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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA**

RICARDO TREJO, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

TOTAL DISTRIBUTION SERVICE, INC.,
a California limited liability company; and
DOES 1 through 100,

Defendants.

Case No. 56-2021-00553039-CU-OE-VTA

*[Assigned for all purposes to the Hon. Jeffrey
Bennett, Dept. 21]*

**DECLARATION OF FLETCHER W.
SCHMIDT IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SETTLEMENT APPROVAL OF CLAIMS
BROUGHT UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
REASONABLE ATTORNEYS' FEES AND
COSTS, AND ENHANCEMENT AWARD**

Date: May 10, 2022
Time: 8:30 a.m.
Dept.: 21
Reservation: 2625631

Action Filed: April 9, 2021
Trial Date: None Set

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I, FLETCHER W. SCHMIDT, declare as follows:

1. I am a Partner at the Haines Law Group, APC, and counsel for Plaintiff Ricardo Trejo (“Plaintiff”) in the above-captioned matter. I am a member in good standing of the bar of the State of California and am admitted to practice in this Court. I have personal knowledge of the facts stated in this declaration and could testify competently to them if called upon to do so.

2. I am a 2012 graduate of Loyola Law School, Los Angeles, where I graduated *cum laude* and was awarded membership in the Order of the Coif. Since graduating from law school, I worked as a law clerk for the law firm of Tredway, Lumsdaine & Doyle, where I was part of the defense team for two class actions, including one wage and hour class action in Los Angeles County Superior Court. From August 2013 to March 2016, I worked as an associate attorney at Boren, Osher & Luftman LLP. Since March 2016 I have worked at my current firm, Haines Law Group, APC, where, in 2018, I became a Partner.

3. During my time with Boren, Osher & Luftman LLP and Haines Law Group, APC, my practice has been solely devoted to litigating plaintiff-side wage and hour class actions in California state and federal court. I am currently responsible for managing a caseload of over seventy-five (75) active wage and hour class actions in which I am integrally involved in all aspects of the litigation.

4. The following is a non-exhaustive list of class action settlements in which I have been named as Class Counsel, and which have been granted final approval: *Julio v. Anthony, Inc.*, Case No. CV14-03172 AB (SHx), United States District Court, Central District of California, Honorable Judge Andre Birotte, Jr. presiding (approving an hourly rate of \$350 for work performed in 2014 and 2015); *Litt v. Western Stone & Metal Corp.*, Case No. 3:14-cv-02804-PJH, United States District Court, Northern District of California, Honorable Judge Phyllis J. Hamilton presiding (approving an hourly rate of \$350 for work performed in 2014 and 2015); *Rubalcava v. United Towing and Transport Burbank, et al.*, Case No. BC518468, California Superior Court, County of Los Angeles, Honorable Judge Kenneth Freeman presiding (approving an hourly rate of \$350 for work performed in 2013, 2014 and 2015);

1 *Rivera Regalado v. Jaguar Farm Labor Contracting*, Case No. CV 130569, California Superior
2 Court, County of San Luis Obispo, Honorable Martin J. Tangeman presiding (approving an
3 hourly rate of \$350 for work performed in 2014 and 2015); *Sanchez v. Res-Care, Inc.*, Case No.
4 BC526175, California Superior Court, County of Los Angeles, Honorable John S. Wiley
5 presiding (approving an hourly rate of \$350 for work performed in 2013, 2014 and 2015);
6 *Rodas v. Gateways Hospital and Mental Health Center*, Case No. BC503179, California
7 Superior Court, County of Los Angeles, Honorable Judge Amy D. Hogue presiding (approving
8 an hourly rate of \$350 for work performed in 2014 and 2015); *Prado v. Warehouse Demo*
9 *Services, Inc.*, Case No. CV14-3170 JFW (Ex), United States District Court, Central District of
10 California, Honorable Judge John F. Walter presiding (approving an hourly rate of \$350 for
11 work performed in 2014 and 2015); *Shaw v. Conant Auto Retail, San Diego*, Case No. 37-2014-
12 00044052-CU-OE-CTL, California Superior Court, County of San Diego, Honorable Judge
13 Joan M. Lewis presiding (approving an hourly rate of \$375 for work performed in 2014, 2015,
14 and 2016); *Tirado v. Ricon Corp.*, Case No BC537042, California Superior Court, County of
15 Los Angeles, Honorable Judge John Shepard Wiley, Jr. presiding (approving an hourly rate of
16 \$375 for work performed in 2014, 2015, and 2016); *Tesla Motors Wage and Hour Litigation*,
17 JCCP 4792, California Superior Court, County of Santa Clara, Honorable Peter H. Kirwan
18 presiding (approving an hourly rate of \$375 for work performed in 2013, 2014, 2015, and
19 2016); *Lopez v. RM HQ LLC, et al.*, Case No. BC525592, California Superior Court, County of
20 Los Angeles, Honorable Elihu M. Berle presiding (approving an hourly rate of \$375 for work
21 performed in 2013, 2014, 2015, and 2016); *Horta v. Searles Valley Minerals, Inc.*, Case No.
22 CIVDS 1507615, California Superior Court, County of San Bernardino, Honorable Donald
23 Alvarez presiding (approving an hourly rate of \$375 for work performed in 2015 and 2016);
24 *Mansilla v. Haeco Americas Line Services, LLC, et al*, Case No. BC615310, Superior Court of
25 California, County of Los Angeles, Honorable Judge Elihu M. Berle presiding (approved at an
26 hourly rate of \$425 for work performed in 2016 and 2017); *Khosravi v. Enterprise Rent-A-Car*
27 *Company of Los Angeles, LLC, et al.*, Case No. 30-2016-00829923-CU-OE-CXC, Superior
28 Court of California, County of Orange, Honorable Judge Thierry Patrick Colaw presiding

(approved at an hourly rate of \$425 for work performed in 2016 and 2017); *Nieves v. Ta Chen International, Inc.*, Case No. BC609005, Superior Court of California, County of Los Angeles, Honorable Judge Kenneth R. Freeman presiding (approved at an hourly rate of \$425 for work performed in 2016 and 2017); *Berkel v. Pride Bakeries, LLC*, Case No. 30-2017-00923148-CU-OE-CXC, Superior Court of California, County of Orange, Honorable Judge William Claster presiding (approved at an hourly rate of \$425 for work performed in 2017 and 2018); *Ruvalcaba Quiroz v. Circle M Contractors, Inc.*, Case No. 30-2016-00885065-CU-OE-CXC, Superior Court of California, County of Orange, Honorable William D. Claster presiding (approving an hourly rate of \$425 for work performed in 2016, 2017 and 2018); *Armenta, et al., v. California Friends Homes d/b/a Quaker Gardens*, Case No. 30-2016-00883282-CU-OE-CXC, Superior Court of California, County of Orange, Honorable Randall J. Sherman presiding (approving an hourly rate of \$425 for work performed in 2016, 2017 and 2018); *Sandra Zinnerman v. Tumbleweed Educational Enterprises, Inc.*, Case No. BC673708, Superior Court of California, County of Los Angeles, Honorable Maren E. Nelson presiding (approving an hourly rate of \$425 for work performed in 2016, 2017, and 2018); *Tina Arellano v. Williams Sonoma Stores, Inc.*, Case No. BC693760, Los Angeles County Superior Court, Honorable Daniel J. Buckley, presiding; *William Cuellar v. UMA Enterprises, Inc.*, Case No. BC657146, Los Angeles County Superior Court, Honorable Maren E. Nelson, presiding (approving an hourly rate of \$475 for work performed in 2017, 2018 and 2019); *Maria C. Garcia, et al. v. Simplified Labor Staffing Solutions, Inc.*, Case No. BC696898, Los Angeles County Superior Court, Honorable Elihu M. Berle, presiding (approving an hourly rate of \$475 for work performed in 2018 and 2019); *Arturo Delgado v. Spears Manufacturing Co.*, Case No. BC709665, Los Angeles County Superior Court, Honorable Maren E. Nelson, presiding (approving an hourly rate of \$595 for work performed in 2018, 2019 and 2020); *Soto v. L I Metal Systems*, Case No. 37-2017-00009607-CU-OE-CTL, San Diego County Superior Court, Honorable Timothy Taylor, presiding (approving an hourly rate of \$595 for work performed in 2017-2020); *Michael Fishback v. Paragon Framing, Inc.*, Case No. CIVDS1906610, San Bernardino County Superior Court, Honorable David Cohn, presiding (approving an hourly rate of \$595 for work

