inc. in the State of California who was paid on a mileage basis at any time from March 10, 2017, through September 30, 2022 (the “Class Period”), is a Class Member.

6. What Does the Settlement Provide?

The proposed settlement provides for a payment by Defendant of \$130,000.00 to fully and finally resolve all claims in the lawsuit (referred to as the “Gross Settlement Amount”). The total amount to be distributed to Class Members who can be located, and who do not exclude themselves from the class settlement, will be the value of the Gross Settlement Amount after deducting the following (the “Net Settlement Amount”): (a) settlement administration costs not to exceed \$.\$3,250.00; (b) class representative service award to Named Plaintiff not to exceed \$5,000.00 for his work and efforts in prosecuting this case, and for undertaking the risks of costs (in the event the outcome of this lawsuit was not favorable); (c) Class Counsel’s attorneys’ fees not to exceed \$43,333.33; (d) Class Counsel’s actual litigation costs and expenses as supported by declaration not to exceed \$15,000.00; and (f) payment of \$5,000.00 for PAGA penalties to the Labor and Workforce Development Agency and Aggrieved Employees. **Class Counsel’s attorneys’ fees and costs, and Named Plaintiff’s class representative service award, remain subject to Court approval.**

No portion of the Net Settlement Amount will be returned to Defendant under any circumstances.

7. How Much Will My Payment Be?

Your estimated share of the settlement of class claims is shown above and is based on the number of pay periods you worked for Defendant during the Class Period, as compared to the total number of pay periods worked by all Class Members during that Class Period. Based upon Defendant’s records, the number of pay periods you worked during the Class Period is determined to be ******.

Your estimated share of the settlement of PAGA claims is shown above and is based on the number of pay periods you worked for Defendant during the period of February 12, 2020, through September 30, 2022 (“PAGA Period”), as compared to the total number of pay periods worked by all Aggrieved Employees during the PAGA Period. Based upon Defendant’s records, the number of pay periods you worked during the PAGA Period is determined to be ******.

If this information appears correct, you do not need to do anything further to receive your settlement payment. If you disagree with the number of pay periods assigned to you, see below (Question 9).

8. How Do I Get a Payment?

To qualify for payment, you need not do anything. The Settlement Administrator will mail you a check within approximately seventy-five days after the Court enters a judgment based on this settlement, but possibly later depending on whether there is any appeal of the judgment entered by the Court.

9. What If I Believe the Information is Inaccurate?

If you believe the number of pay periods you worked for Defendant during the Class Period and/or PAGA Period is inaccurate, you may dispute it by sending a letter to [ADMINISTRATOR'S ADDRESS] no later than [RESPONSE DEADLINE]. Be sure to include your name, address, telephone number, last four digits of your Social Security Number, and a statement as to what and why you are disputing. Also attach a copy of any documentation you want to include to support your dispute.

10. What Am I Giving Up to Get a Settlement Payment?

Unless you request to be excluded from the class settlement, you remain a part of the Settlement Class, and that means you cannot sue, continue to sue, or be part of any other lawsuit against Defendant for any legal claims that are based on the facts alleged by Named Plaintiff in the lawsuit, or any claims that could have been brought under the facts and allegations made in the lawsuit. Specifically, you will be giving up or “releasing” Defendant from the claims described below:

- a) All claims, including penalties, interest, costs, and attorneys’ fees related thereto, that were or could have been brought under the facts and allegations made in the operative Second Amended Complaint for violation of Labor Code sections 201, 202, 203, 204, 226, 226.2, 226.7, 510, 558, 1194, 1197, and 1197.1 during the Class Period.
- b) All claims for penalties under the California Private Attorneys General Act, including interest, costs and attorneys’ fees related thereto, predicated on the violation of Labor Code sections 201, 202, 203, 204, 226, 226.2, 226.7, 510, 558, 1194, 1197, and 1197.1 that accrued during the PAGA Period and were alleged in the PAGA Notice and operative Second Amended Complaint.

11. How Do I Exclude Myself from the Settlement?

To exclude yourself from the class settlement (also referred to as “opt-out”), you must mail a letter to the Settlement Administrator saying that you want to be excluded from the *Pedro Cortez v. BG Trucking, Inc.* settlement.

Be sure to include your name, address, telephone number, last four digits of your Social Security Number, and your signature. You must mail your exclusion letter postmarked no later than [RESPONSE DEADLINE], to the Settlement Administrator at [ADMINISTRATOR'S ADDRESS].

If you submit a timely and valid “opt-out” request, you will no longer be a member of the Class and you will not receive any money from the class portion of the settlement, or be able to object to the settlement, but you will not be legally bound by anything that happens regarding the class action portion of this lawsuit. You will keep any rights to sue (or continue to sue) Defendant in the future for the class claims made in this lawsuit, at your own expense.

You may not opt-out, or request to be excluded, from the settlement of the PAGA claim. Thus, even if you submit

a timely and valid “opt-out” request, you will still receive an Individual PAGA Payment and will be deemed to have released the PAGA claims. Your estimated Individual PAGA Payment is shown above.