performed in 2019 and 2020); and *Francisco Garcia v. Searing Industries, Inc.*, Case No. CIVDS1932477, San Bernardino County Superior Court, Honorable David Cohn, presiding (approving an hourly rate of \$595 for work performed in 2019 and 2020).

5. I have also moved to certify and have received an order certifying a class action and/or conditionally certifying a collective action as Class Counsel in the following cases: *Medeiros v. Vortex Financial Management Inc.*, Case No. 30-2013-00644741-CU-OE-CXC, California Superior Court, County of Orange, Honorable Judge Gail A. Andler presiding (certifying a class of employees who were misclassified as independent contractors); *Javine v. San Luis Ambulance Service, Inc.*, Case No. CV13-07480 BRO (SSx), United States District Court, Central District of California, Honorable Judge Beverly Reid O'Connell presiding (conditionally certifying an unpaid FLSA overtime wage class); *Prado v. Warehouse Demo Services, Inc.*, Case No. CV14-3170 JFW (Ex), United States District Court, Central District of California, Honorable Judge John F. Walter presiding (certifying a rest period violation class and conditionally certifying a FLSA unpaid overtime wage class); *Bower v. Cycle Gear, Inc.*, Case No. CV14-2712 HSG, United States District Court, Northern District of California, Honorable Judge Haywood S. Gilliam, Jr. presiding (conditionally certifying an unpaid FLSA overtime wage class); *Vega v. Weatherford U.S., Limited Partnership*, Case No. CV14-1790-JLT, United States District Court, Eastern District of California, Honorable Judge Jennifer L. Thurston presiding (conditionally certifying an unpaid FLSA overtime wage class); *Galvan v. AMVAC Chemical Corporation*, Case No. 30-2014-00716103-CU-OE-CXC, California Superior Court, County of Orange, Honorable Judge William Claster presiding (certifying unpaid overtime wage class and waiting time penalty class); *Camacho v. Residential Fire Systems, Inc.*, Case No. 30-2015-00775372-CU-OE-CXC, California Superior Court, County of Orange, Honorable Judge Glenda Sanders presiding (certifying five separate classes for claims for unpaid wages, unreimbursed expenses, failure to authorize and permit rest periods, and derivative claims); *Ontiveros v. Safelite Fulfillment, Inc., et al*, Case No. CV 15-7118-DMG (RAOx), United States District Court, Central District of California, Honorable Dolly M. Gee presiding (certifying six classes of employees for rest period violations, wage statement

violations, meal period violations, and overtime and double-time violations); and *Staublein v. Wells Fargo Bank, National Association*, Case No. CIVDS1712267, San Bernardino Superior Court, Honorable David Cohn presiding (certifying a wage statement class).

6. In 2018-2021, Thomson Reuters and Los Angeles Magazine recognized me as a Top Young Attorney in Southern California in the annual Rising Star Edition of Super Lawyers. This is an honor awarded to no more than two-and-a-half percent (2.5%) of attorneys under the age of forty in Southern California each year.

7. As counsel for Plaintiff, I have been closely involved in all aspects of this litigation since its inception and believe that the proposed Settlement is a fair and reasonable result for the aggrieved employees and the State of California.

8. Defendant operates a trucking business that provides shipping and logistics services for companies such as Amazon and Costco. Plaintiff worked for Defendant as a local driver from July 20, 2015, to June 8, 2020. Plaintiff's job duties consisted of making intrastate deliveries of cargo containers. Plaintiff, like all aggrieved employees, was employed by Defendant as non-exempt employee during the PAGA Period and was subject to Defendant's wage and hour policies and practices.

9. On February 2, 2021, Plaintiff provided written notice of his intent to file a claim for PAGA civil penalties to the LWDA and Defendant. On April 9, 2021, Plaintiff filed this representative action alleging that Defendant: (1) failed to pay the minimum wage for all hours worked (Labor Code §§ 204, 1182.12, 1194, 1194.2, 1197, 1198); (2) failed to pay all overtime wages (Labor Code §§ 204, 510, 558, 1194, 1198); (3) failed to provide all lawful meal periods (Labor Code §§ 226.7, 512, 558, 1198); (4) failed to provide accurate and compliant itemized wage statements (Labor Code § 226 *et seq.*); (5) failed to pay all final wages upon separation (Labor Code §§ 201-203); (6) failed to pay all earned wages at least twice during each calendar month (Labor Code § 204); and (7) failed to maintain accurate records (Labor Code §§ 558, 1174). A true and correct copy of Plaintiff's pre-filing letter sent to the LWDA on February 2, 2021, is attached hereto as **Exhibit 2**.

1 10. On January 19, 2022, the Parties attended a full-day mediation session with
2 Steven J. Serratore, Esq., a respected wage and hour mediator. In connection with mediation
3 but prior to any formal written or deposition discovery, Defendant produced timekeeping and
4 payroll records for 30% of the non-exempt employees who worked during the during the
5 PAGA Period. Plaintiff and his retained expert, who holds a Ph.D. in labor economics,
6 analyzed these records and created a comprehensive exposure analysis for the PAGA claim.
7 During mediation, the Parties debated the legal bases for their claims and defenses and their
8 respective data analyses. At the conclusion of mediation, Mr. Serratore provided a mediator's
9 proposal to fully resolve the PAGA claim, which the Parties ultimately accepted. Over the
10 following months, the Parties negotiated the final terms and executed the proposed Settlement
11 now before this Court for approval.

12 11. Plaintiff alleges that Defendant failed to compensate aggrieved employees for
13 work that was performed while clocked out but while employees were still subject to
14 Defendant's control. Specifically, Defendant required Plaintiff and other aggrieved employees
15 to clock out for supposed meal periods to avoid inspection citations at the container port.
16 However, while waiting in line at the port, employees were required to remain in the company
17 truck during meal periods so that they could move the truck forward as the line progressed –
18 resulting in employees not being relieved of duty during meal periods. Defendant then failed to
19 pay employees all minimum and overtime wages for this on-duty meal period time.

20 12. Plaintiff also alleges that Defendant maintained an unlawful policy/practice of
21 requiring employees to delay or skip first and second meal periods while in line at the container
22 port, an allegation supported by the timekeeping records. Specifically, Plaintiff alleges that
23 employees were not provided adequate time in their schedule to take 30 minute meal periods
24 before the end of the fifth and tenth hour of work. As a result, employees were required to
25 delay their meal periods or even forego them entirely to get to their destination on time.
26 Plaintiff's expert determined that 76.17% of meal periods for shifts over 6.0 hours reflect late
27 (commencing after the fifth hour of work), short (less than 30 minutes), or not recorded at all.
28

1 Plaintiff's expert also determined that over 99% of shifts in excess of 10.0 hours do not reflect
2 a compliant second meal period.

3 13. As a result of Defendant's alleged failures to pay all minimum and overtime
4 wages as well as meal period premium wages, Plaintiff alleges that Defendant failed to issue
5 accurate and itemized wage statements and failed to pay all wages owed to employees upon
6 their separation of employment.

7 14. Plaintiff contends that he could prove a PAGA violation in each of the 5,072
8 pay periods in the PAGA Period due to Defendant's high meal period violation rate (76.17%
9 for first meals and 99% for second meals) and the alleged regularity of off-the-clock work
10 during meal periods. Plaintiff calculates Defendant's maximum possible PAGA exposure at
11 \$507,200 (5,072 pay periods x \$100 per violation). Plaintiff discounted the total exposure
12 figure by 75% to account for the risk of losing on the merits and the risk of the Court reducing
13 the penalties, to arrive at a realistic recovery of \$152,160.

14 15. Defendant first contends that the upcoming U.S. Supreme Court decision in
15 *Viking River Cruises, Inc. v. Moriana*, Case No. 20-1573, will overturn *Iskanian* and require
16 dismissal of this PAGA lawsuit. Defendant also maintains that aggrieved employees are
17 exempt from overtime claims under the Federal Motor Carrier Exemption ("FMCE"), and that
18 their California meal period claims are preempted by the Federal Motor Carrier Safety
19 Administration's ("FMCSA") hours of service rules. The Ninth Circuit recently upheld the
20 FMCSA's determination that California's meal and rest period laws, as applied to "property-
21 carrying commercial motor vehicle drivers," are preempted by federal hours of service rules.

22 16. Under the Federal Motor Carrier Exemption, overtime pay is not required for
23 drivers of trucks in excess of 10,000 pounds who also transport goods over state borders. 29
24 USC § 213(b)(1). Additionally, truckers who drive trucks weighing more than 26,001 pounds
25 or weighing between 10,000 and 26,001 pounds (while engaged in interstate commerce) are
26 exempt from overtime pay under California law.

27 17. Notwithstanding a complete bar to Plaintiff's claims, Defendant contends that it
28 has never required employees to work off the clock during meal periods. Instead, Defendant

1 provides employees with autonomy to schedule and take their meal periods as they please
2 during the day. Defendant does not police meal periods. To the extent that any employee took a
3 meal period later than the fifth or tenth hour of work, or the timekeeping records do not reflect
4 a second meal period, Defendant contends that the decision to delay or waive a meal period
5 was the sole choice of the employee, not Defendant's policy/practice.

6 18. Because Plaintiff's underlying causes of action will fail, Defendant contends
7 that the PAGA claim will also fail. Defendant also maintains that given its good faith defenses,
8 this Court would exercise its discretion to substantially reduce any PAGA penalties awarded.
9 Further, Defendant argues that Plaintiff could only seek PAGA penalties at the \$100 "initial"
10 violation rate, as opposed to the \$200 "subsequent" violation rate, since Defendant had never
11 been put on notice by a court or the Labor Commissioner that its practices violated the Labor
12 Code until Plaintiff initiated this action.

13 19. The mediator's proposal for a \$130,000 Maximum Settlement Amount
14 ("MSA") represents approximately 85.44% of Plaintiff's reasonably forecasted recovery. After
15 deducting amounts for requested attorneys' fees and costs, Plaintiff's enhancement award, and
16 settlement administration costs, the remaining Net Settlement Amount ("NSA") distributable to
17 the aggrieved employees and the LWDA is estimated to be \$47,078.33. A true and correct copy
18 of the Settlement Agreement is attached hereto as **Exhibit 1**. The Notice of PAGA Settlement
19 and Release of Claims ("Notice") is attached as **Exhibit A** to the Settlement Agreement

20 20. Plaintiff's expert's data analysis determined that there were approximately
21 5,072 aggregate pay periods worked by the aggrieved employees during the PAGA Period. The
22 average recovery is estimated to be approximately \$170.57 and the highest possible recovery,
23 should an aggrieved employee have been employed for the entirety of the PAGA Period, is
24 estimated to be approximately \$257.58.

25 21. My firm's fee request of \$43,333.33 (one-third of the MSA) is the same
26 percentage sought in *Laffitte* and is consistent with my firm's experience in similar wage-and-
27 hour class and representative action matters. The fee award requested here is justified because
28 my firm achieved a monetary recovery for the aggrieved employees and the State of California

1 in an uncertain and risky case, while bearing the substantial burdens of representation on a
2 contingency basis. My firm's efforts include conducting pre-filing investigation, analyzing
3 Plaintiff's claims, conducting legal research regarding the merits and legal bases of Plaintiff's
4 claims, drafting and filing Plaintiff's complaint and LWDA notice letter, reviewing documents
5 and data produced by Defendant, meeting and conferring with Defendant's counsel regarding
6 Defendant's informal document production, extensively evaluating the timekeeping and payroll
7 data with a retained expert prior to mediation, preparing for and attending mediation, drafting a
8 mediation brief, negotiating and drafting the long-form Settlement Agreement and Notice,
9 preparing this Motion for settlement approval and all supporting documents hereto, and
10 otherwise litigating the case. My firm will spend additional time attending the hearing on this
11 Motion and overseeing the settlement administration process.

12 22. Since undertaking representation of Plaintiff, my firm dedicated substantial
13 resources to this litigation, including expending \$31,588.34 in litigation costs, without
14 receiving any compensation to date. My firm's request is fair, adequate, and reasonable, as all
15 of these costs are documented and reasonably incurred. A true and correct copy of my firm's
16 expense summary is attached hereto as **Exhibit 3**.

17 23. Plaintiff also requests that the Court approve \$3,000.00 in administration costs
18 to the Settlement Administrator, Simpluris. Simpluris was selected to administer this
19 Settlement because it is an experienced and well-respected settlement administrator and
20 returned a competitive bid for the work to be performed.

21 24. Plaintiff seeks an enhancement award of \$5,000.00. This request is reasonable
22 given Plaintiff's efforts in this case and the risks he undertook on behalf of the aggrieved
23 employees. Among other things, Plaintiff searched for and gathered relevant documents for use
24 in the lawsuit and provided factual information to my firm, had regular discussions with
25 attorneys at my firm regarding the claims in the lawsuit, the facts and legal theories at issue in
26 the case, including Defendant's pay and meal period practices, discussed the status of the case
27 and general case strategy with attorneys at my firm on many occasions, and helped my firm
28 prepare for mediation.

1 25. I confirm that I do not have an interest in, and I am not involved in the
2 governance or work of, the proposed cy pres recipient, Court Appointed Special Advocates
3 ("CASA") of Ventura County. Likewise, I do not have a relationship with the proposed
4 Settlement Administrator, Simpluris.

5 26. Concurrently with the filing of this motion, Plaintiff provided notice of the
6 proposed Settlement, as well as copies of the motion and supporting papers, to the LWDA.
7 Attached hereto as **Exhibit 4** is a true and correct copy of the LWDA's confirmation of receipt
8 of Plaintiff's submission.

9 I declare under penalty of perjury under the laws of the United States and the state of
10 California that the foregoing is true and correct. Executed on April 14, 2022, at El Segundo,
11 California.

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EXHIBIT 1

PAGA SETTLEMENT AGREEMENT AND RELEASE

IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff Ricardo Trejo ("Plaintiff"), for himself and on behalf of the State of California and all Private Attorneys General Act ("PAGA") Settlement Members, on the one hand, and Defendant Total Distribution Service, Inc. ("Defendant"), on the other (collectively, the "Parties"), subject to the approval of the Court in accordance with California Labor Code section 2699(l)(2), that the Settlement of this Action shall be effectuated upon and subject to the following terms and conditions.

The Parties agree that the Action (as defined in Section I below) shall be, upon approval by the Court, ended, settled, resolved, and concluded without any admission of fault or liability, as set forth in this Agreement and for the consideration set forth herein, including but not limited to a release of claims by Plaintiff and the PAGA Settlement Members as set forth herein.

I. DEFINITIONS

Unless otherwise defined herein, the following terms used in this Agreement shall have the meanings ascribed to them as set forth below:

- (a) "Action" means the civil action, *Ricardo Trejo, an individual, on behalf of himself and all others similarly situated, Plaintiff, v. Total Distribution Service, Inc., a California Corporation, and DOES 1 through 100, Defendants*, pending in the Superior Court of California in and for the County of Ventura, Case No. 56-2021-00553039-CU-OE-VTA.
- (b) "Agreement" means this PAGA Settlement Agreement and Release.
- (c) "Approval Date" means the date the Court grants approval of this Agreement by signing and filing the Final Order.
- (d) "Complaint" means the operative Complaint, which was filed on or about April 9, 2021, for Violation of The California Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*).
- (e) "Court" means the Superior Court for the State of California, County of Ventura.
- (f) "Defendant" means the Defendant in this Action, Total Distribution Service, Inc.
- (g) "Defense Counsel" or "Counsel for Defendant" means:

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- (h) “PAGA Settlement Members” or “aggrieved employees” means all Defendant’s current and former non-exempt employees in the State of California from February 2, 2020 through March 20, 2022.
- (i) “PAGA Settlement Member Payment” means the portion of the Gross Settlement Amount that shall be paid to each PAGA Settlement Member per the terms and conditions of this Agreement.
- (j) “Effective Date” means the date by which all of the following have occurred:
 - (1) The Court has approved the Agreement;
 - (2) The Court has entered the Final Order;
 - (3) Defendant has transferred the Gross Settlement Amount to the Settlement Administrator; and,
 - (4) The later of either:
 - i. The thirtieth (30th) calendar day after the Final Order has been filed provided no motion to vacate the judgment, appeal, writ or other appellate proceeding having been filed; or
 - ii. The seventh (7th) calendar day after any motion to vacate the judgment, appeal, writ, or other appellate proceeding opposing the Agreement has been finally dismissed with no material change to the terms of this Agreement and there is no right to pursue further remedies or relief. Should any appeal not result in approval of the Parties’ Agreement as described herein, the Agreement shall be void *ab initio* and of no further force or effect, and the Parties shall be returned in all respects to their respective positions as of January 19, 2022.
- (k) “Final Order” means the final Court order entered in this Action in accordance with the terms herein, the Court adopting and approving this Agreement (and the terms of Settlement described herein) under the specific terms requested, and the Court retaining jurisdiction over the enforcement, implementation, construction, administration, and interpretation of the Settlement.
- (l) “Gross Settlement Amount” means the total gross settlement amount of One Hundred Thirty Thousand Dollars and Zero Cents (\$130,000.00) to be paid by Defendant, subject to pro rata increase, as provided by this Agreement to fully and finally settle, resolve and conclude this Action as provided under this Agreement, without any admission of fault or liability.
- (m) “LWDA” means the State of California Labor and Workforce Development Agency.
- (n) “Named Plaintiff” or “Plaintiff” means Ricardo Trejo, individually and in his capacity as a representative of the State of California on behalf of other aggrieved employees.

- (o) “PAGA” means the California Labor Code Private Attorneys General Act of 2004, California Labor Code section 2698 *et seq.*
- (p) “PAGA Claims” means all claims, demands, liabilities, damages, attorney’s fees, costs, and penalties against the Released Parties, that could have been recovered under the PAGA based on the facts asserted in the Action or any other claims under PAGA that could have been asserted in the Action based on the facts alleged, including but not limited to claims under PAGA arising from alleged unpaid wages, minimum wages, regular wages, overtime and double time wages; meal period violations; untimely payment of wages; wage statement violations; separation pay violations; and failure to maintain accurate records during the PAGA Claim Period.
- (q) “PAGA Claim Period” means any time during the period of February 2, 2020 through March 20, 2022.
- (r) “Plaintiff’s Counsel” means:

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Facsimile: (424) 292-2355
- (s) “Released Parties” means Defendant, its parents, subsidiaries, affiliates, insurers, related entities and divisions, and its and their respective: (i) predecessors, successors, and assigns, and (ii) current and former agents, heirs, executors, administrators, principals, officers, directors, shareholders, employees, founders, members, assigns, insurers, attorneys, and all others claiming through or by any of them
- (t) “Settlement Administrator” means Simpluris.

II. APPROVAL AND IMPLEMENTATION OF SETTLEMENT

A. Cooperation

The Parties will cooperate in seeking approval of the Settlement described in this Agreement. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed, including responding to challenges by any third parties, and shall take all steps that may be requested by the Court relating to the approval and implementation of the Settlement described in this Agreement.

B. Court Approval

Because this Action includes PAGA claims, this Agreement requires review and approval by the Court. See Cal. Lab. Code § 2699(l)(2). This Agreement is expressly contingent upon the Court's approval of this Settlement and the terms and material conditions of this Agreement (including, but not limited to, issuance of the Final Order in a form agreed to by the Parties and entry of the Final Order in accordance therewith). The Court's failure to approve this Settlement shall render the entire Agreement voidable and unenforceable as to the Parties, at the option of either Plaintiff or Defendant. Each party may exercise its option to void this Agreement as provided above by giving notice, in writing, to the other party, and to the Court within fifteen (15) days after the Final Order denying approval of the Settlement has been received by the party seeking to void the Agreement.

Plaintiff will file a Motion for Approval of PAGA Settlement and for an Order approving this Agreement. If the Court does not grant the request for approval and issue the Final Order, under the specific terms requested, the Parties agree to meet and confer to address the Court's concerns and determine whether resolution of the Action can be obtained in a manner consistent with the Court's concerns.

Plaintiff shall submit a copy of the Final Order in this Action and a copy of any other order providing for or denying an award of civil penalties to the LWDA within ten (10) days after entry of the Final Order, in compliance with section 2699(l)(3) of the California Labor Code.

C. Gross Settlement Amount Payment Procedures

(a) Gross Settlement Amount

In exchange for the releases, obligations, and promises set forth in this Agreement (and subject to the terms and conditions contained in this Agreement), Defendant agrees to pay the Gross Settlement Amount of \$130,000.00, which is the total and all-inclusive amount Defendant will be obligated to pay under the Settlement embodied by this Agreement (subject only to a pro-rata increase described in Section II(C)(c) below). The Gross Settlement Amount shall be allocated as follows:

- (1) **Attorneys' Fees and Costs:** Plaintiff's Counsel may apply to the Court for up to one-third of the total Gross Settlement Amount (currently estimated at \$43,333.33) ("Fee Amount") as attorneys' fees and will request up to \$35,000.00 in actual costs ("Actual Costs") pursuant to PAGA, which provides for the recovery of attorneys' fees and costs. Any modification of such application by the Court shall not (i) affect the enforceability of the Agreement, (ii) provide any of the Parties with the right to terminate the Agreement, or (iii) impose any obligation on Defendant to increase the consideration paid in connection with the Settlement. Plaintiff's Counsel's entitlement to fees and costs is a material condition of this Settlement, but the Fee Amount awarded is not.
- (2) **Settlement Administration Fees:** All Settlement Administration expenses shall be paid from the Gross Settlement Amount and shall not exceed Three Thousand

Dollars (\$3,000.00) (“Settlement Administration Fees”). Settlement Administration expenses paid to an outside Settlement Administration service must come out of the Gross Settlement Amount. The Parties agree to retain Simpluris to serve as the Settlement Administrator in this matter. If the Settlement Administration Fees are less than the estimated amount of \$3,000.00, the remainder will be distributed amongst the PAGA Settlement Members pursuant to the allocation formula set forth in Section II(C)(a)(4).

- (3) Plaintiff’s Enhancement Payment: Defendant agrees not to oppose Plaintiff Ricardo Trejo’s request for an enhancement payment of Five Thousand Dollars and Zero Cents (\$5,000.00) in recognition for the work Plaintiff has done on behalf of the State of California and the aggrieved employees. If Plaintiff’s request for an enhancement payment is not approved and/or reduced by the Court, any amount not approved and/or reduced by the Court will be distributed amongst the PAGA Settlement Members pursuant to the allocation formula set forth in Section II(C)(a)(4).
- (4) Payment of PAGA Penalties: The total sum available for payment of PAGA penalties shall be calculated by deducting the Fee Amount, Actual Costs, Settlement Administration Fees, and Plaintiff’s Enhancement Payment from the \$130,000.00 Gross Settlement Amount (this will yield the “Net Settlement Amount”). Thereafter, seventy-five percent (75%) of the Net Settlement Amount shall be distributed to the LWDA (“LWDA Payment”) and the remaining twenty-five percent (25%) shall be distributed to the PAGA Settlement Members (“PAGA Settlement Member Payment”).
 - i. The “PAGA Settlement Member Payment” for each PAGA Settlement Member shall be determined based on a formula taking into account the number of each PAGA Settlement Member’s “Qualifying Pay Periods.” A “Qualifying Pay Period” shall be defined as any pay period in which a PAGA Settlement Member was employed as non-exempt employee by Defendant between February 2, 2020, and March 20, 2022, as determined by Defendant’s records.
 - ii. The amount paid to each PAGA Settlement Member will be determined as follows: The 25% amount to be distributed to PAGA Settlement Members will be divided by the total number of Qualifying Pay Periods for all PAGA Settlement Members during the relevant time period (February 2, 2020 up through and including March 20, 2022) (“Qualifying Pay Period Amount”). Each PAGA Settlement Member will then be paid an amount equal to the Qualifying Pay Period Amount multiplied by that PAGA Settlement Member’s total number of Qualifying Pay Periods.

(b) Funding and Distribution Process

Within thirty (30) days after the Court enters Final Order, Defendant shall transmit to the Settlement Administrator the Gross Settlement Amount to be held by the Settlement Administrator in a low-risk interest bearing account, until distribution following the Effective Date.

Within ten (10) business days after the Court enters the Final Order, Defendant shall also provide the Settlement Administrator with a PAGA Employees List which shall state each PAGA Settlement Members' (1) full name, (2) last known address, (3) social security number, (4) dates of employment, and (5) the numbers of pay periods he or she worked. This information is being provided confidentially to the Settlement Administrator only, and the Settlement Administrator shall treat the information as private and confidential and take all necessary precautions to maintain the confidentiality of contact information of the PAGA Settlement Members. This information is to be used only to carry out the Settlement Administrator's duties as specified in this Agreement.

Within ten (10) business days of receiving the PAGA Employees List, the Settlement Administrator will disburse PAGA Settlement Member Payments to each PAGA Settlement Member, will disburse the Attorneys Fees to Plaintiff's Counsel, will disburse the Attorneys' Costs to Plaintiff's Counsel, and will send a check to the LWDA for the LWDA Payment, in the amount calculated pursuant to the terms of this Agreement.

Prior to the disbursement to PAGA Settlement Members, the Settlement Administrator shall run a skip trace to obtain updated address information for every PAGA Settlement Member. PAGA Settlement Members who receive their PAGA Settlement Member Payments via U.S. Mail will receive a letter along with their PAGA Settlement Member Payment explaining the reason for the payment, substantially in the form attached hereto as **Exhibit A**, the content of which will be submitted to the Court for approval. Such mailing as described in this paragraph shall be conclusive evidence of payment of the PAGA Settlement Member Payments, and shall satisfy any and all due process requirements. All funds not claimed within 180 days of mailing of payment shall be sent to Court Appointed Special Advocates ("CASA") of Ventura County, a 501(c)(3) nonprofit organization (EIN 45-1649286) providing legal assistance and aid to abused and neglected children.

(c) Pro Rata Increase

Defendant has represented that there are approximately 69 aggrieved employees who worked approximately 5,072 pay periods between February 2, 2020 and January 19, 2022. This estimate serves as the basis for Plaintiff's accepting the Settlement. In the event the actual number of pay periods during this period from (February 2, 2020 through January 19, 2022) exceeds 5,072 by more than 15%, Defendant will increase the Gross Settlement Amount on a proportional basis (i.e., if there was 20% increase in pay periods, Defendant would increase the Settlement Amount by an additional 5%).

(d) No Additional Contribution by Defendant

Defendant's monetary obligation under this Agreement is limited to the Gross Settlement Amount (subject only to a pro-rata increase described in Section II(C)(c) above). Defendant shall not be required to pay more than the Gross Settlement Amount to obtain the relief (including, but not limited to, the Settlement, releases of claims, issuance of the Final Order, dismissal of all claims in the Action with prejudice) provided in this Agreement or to fully and finally settle and resolve the PAGA Claims.

Notwithstanding the above, in the event that this Agreement is voided or nullified, in whole or in part, however that may occur, or the Settlement of the Action is barred by operation of law, or invalidated, or ordered not to be carried out by a Court of competent jurisdiction, Defendant will cease to have any obligation to pay any portion of the Gross Settlement Amount to anyone under the terms of this Agreement.

(e) Tax Indemnity

The PAGA Settlement Member Payments are penalties, shall be reported on an IRS Form 1099 (to the extent required by law), and will not be subject to local, state or federal tax withholdings. Each PAGA Settlement Member will be responsible for paying all applicable state, local and federal income taxes on all amounts received pursuant to this Settlement, and the Released Parties shall not be held liable for any failure to do so.

III. LIMITATIONS ON USE OF THIS SETTLEMENT

A. No Admission

Defendant disputes that Plaintiff or any PAGA Settlement Member are entitled to any additional wages other than those already paid and/or any penalties, dispute the allegations and each and every cause of action in the Action, and dispute that the Action may be maintained on a class or representative basis. This Agreement is entered into solely for the purpose of compromising highly disputed claims. This Agreement and the payment of the Gross Settlement Amount and the other considerations recited herein represent the compromise of disputed claims. Nothing in this Agreement is intended as or may be construed as an admission of liability, unlawful conduct, or wrongdoing by Defendant (and/or any of the Released Parties) in any way, shape or form, and Defendant and the Released Parties deny any such liability or wrongdoing.

B. Non-Evidentiary Use

Except for purposes of effectuating the Settlement pursuant to this Agreement and/or for Defendant (and/or a Released Party) to establish that a PAGA Settlement Member has resolved any of his/her claims released through this Agreement, and regardless of whether the Final Order occurs, neither this Agreement nor any of its terms (including, but not limited to, the payment of the Gross Settlement Amount) nor the Settlement itself will be construed as, offered, or admitted in evidence as, received as, or deemed to be evidence, in any further proceeding in the Action, or any other civil, criminal, and/or administrative action or proceeding, for any purpose adverse to Defendant or any of the Released Parties, including but not limited to, evidence of a presumption, concession, indication, or admission by Defendant or any of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage.

C. Nullification

If (a) the Court should for any reason fail to approve this Settlement consistent with the specific terms agreed to by the Parties and set forth herein, (b) the Court should for any reason fail to enter the Final Order, or (c) the Final Order is reversed, modified, or declared or rendered void, then this Agreement shall be deemed voidable and unenforceable as to Plaintiff and Defendant, at the option of either party. Each party may exercise its option to void this Settlement as provided above by

giving notice, in writing, to the other, and to the Court within fifteen (15) days after the Final Order granting approval of the Settlement or a Final Order denying approval of the Settlement has been received by the party seeking to void the Settlement.

Where either party has exercised its option to void this Settlement, (i) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect; and (ii) all Parties to this Agreement and the pleadings in this Action shall stand in the same position they were the day prior to the January 19, 2022 mediation in this Action, without prejudice to either Party; and (iii) Defendant will not have any obligation to pay any portion of the Gross Settlement Amount to anyone under the terms of this Agreement.

IV. RELEASE AND WAIVER OF CLAIMS

A. Claims Released By Plaintiff, the LWDA, and All PAGA Settlement Members

Upon the Effective Date, Plaintiff, the LWDA, all PAGA Settlement Members, and the State of California shall be deemed to have fully, finally, and forever waived, released, relinquished, and discharged Defendant and each and all of the Released Parties from all claims, demands, liabilities, damages, attorney's fees, costs, and penalties, that could have been recovered under the PAGA based on the facts asserted in the Action or any other claims under PAGA that could have been asserted in the Action based on the facts alleged, including but not limited to claims under PAGA arising from alleged unpaid wages, minimum wages, regular wages, overtime and double time wages; meal period violations; untimely payment of wages; wage statement violations; separation pay violations; and failure to maintain accurate records during the PAGA Claim Period.

B. No Additional Attorneys' Fees or Costs

The Parties agree to bear its/their own attorneys' fees and costs related to this Action except as specifically provided above with respect to the Fee Amount and Enforcement Action.

V. MISCELLANEOUS PROVISIONS

A. LWDA Notice

The LWDA will be given notice of this Settlement pursuant to the 2016 amendments to the PAGA. Cal. Lab. Code § 2699(1)(2). Plaintiff will serve a copy of the Settlement to the LWDA on the same day the Settlement is filed with the Court.

Additionally, a copy of the Court's Final Order will be submitted to the LWDA within ten (10) days after entry of the Final Order, pursuant to California Labor Code § 2699(1)(3).

B. Voluntariness

This Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of any of the Parties, or of any other person, firm or other entity.

C. Amendments

The terms and provisions of this Agreement may be amended or modified only by an express written agreement that is signed by the Plaintiff and an authorized representative of Defendant.

D. Assignment

None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Party, PAGA Settlement Member, the State of California, Plaintiff's Counsel, or Defense Counsel without the express written consent of each Party. Plaintiff individually and expressly warrants that he has not transferred to any person or entity, any right or cause of action, or claim released by this Agreement.

E. Governing Law

This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California, irrespective of the State of California's choice of law principles.

F. Entire Agreement

This Agreement contains the entire understanding of the Parties hereto in respect of the subject matter contained herein. There are no restrictions, promises, representations, warranties, covenants, or undertakings governing the subject matter of this Agreement other than those expressly set forth or referred to herein. This Agreement supersedes all prior agreements and understandings among the Parties hereto with respect to the subject matter hereof, including, without limitation, the Memorandum of Understanding executed by the Parties.

G. Waiver of Compliance

A waiver or failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

H. Counterparts

This Agreement, and any amendments hereto, may be executed in any number of counterparts and any Party and/or its/their respective counsel hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. A fax or PDF signature on this Agreement shall be as valid as an original signature.

I. Meet and Confer Regarding Dispute(s)

Should any dispute(s) arise among the Parties or their respective counsel regarding the implementation or interpretation of this Agreement, Plaintiff's Counsel and Defense Counsel shall meet and confer in an attempt to resolve such disputes prior to submitting such disputes to the Court.

J. Agreement Binding on Successors

This Agreement shall bind and inure to the benefit of the Parties hereto and to their respective successors, assigns, legatees, heirs, and personal representatives.

K. Cooperation in Drafting

The Parties have cooperated in the negotiation and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party, or the Party's counsel, was the drafter or participated in the drafting of this Agreement.

L. Fair Settlement

Plaintiff, Defendant, Plaintiff's Counsel, and Defense Counsel believe that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms' length negotiation, taking into account all relevant factors, current and potential, and is consistent with public policy, and fully complies with applicable provisions of law.

M. Headings

The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement and shall not be considered in interpreting this Agreement.

N. Continuing Jurisdiction

The Parties agree that upon the occurrence of the Final Order pursuant to the terms of this Agreement, this Agreement shall be enforceable by the Court pursuant to Code of Civil Procedure section 664.6 and the Court shall retain exclusive and continuing equity jurisdiction of this Action over all Parties and the PAGA Settlement Members to the fullest extent to interpret, enforce and effectuate the terms, conditions, intents and obligations of the Agreement.

O. No Reliance on Representations

The Parties have made such investigation of the facts and the law pertaining to the matters described herein and to this Agreement as they deem necessary, and have not relied, and do not rely, on any statement, promise, or representation of fact or law, made by any of the other Parties, or any of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted rights, or with regard to the advisability of making and executing this Agreement, or with respect to any such matters. No representations, warranties, or inducements have been made to any Party concerning this Agreement.

P. Enforcement Action

In the event that one more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Agreement or to declare rights and/or obligations under this Agreement, the successful Party or Parties will be entitled to recover from

the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date set forth below.

APPROVED AND ACCEPTED.

Dated: MARCH 25, 2022


Ricardo Trejo (Mar 25, 2022 15:29 PDT)
RICARDO TREJO, Plaintiff and PAGA Representative

Dated: _____, 2022

TOTAL DISTRIBUTION SERVICE, INC.

By _____

PRESIDENT

**APPROVED AS TO FORM AND
ATTORNEY OBLIGATIONS ONLY**

Dated: March 29, 2022

HAINES LAW GROUP, APC

By 

FLETCHER W. SCHMIDT
Attorneys for Plaintiff

Dated: _____, 2022

FISHER & PHILLIPS LLP

By _____
USAMA KAHF
NATHAN LOW
Attorneys for Defendant

the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date set forth below.

APPROVED AND ACCEPTED.

Dated: _____, 2022

RICARDO TREJO, Plaintiff and PAGA Representative

Dated: 3/25/2022, 2022

TOTAL DISTRIBUTION SERVICE, INC.

By  _____
PRESIDENT

**APPROVED AS TO FORM AND
ATTORNEY OBLIGATIONS ONLY**

Dated: _____, 2022

HAINES LAW GROUP, APC

By _____
FLETCHER W. SCHMIDT
Attorneys for Plaintiff

Dated: 3/25/2022, 2022

FISHER & PHILLIPS LLP

By  _____
USAMA KAHF
NATHAN LOW
Attorneys for Defendant

NOTICE OF SETTLED REPRESENTATIVE ACTION

Ricardo Trejo v. Total Distribution Services, Inc. (Ventura County Superior Court, Case No. 56-2021-00553039-CU-OE-VTA)

P.O. Box

Telephone:

«Barcode»

«BarcodeString»

SIMID «SIMID»

«FirstName» «LastName»

«Address1» «Address2»

«City» «State» «Zip»

You are receiving this notice and check as a result of a recent lawsuit brought on a representative basis under the Private Attorneys General Act, Labor Code § 2698 *et seq.* (“PAGA”) (“the Action”), *Ricardo Trejo v. Total Distribution Services, Inc.* in Ventura County Superior Court, Case Number 56-2021-00553039-CU-OE-VTA that has been settled. The plaintiff in the lawsuit is Ricardo Trejo (“Plaintiff”) and the defendant is Total Distribution Services, Inc. (“Defendant”).

This notice is not intended to be, and should not be construed as, an expression of any opinion by the Court with respect to the truth of the allegations raised in the Action or the merits of the claims or defenses asserted. The Court has made no determination as to whether the claims alleged by Plaintiff have any merit.

Instead, both parties agreed to resolve the Action with no decision or admission of who is right or wrong. By agreeing to resolve the lawsuit, the parties avoid the risks and costs associated with trial. Defendant is not admitting to any allegations or wrongdoing in this case, and in fact expressly denies that any of its practices at issue in this lawsuit were or are unlawful.

Plaintiff and the State of California are releasing PAGA Claims against Defendant. The “PAGA Claims” are all claims, demands, liabilities, damages, attorney’s fees, costs, and penalties that could have been recovered under the PAGA based on the facts asserted in the Action or any other claims under PAGA that could have been asserted in the Action based on the facts alleged, including but not limited to claims under PAGA arising from alleged unpaid wages, minimum wages, regular wages, overtime and double time wages; meal period violations; untimely payment of wages; wage statement violations; separation pay violations; and failure to maintain accurate records. This release will only apply to claims under PAGA that arose during the period of February 2, 2020, through March 20, 2022 (the “PAGA Claim Period”).

By Order dated <<APPROVAL DATE>>, the Superior Court approved the Settlement of the PAGA claims. According to Defendant’s records, you are an Aggrieved Employee, meaning that you were employed by Total Distribution Services, Inc. as an hourly, non-exempt employee at any time during the PAGA Claim Period and therefore entitled to a share of the PAGA settlement based upon the Court approved allocation. Enclosed with this Notice is your check for your share, and there is no action required of you in this matter. The settlement check will remain valid for 180 days. Any check not negotiated within 180 days will be distributed to Court Appointed Special Advocates (“CASA”) of Ventura County, a 501(c)(3) nonprofit organization (EIN 45-1649286) providing legal assistance and aid to abused and neglected children. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

Calculation of Individual PAGA Payment: You worked <<THIS EMPLOYEE’S PAY PERIODS>> during the PAGA Claim Period. The total number of pay periods worked by all Aggrieved Employees during the PAGA Claim Period is <<TOTAL PAY PERIODS>>. Your Individual PAGA Payment has been calculated at \$<<AMOUNT PAID TO THIS EMPLOYEE>>. Your payment was calculated by taking the share of the Net Settlement Amount paid to Aggrieved Employees and multiplying it by a fraction with your proportionate share of pay periods worked during the PAGA Claim Period as the numerator and the total number of pay periods worked by all Aggrieved Employees during the PAGA Claim Period as the denominator.

Please Note: One hundred percent (100%) of your Individual PAGA Payment under this Settlement will be considered penalties and will be reported on an IRS Form 1099. You should rely on your own tax advisors as to the tax consequences of your Individual PAGA Payment. Neither Counsel for Plaintiff, Counsel for Defendant, nor the Settlement Administrator may legally provide you with advice regarding the tax implications of the receipt of this settlement payment. Nothing within this notice or any other communication will constitute or be construed or relied upon as tax advice. Enclosed are the appropriate tax forms pertaining to your payment.

Do not call or write the Court or Office of the Clerk to ask questions about the settlement or about the claims process. If you have any questions, you may call or write to <<ADMIN CONTACT INFO>> using the contact information at the top of this correspondence. Alternatively, if you wish to find out more about the settlement, you may refer to the pleadings and other papers filed in the Action, which are available at the Ventura County Superior Court.

EXHIBIT 2

HAINES LAW GROUP
EMPLOYMENT ATTORNEYS

February 2, 2021

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Ricardo Trejo v. Total Distribution Service, Inc.*

To Whom It May Concern:

Please be advised that this law firm represents Ricardo Trejo in claims arising from his employment with Total Distribution Service, Inc., and Does 1 through 100 (“Defendants”). Mr. Trejo is an “aggrieved employee” within the meaning of Labor Code section 2699.3 as to all of the violations alleged herein. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 754 (“any Labor Code penalties recoverable by state authorities may be recovered in a PAGA action by a person who was employed by the alleged violator and affected by at least *one* of the violations alleged in the complaint.”)(emphasis added). The purpose of this letter is to comply with Labor Code § 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, “aggrieved employees” includes all of Defendants’ non-exempt employees who worked for Defendants in California during the one year immediately preceding the date of this letter through the present.

Mr. Trejo worked for Defendants as a “commercial truck driver” from approximately 2015 to June 2020. Defendants are in the trucking business and provide several services including hauling a wide variety of items such as fertilizer, televisions, and other products for companies such as Amazon and Costco. Mr. Trejo’s job duties consisted of making local intrastate deliveries on behalf of various companies to pick up and drop off cargo containers. Mr. Trejo’s regular shift began at approximately 4:30 a.m. and ended at approximately 4:30 p.m. Monday through Friday. On occasions, Mr. Trejo and other aggrieved employees worked on weekends.

Throughout Mr. Trejo and other aggrieved employees’ employment with Defendants, Defendants have maintained unlawful meal period policies/practices that fail to provide timely, duty-free 30-minute first meal periods commencing before the end of the fifth hour of work, as well as second meal periods for shifts in excess of 10.0 hours. Specifically, Defendants have failed to schedule meal periods throughout the workday and Mr. Trejo and other aggrieved employees’ driving schedule does not accommodate for 30-minute duty-free meal periods. Furthermore Mr. Trejo and other aggrieved employees were

required to clock-out for a meal period before reaching the end of their sixth hour of work, even if they were unable to actually take a duty-free meal period. For example, on many occasions Mr. Trejo and other aggrieved employees were in their trucks waiting in line to enter facilities at the Port of Long Beach when it was time to take their meal period, but because they could not exit their vehicle, they had to clock out for a non-existent meal period while remaining on duty, and had to either forgo or postpone their meal period until later in their shift. On occasions when Mr. Trejo and other aggrieved employees were not provided with all lawful meal periods to which they were entitled, Defendants have failed to pay Mr. Trejo and other aggrieved employees an additional hour of premium pay at their respective regular rates of pay for each workday in which a meal period violation occurred, as required by Labor Code § 226.7.

Defendants' policy/practice of requiring Mr. Trejo and other aggrieved employees to clock-out for meal periods, when no such duty-free meal periods were actually provided, has also resulted in the underpayment of all minimum and overtime wages earned. See *Kaanaana, et al. v. Barrett Business Services, Inc., et al.*, 29 Cal. App. 5th 778, 808 (2018) (finding that time worked during meal periods results in liability for both "premium pay for the meal period violation and payment of minimum wages for all time worked.") As a result of these unlawful policies/practices, Mr. Trejo and other aggrieved employees were not paid all minimum and overtime wages owed to them.

As a result of Defendants' failure to pay all overtime and minimum wages and meal period premium wages, Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Trejo and other aggrieved employees, and failed to pay Mr. Trejo and other aggrieved employees all wages earned at the time of their separation of employment.

Based on the foregoing, Mr. Trejo seeks to represent himself and all aggrieved employees, as defined by Labor Code § 2699(c), which includes all of Defendants' non-exempt employees who worked for Defendants from one year prior to the date of this letter through the present.

As described above, Defendants committed the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 9 ("Wage Order 9"):

Minimum Wage Violations

Defendants failed to conform their pay practices to the requirements of the law. This unlawful conduct includes Defendants' failure to pay Mr. Trejo and other aggrieved employees for all hours worked including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code and Wage Order 9. Wage Order 9, § 4 and California Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law. California Labor Code § 1198 makes unlawful the employment of an employee under conditions that the IWC prohibits. California Labor Code §§ 1194(a)

and 1194.2(a) provide that an employer who has failed to pay its employees the legal minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages due and interest thereon.

Overtime Wage Violations

Defendants were required to properly pay Mr. Trejo and other aggrieved employees for all overtime hours worked pursuant to California Labor Code § 1194 and Wage Order 9. Wage Order 9, § 3 requires an employer to pay an employee “one and one-half (1½) times the employee’s regular rate of pay” for work in excess of 8 hours per work day and/or in excess of 40 hours of work in the workweek. Defendants caused Mr. Trejo and other aggrieved employees to work overtime hours but did not compensate Mr. Trejo or other aggrieved employees at one and one-half times their regular rate of pay for all such hours.

Meal Period Violations

As alleged above, Defendants failed to provide Mr. Trejo and other aggrieved employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 9, § 11. As a result, Mr. Trejo and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 (“If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”).

Wage Statement Violations

Defendants were required to furnish Mr. Trejo and other aggrieved employees with complete and accurate itemized wage statements that showed, among other things, their rates of pay, corresponding number of hours worked at each rate of pay, total gross wages earned, and total net wages earned. *See* Labor Code §§ 226(a) and 1174(d); Wage Order 9, § 7. As a result of Defendants’ failure to pay all meal period premiums, and minimum and overtime wages, Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Trejo and other aggrieved employees in violation of Labor Code § 226. Defendants’ failure to comply with its wage statement obligations was knowing and intentional, and Mr. Trejo and other aggrieved employees have suffered injury as a result.

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separations of employment. Defendants failed to timely pay Mr. Trejo and other aggrieved employees all of their final wages at the time of separation, which included, among other things, underpaid overtime and minimum wages, and meal period premium wages. Pursuant to Labor Code § 203, Defendants’ failure to pay all final wages

due to Mr. Trejo and other aggrieved employees was willful and, consequently, entitles Mr. Trejo and other aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day Defendants failed to pay their final wages after their separations, up to a maximum of thirty days.

As an “aggrieved employee,” Mr. Trejo will initiate a civil action on behalf of himself and other aggrieved employees to recover damages, statutory penalties, and civil penalties (including an amount equal to the unpaid wages) resulting from the wage and hour violations alleged herein. Based on Mr. Trejo’s own investigation, and on information and belief, Defendants committed and continue to commit the following Labor Code violations:

- a. Defendants violated Labor Code §§ 558, 1182.12, 1194, 1194.2, and 1197 by failing to pay Mr. Trejo and other aggrieved employees the statutory minimum wage for all hours worked;
- b. Defendants violated Labor Code §§ 204, 510, 558, 1194 and 1198 by failing to pay Mr. Trejo and other aggrieved employees all overtime compensation earned;
- c. Defendants violated Labor Code §§ 226.7, 512, and 558 by failing to provide all meal periods as required by law and failing to pay meal period premiums to Mr. Trejo and similarly aggrieved employees at these employees’ respective regular rates of compensation for meal period violations;
- d. Defendants violated Labor Code § 226, *et seq.*, by failing to furnish Mr. Trejo and other aggrieved employees with accurate and complete itemized wage statements;
- e. Defendants violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due to Mr. Trejo and other aggrieved employees;
- f. Defendants violated Labor Code § 204 by failing to pay Mr. Trejo and other aggrieved employees all wages earned at least twice during each calendar month; and
- g. Defendants violated Labor Code §§ 1174 and 1198 by failing to maintain accurate records on behalf of Mr. Trejo and other aggrieved employees.

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LWDA
February 2, 2021
Page 5 of 5

Pursuant to Labor Code § 2699.3, please notify us and Defendants if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
HAINES LAW GROUP, APC

A handwritten signature in blue ink, appearing to read "FWS", followed by a period and a capital "A".

Fletcher W. Schmidt

cc: Total Distribution Service, Inc. (via certified mail)

PROOF OF ACCEPTANCE (ELECTRONIC)

PRODUCED DATE: 02/03/2021

HAINES LAW GROUP:

The following is information for Certified Mail™/RRE item number:

9214 8901 9403 8331 3348 14

Our records indicate that this item was accepted by the USPS at:

SHIPMENT RECEIVED ACCEPTANCE PENDING EL SEGUNDO,CA 90245 02/02/2021

ORIGINAL INTENDED RECIPIENT:

TOTAL DISTRIBUTION SERVICE INC

C/O: MICHAEL PIANTANIDA

555 BLUEBIRD CANYON DR

LAGUNA BEACH CA 92651-3306

JR

From: noreply@salesforce.com on behalf of [LWDA DO NOT REPLY](#)
To: [Jonathan Ramirez](#)
Subject: Thank you for submission of your PAGA Case.
Date: Tuesday, February 02, 2021 5:43:53 PM

2/2/2021

LWDA Case No. LWDA-CM-820514-21
Law Firm : Haines Law Group, APC
Plaintiff Name : Ricardo Trejo
Employer: Total Distribution Service, Inc.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT 3

Haines Law Group, APC

Expense Summary

Ricardo Trejo v. Total Distribution Service, Inc.

EXPENSE	AMOUNT
Copying, Postage, and FedEx Costs	\$366.84
Document Purchase Fees	\$27.30
Expert Fees	\$19,493.00
Filing and Service Fees	\$1,701.20
Mediation Fees	\$10,000.00
TOTAL:	\$31,588.34

EXHIBIT 4