12. If I Don’t Exclude Myself, Can I Sue Defendant or Get Money from the Settlement?

If you do not exclude yourself from the settlement, you cannot sue Defendants for any of the claims that this settlement resolves. If you have a pending lawsuit against Defendants, speak to your lawyer in that case immediately. You may have to exclude yourself from this case to continue on with your own lawsuit. Remember, the exclusion deadline is **[RESPONSE DEADLINE]**.

If you exclude yourself from the Settlement, you will not receive any money from the settlement of the class action claims in this matter.

13. How Do I Tell the Court that I Don’t Believe that the Settlement is Fair?

If you are a Class Member and you do not exclude yourself from the class settlement, you can object to the settlement if you believe that the settlement is unfair or inadequate. You can give reasons why you think the Court should not approve the settlement. If you object and follow the procedures set out in this section, your objection will be considered.

If you decide to object to the proposed settlement, you must do so in writing. Upon the submission of your objection, you may then also appear at the final approval hearing for the settlement (see section 17 below for details as to when this hearing will take place), either in person or through an attorney at your own expense.

All objections must be signed by you and must include: (1) your full name, signature, address, and telephone number; (2) a written statement of the basis for your objection; and (3) any copies of papers, briefs, or documents upon which the objection is based. You must mail your objection postmarked no later than **[RESPONSE DEADLINE]**, to the Settlement Administrator at **[ADMINISTRATOR’S ADDRESS]**.

There is no right to object to the settlement of the PAGA claim. Thus, even if you submit a timely objection to the class settlement, you will still receive an Individual PAGA Payment and will be deemed to have released the PAGA claims. Your estimated Individual PAGA Payment is shown above.

14. What is the Difference Between Objecting and Excluding?

Objecting is simply telling the Court that you don’t like something about the settlement. You can object only if you stay in the Class. Excluding yourself, on the other hand, is telling the Court that you don’t want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you. However, if you file an objection, you will still receive settlement benefits under the settlement if it is approved by the Court. **Do not submit both an Objection and a Request for Exclusion.** If you do, the Request for Exclusion will be invalid, you will be included in the Settlement Class, and you will be bound by the terms of the Settlement.

15. Do I Have a Lawyer in this Case?

The Court decided that the law firm of Diversity Law Group, which represents the Named Plaintiff, is also qualified to represent you and all Class Members. You will not be charged for these lawyers. This law firm is referred to as “Class Counsel.” If you want to be represented by your own lawyer, you may hire one at your own expense.

16. How Will the Attorneys for the Class and the Class Representative be Paid?

The attorneys for the Named Plaintiff and the Class will be paid from the Gross Settlement Amount. Class Counsel will ask for up to \$43,333.33 in attorneys' fees and for actual litigation costs incurred up to a maximum of \$15,000.00, the actual amount of which will be determined by the Court at the final approval hearing (see section 17 below for details as to when this hearing will take place). Class members (like you) do not have to pay the fees and costs of Class Counsel. **If you elect, however, to hire your own lawyer, you have to make your own arrangements to compensate your lawyer.**

If approved by the Court, a service payment for the Named Plaintiff of an amount up to \$5,000.00 will be paid from the Gross Settlement Amount for his work and efforts in prosecuting this case, and for undertaking the risks of costs (in the event the outcome of this lawsuit was not favorable).

17. Notice of Hearing on Final Approval and Objections to Class Action Settlement.

The Court has preliminarily approved the settlement and will hold a final approval hearing to decide whether to give final approval to the settlement. This hearing will be held before the Honorable Joel R. Wohlfeil on [REDACTED], 2023, at [REDACTED] a.m., in Department C-73 of the Superior Court of California for the County of San Diego, located at 330 W. Broadway, San Diego, CA 92101, to determine whether the proposed settlement is fair, reasonable, and adequate, and whether it should be finally approved by the Court. If there are objections, the Court will consider them. After the hearing, the Court will decide whether to approve the settlement. We do not know how long this decision will take. The final approval hearing may be continued without further notice. The Court may adjourn or continue the hearing from time to time, without further notification, as the Court may direct.

Once final approval is granted by the Court, the Court will enter judgment against Defendant, and all Class Members who have not requested exclusion will be deemed to have waived the Released Claims set forth above.

18. How Do I Get More Information?

This Notice summarizes the proposed settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement by contacting Class Counsel.

19. What is the Contact Information for the Court and Class Counsel?

The addresses for the Court and Class Counsel are as follows:

COURT	CLASS COUNSEL
Clerk of Court San Diego County Superior Court 330 W. Broadway San Diego, California 92101	DIVERSITY LAW GROUP, P.C. Larry W. Lee – lwlee@diveristylaw.com Kristen M. Agnew – kagnew@diversitylaw.com Nicholas Rosenthal – nrosnethal@diversitylaw.com 515 S. Figueroa Street, Suite 1250 Los Angeles, California 90071 Telephone: (213) 488-6555 Facsimile: (213) 488-6554

WHAT IF I HAVE QUESTIONS?

Page 6 of 7

QUESTIONS? CALL TOLL FREE 1-800-_____

If you have any questions about the settlement, you may contact the Settlement Administrator:

Pedro Cortez v. BG Trucking, Inc
c/o _____
Address
City, CA, Zip
Toll-Free Phone Number: [insert]

PLEASE DO NOT TELEPHONE DEFENSE COUNSEL, THE COURT, OR THE OFFICE OF THE COURT CLERK FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS.