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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

TONY NUNEZ, individually, and on behalf of
all others similarly situated,

Plaintiff,

v.

GABRIEL CONTAINER, a California
corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 21STCV09787

CLASS ACTION

[Assigned to: Hon. Lawrence P. Riff, Dept. 7]

**DECLARATION OF JUSTIN F.
MARQUEZ IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

[Filed concurrently with: Plaintiff's Notice of
Motion and Motion for Preliminary Approval
of Class Action Settlement, Memorandum of
Points and Authorities; Declaration of Tony
Nunez; and [Proposed] Order]

PRELIMINARY APPROVAL HEARING

Date: June 27, 2023

Time: 10:00 a.m.

Dept: 7

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1. I am admitted, in good standing, to practice as an attorney in the State of California, the Ninth Circuit Court of Appeals, and the United States District Courts for the Central, Southern, Eastern, and Northern Districts of California. I am a Senior Partner at Wilshire Law Firm, PLC, counsel of record for Plaintiff Tony Nunez (“Plaintiff”). I have personal knowledge of the facts set forth in this declaration and could and would competently testify to them under oath if called as a witness. This Declaration is submitted in support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement.

2. This is a wage and hour class and Private Attorneys General Act (“PAGA”) (Cal. Lab. Code §§ 2699, *et seq.*) representative action. Plaintiff and the putative class members worked in California as hourly-paid or non-exempt employees for Defendant Gabriel Container (“Defendant”) during the class period. Defendant operates a company that manufactures cardboard containers in Santa Fe Springs.

4. On March 12, 2021, Plaintiff filed a putative wage and hour class action complaint against Defendant for: (1) failure to pay minimum and straight time wages (Labor Code §§ 204, 1194, 1194.2, and 1197); (2) failure to pay overtime wages (Labor Code §§ 1194 and 1198); (3) failure to provide meal periods (Labor Code §§ 226.7 and 512); (4) failure to authorize and permit rest periods (Labor Code §§ 226.7); (5) failure to timely pay final wages at termination (Labor Code §§ 201-203); (6) failure to provide accurate itemized wage statements (Labor Code § 226);

1 and (7) unfair business practices (Business and Professions Code 17200, *et seq.*) (*Id.* at ¶ 4.) On
2 March 12, 2021, Plaintiff also sent a notice to Defendant and the California Labor & Workforce
3 Development Agency (“LWDA”) alleging similar wage and hour violations pursuant to the PAGA.
4 Attached as **Exhibit 1** is a true and correct copy of Plaintiff’s Notice of Labor Code Violations and
5 PAGA Penalties. Plaintiff also paid the \$75.00 filing fee on March 12, 2021.

6 5. On December 3, 2021, Plaintiff filed a First Amended Class & Representative
7 Action Complaint, which added a claim for civil penalties under the PAGA.

8 DISCOVERY AND INVESTIGATION

9 6. Following the initial Status Conference, Plaintiff propounded formal written
10 discovery. However, the Parties later agreed to stay formal discovery in exchange for participating
11 in private mediation and engaging in informal discovery. In advance of mediation, Defendant
12 produced a sample of timekeeping and pay records for the class members, which included time
13 records and corresponding pay records for approximately 25% of the total shifts in the class period.
14 Defendant also provided documents of its wage and hour policies and practices during the class
15 period and information regarding the total number of current and former employees.

16 7. After reviewing documents regarding Defendant’s wage and hour policies and
17 analyzing Defendant’s timekeeping and payroll records with the assistance of a retained expert,
18 Class Counsel was able to evaluate the probability of class certification, success on the merits, and
19 Defendant’s maximum monetary exposure for all claims. Class Counsel also investigated the
20 applicable law regarding the claims and defenses asserted in the litigation. Class Counsel reviewed
21 these records and prepared a damage analysis prior to mediation.

22 SETTLEMENT NEGOTIATIONS

23 8. On May 31, 2022, the Parties participated in private mediation with experienced
24 class action mediator Honorable Steven R. Denton (Ret.) (*Id.* at ¶ 7.) The mediation was
25 conducted via Zoom. The settlement negotiations were at arm’s length and, although conducted
26 in a professional manner, were adversarial. The Parties went into the mediation willing to explore
27 the potential for a settlement of the dispute, but each side was also prepared to litigate their position
28 through trial and appeal if a settlement had not been reached.

1 9. After extensive negotiations and discussions regarding the strengths and
2 weaknesses of Plaintiff's claims and Defendant's defenses, the mediator issued a mediator's
3 proposal that the Parties ultimately accepted approximately one week later. The Parties
4 subsequently negotiated and drafted a long-form agreement, the material terms of which are
5 encompassed within the Settlement Agreement . Attached as **Exhibit 2** is a true and correct copy
6 of the Class Action and PAGA Settlement Agreement and Class Notice ("Settlement" or
7 "Settlement Agreement").

8 10. The Parties used the Los Angeles Superior Court's Form Class Notice. Because the
9 Parties began negotiating the long-form agreement before Los Angeles Superior Court issued its
10 model long-form agreement, the Parties did not use the Court's model version. However, the terms
11 are largely similar to the terms used in the Los Angeles Superior Court model version.

12 11. Class Counsel submitted the proposed Settlement to the LWDA before filing the
13 Motion for Preliminary Approval.

14 12. I requested several bids from experienced class action settlement administrators to
15 handle the responsibilities of the Settlement Administrator under this Settlement. The Parties
16 accepted the bid of Phoenix Settlement Administrators ("Phoenix"). Phoenix has numerous years
17 of experience in the field of Class Action Administration, particularly in the wage and hour arena.
18 In its bid, Phoenix agreed to cap its costs at \$7,500 if there are under 200 class members. Phoenix's
19 bid also accounts for Notice in English and Spanish. A true and correct copy of the bid is attached
20 hereto as **Exhibit 3**.

21 13. Plaintiff does not have any interest, financial or otherwise, in the third-party
22 administrator, Phoenix.

23 14. No one at Wilshire Law Firm, PLC (meaning the law firm itself and anyone
24 employed at the law firm) has any interest, financial or otherwise, in the third-party administrator,
25 Phoenix.

26 15. Wilshire Law Firm, PLC has no fee-splitting agreement with any other counsel in
27 this case.

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1 THE PROPOSED SETTLEMENT IS FAIR AND REASONABLE

2 16. Class Counsel has conducted a thorough investigation into the facts of this case.
3 Based on the foregoing discovery and their own independent investigation and evaluation, Class
4 Counsel is of the opinion that the Settlement is fair, reasonable, and adequate and is in the best
5 interests of the Settlement Class Members in light of all known facts and circumstances, the risk
6 of significant delay, the defenses that could be asserted by Defendant both to certification and on
7 the merits, trial risk, and appellate risk.

8 17. Based on an analysis of the facts and legal contentions in this case, documents and
9 information from Defendant, I evaluated Defendant's maximum exposure. I took into account the
10 risk of not having the claims certified and the risk of not prevailing at trial, even if the claims are
11 certified. After using the data Defendant provided, including class member timekeeping and
12 payroll records, as well as class member demographics (i.e., the number of class members,
13 workweeks, and average total compensation of the class), with the assistance of a statistics expert,
14 I created a damages model to evaluate the realistic range of potential recovery for the class. The
15 damages model is based on the following benchmarks:

16 Total Class Members: 142
17 Terminated Class Members during 3-year statute: 76
18 Total Workweeks: 20,594
19 Total Shifts Worked by the Class: 106,976
20 PAGA Pay Periods: 9,137
21 PAGA-Eligible Employees: 101
22 Avg. Hourly Rate: \$14.22

23 18. Based on Plaintiff's discovery and investigation, Class Counsel reached the
24 conclusion that: Defendant failed to pay class members for all hours worked, including overtime
25 wages; Defendant had a policy and practice of not providing its employees with California
26 compliant meal and rest periods which they did not pay appropriate premiums for; and Defendant
27 failed to indemnify class members for all necessary business expenses incurred. Defendant denies
28 these claims. Defendant also contended that class action relief was not warranted for

1 approximately 80% of the employees (who worked approximately 85% of the workweeks at issue
2 during the class period) because they were subject to arbitration agreements and class waivers.

3 19. Plaintiff alleges that Defendant failed to pay for all hours worked, including
4 minimum, straight time, and overtime wages. For purposes of calculating Defendant's liability
5 based on a best case scenario for Plaintiff and the Class, I estimate that Defendant's maximum
6 potential exposure by assuming that all unpaid work time should have been paid at the overtime
7 rate, not minimum or straight time wages, even though approximately 15% of the shifts were less
8 than eight hours in duration, and I assumed, as based on the experiences from Plaintiff and other
9 class members, that Defendant is liable for approximately 60 minutes of unpaid worktime per
10 workweek. This results in an estimate of \$439,270.02 (20,594 workweeks * \$14.22 average hourly
11 rate * 1.5 overtime rate * 1 hour of unpaid work per workweek), but I discounted this figure by
12 80% to account for the difficulty of prevailing on a motion for class certification and a trial on the
13 merits, yielding a **realistic damages estimate of \$87,854.**¹

14 20. Plaintiff also alleges that Defendant failed to pay for all recorded hours worked
15 based on Defendant's practice of rounding time entries that was in effect for a majority of the class
16 period. For purposes of calculating Defendant's liability based its rounding practice, my expert
17 analyzed the sampling of time and pay records and found that, using an extrapolated damages
18 model, employees were underpaid an approximate net amount of 3,485 hours. When factoring in
19 the occasions in which the unpaid rounding time should have been paid at overtime and double
20 overtime rates, my expert concluded that Defendant's rounding practice resulted in approximately
21 \$80,798 of unpaid wages), but I discounted this figure by 50% to account for the difficulty of
22 prevailing on a motion for class certification and a trial on the merits, yielding a **realistic damages**
23 **estimate of \$40,399.**

24 21. With respect to the meal period claim, Plaintiff alleges that Defendant required him
25 _____

26 ¹ An 80% discount for risk at certification and trial is reasonable because the Judicial
27 Council of California found that only 21.4% of all class actions were certified either as part of a
28 settlement *or* as part of a contested certification motion. (See Findings of the Study of California
Class Action Litigation, 2000-2006, available at [http:// www.courts.ca.gov/documents/class-
action-lit-study.pdf](http://www.courts.ca.gov/documents/class-action-lit-study.pdf).)

1 and similarly situated class members to perform work duties during their allocated meal periods
2 and/or to take meal periods after having worked at least five hours in a workday. Plaintiff also
3 alleges that Defendant failed to record accurate meal period times, thus rendering the meal periods
4 non-compliant. My expert analyzed Defendant's timekeeping records and found that class
5 members had a meal period automatically deducted from approximately 75% of their shifts.
6 Defendant contended that this practice was compliant due to the alleged ceasing of operations at
7 Defendant's facility. Based on the records produced, as well as Plaintiff's and the other class
8 members' experience working for Defendant, I assumed a 50% meal period violation rate for the
9 class period, yielding a damage estimate of \$760,699.36 (106,976 shifts * 50% * \$14.22 average
10 hourly rate); however, I discounted this figure by 80% to account for the difficulty of certifying
11 and proving meal period claims at trial, as well as Defendant's contention that the claim lacks
12 merit, yielding a **realistic damages estimate of \$152,119.87.**

13 22. With respect to the rest period claim, Plaintiff alleges that Defendant required him
14 and similarly situated class members to work in lieu of taking rest periods. Assuming a 50%
15 violation rate for the class period based on Plaintiff's and other class members' experience working
16 for Defendant, Defendant's potential liability for the rest period claim is \$760,699.36 (106,976
17 shifts * 50% * \$14.22 average hourly rate); however, I discounted this figure by 80% to account
18 for the difficulty of certifying and proving rest period claims, particularly because rest periods do
19 not have to be recorded, and to account for the possibility of class members voluntarily choosing
20 to forego a rest period, yielding a **realistic damages estimate of \$152,119.87.**

21 23. In sum, I estimated that Plaintiff's maximum recovery for the non-penalty claims is
22 \$2,041,466.74, but, after factoring in the risk and uncertainty of prevailing at certification and trial,
23 I estimate that Plaintiff's realistic estimated recovery for the non-penalty claims is **\$432,492.74.**

24 24. With respect to Plaintiff's derivative claims for statutory and civil penalties,
25 Plaintiff estimated that Defendant's realistic potential liability is \$200,000. While Defendant's
26 maximum potential liability for waiting time penalties is \$343,677 based on approximately 76
27 terminated class members during the 3-year statute, \$404,000 for inaccurate wage statements based
28 on approximately 101 class members who worked 9,137 pay periods within the 1-year statute, and

1 \$913,700 for PAGA violations based on the Court assessing a \$100 penalty for initial violations
2 for all 9,137 pay periods within the 1-year statute, I believe that it would be unrealistic to expect
3 the Court to award the full \$1,661,377 in penalties given Defendant's defenses, the contested nature
4 of Plaintiff's claims, and the discretionary nature of penalties. The penalties per pay statement is
5 also inflated because Defendant issued pay statements every workweek (as opposed to bimonthly),
6 which would likely give Defendant greater leniency when determining penalties at trial.
7 Considering that the underlying claims are realistically estimated to be \$432,492.74, such a
8 disproportionate award would also raise due process concerns. Weighing these factors and
9 applying a discount to account for the risk and uncertainty of prevailing at trial, I arrived at
10 \$200,000.00 for statutory and civil penalties.

11 25. Using these estimated figures, Plaintiff predicted that the realistic maximum
12 recovery for all claims, including penalties, would be \$632,492.74. This means that the
13 \$390,000.00 settlement figure represents 61.6% of the realistic maximum recovery ($\$390,000.00 /$
14 $\$632,492.74 = 61.6\%$). Considering the risk and uncertainty of prevailing at class certification and
15 at trial, this is an excellent result for the Class.² This result is also significant considering that
16 approximately 80% of the class members are purportedly covered by arbitration agreements and
17 class action waivers. Indeed, because of the proposed Settlement, class members will receive
18 timely, guaranteed relief that they likely would have been unable to achieve on their own, and will
19 avoid the risk of an unfavorable judgment.

20 26. While Plaintiff is confident in the merits of their claims, a legitimate controversy
21 exists as to each cause of action. Plaintiff also recognizes that proving the amount of wages due
22 to each Class Member would be an expensive, time-consuming, and uncertain proposition.

23 27. This Settlement avoids the risks and the accompanying expense of further litigation.

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25 ² See, e.g., *Wise v. Ulta Salon, Cosmetics & Fragrance, Inc.* (E.D. Cal. Aug. 21, 2019) 2019
26 WL 3943859 at *8 (granting preliminary approval where the proposed allocation to settle class
27 claims was between 9.53 percent of Plaintiffs' maximum recovery); *Bravo v. Gale Triangle, Inc.*
28 (C.D. Cal. Feb 16, 2017) 2017 WL 708766 at * 10 (finding that "a settlement for fourteen percent
recovery of Plaintiffs' maximum recovery is reasonable"); *In re Omnivision Techs., Inc.* (N.D. Cal.
2008) 559 F.Supp.2d 1036, 1042 (approving settlement amount that "is just over 9% of the
maximum potential recovery asserted by either party.").

1 Although the Parties had engaged in a significant amount of investigation, informal discovery, and
2 class-wide data analysis, the Parties had not yet completed all written discovery and depositions.
3 Plaintiff intended to depose Defendant's designated PMKs and to depose a sampling of class
4 members. Moreover, preparation for class certification and a trial remained for the Parties, as well
5 as the prospect of appeals in the wake of a disputed class certification ruling for Plaintiff and/or
6 adverse summary judgment ruling. Had the Court certified any claims, Defendant could move to
7 decertify the claims or compel to arbitration class members that purportedly signed arbitration
8 agreements. As a result, the Parties would incur considerably more attorneys' fees and costs
9 through trial.

10 28. The Net Settlement Amount available for Class Member settlement payments is
11 estimated to be \$213,750, for a class of 142 persons.³ As a result, each Settlement Class Member
12 is eligible to receive an **average net benefit of approximately \$1,505.28.**

13 29. The proposed Settlement of \$390,000.00, therefore, represents a substantial
14 recovery when compared to Plaintiff's reasonably forecasted recovery. When considering the risks
15 of litigation, the uncertainties involved in achieving class certification, the burdens of proof
16 necessary to establish liability, the probability of appeal of a favorable judgment, it is clear that the
17 settlement amount of \$390,000.00 is within the "ballpark" of reasonableness, and preliminary
18 settlement approval is appropriate.

19 ENHANCEMENT AWARD FOR PLAINTIFF IS REASONABLE

20 30. Class Counsel represent that Plaintiff devoted a great deal of time and work assisting
21 counsel in the case, communicated with counsel very frequently for litigation and to prepare for
22 mediation, and was frequently in contact with Class Counsel during the mediation. Plaintiff's
23 requested service award is reasonable particularly in light of the substantial benefits Plaintiff
24 generated for all class members.

25 31. Throughout this Litigation, Plaintiff, who is a former employee of Defendant, has
26

27 ³ The Net Settlement Amount is: \$390,000.00 minus \$130,000.00 for Class Counsel's
28 attorneys' fees, minus \$20,000.00 for Class Counsel's litigation expenses, minus \$7,500.00 in
administration costs, minus \$18,750.00 for the PAGA payment portion to the LWDA, and minus
\$10,000.00 for the class representative service award to Plaintiff.

1 cooperated immensely with my office and have taken many actions to protect the interests of the
2 class. Plaintiff provided valuable information regarding the “off-the-clock,” meal period, and rest
3 period claims. Plaintiff also informed my office of developments and information relevant to this
4 action, participated in decisions concerning this action, made himself available to answer questions
5 during the mediation, and provided my office with the names and contact information of potential
6 witnesses in this action. Before we filed this case, Plaintiff provided my office with documents
7 regarding the claims alleged in this action. The information and documentation provided by
8 Plaintiff were instrumental in establishing the alleged wage and hour violations alleged in this
9 action, and the recovery provided for in the Settlement Agreement would have been impossible to
10 obtain without Plaintiff’s participation.

11 32. At the same time, Plaintiff faced many risks in adding himself as the class
12 representative in this matter. Plaintiff faced actual risks with his future employment, as putting
13 himself on public record in an employment lawsuit could also very well affect his likelihood for
14 future employment. Furthermore, as part of this Settlement, Plaintiff is executing a general release
15 of all claims against Defendant.

16 33. In turn, class members will now have the opportunity to participate in a settlement,
17 reimbursing them for alleged wage violations they may have never known about on their own or
18 been willing to pursue on their own. If these class members would have each tried to pursue their
19 legal remedies on their own, that would have resulted in each having to expend a significant amount
20 of their own monetary resources and time, which were obviated by Plaintiff putting himself on the
21 line on behalf of these other class members.

22 34. In the final analysis, this class action would not have been possible without the aid
23 of Plaintiff, who put his own time and effort into this Litigation, sacrificed the value of his own
24 individual claims, and placed himself at risk for the sake of the class members. The requested
25 service award for Plaintiff for his service as the class representative and for his general release of
26 all individual claims is a relatively small amount of money when the time and effort put into the
27 Litigation are considered and in comparison to enhancements granted in other class actions. The
28 requested incentive award is therefore reasonable to compensate Plaintiff for his active

1 participation in this lawsuit. Indeed, in *Karl Adams, III, et al. v. MarketStar Corporation*, et al.,
2 No. 2:14-cv-02509-TLN-DB, a wage and hour class action alleging that class members were
3 misclassified as exempt outside salespersons, I was co-lead Class Counsel and helped negotiate a
4 \$2.5 million class action settlement for 339 class members, and the court approved a \$25,000.00
5 class representative incentive award for each named plaintiff.

6 THE REQUEST FOR ATTORNEYS' FEES AND COSTS IS REASONABLE

7 35. The Settlement provides for attorneys' fees payable to Class Counsel in an amount
8 up to 33.33% of the Settlement Amount or up to \$130,000.00, plus actual costs and expenses not
9 to exceed \$20,000.00. The proposed award of attorneys' fees to Class Counsel in this case can be
10 justified under either method – lodestar or percentage recovery. Class Counsel, however, intend
11 to base the proposed award of fees, costs and expenses on the percentage method as many of the
12 entries in the time records will have to be redacted to preserve attorney-client and attorney work
13 product privileges.

14 36. I am informed and believe that the fee and costs provision is reasonable. The fee
15 percentage requested is less than that charged by my office for most employment cases. My office
16 invested significant time and resources into the case, with payment deferred to the end of the case,
17 and then, of course, contingent on the outcome.

18 37. It is further estimated that my office will need to expend at least another 50 to 100
19 hours to monitor the process leading up to the final approval and payments made to the class. My
20 office also bears the risk of taking whatever actions are necessary if Defendant fails to pay.

21 38. The risk to my office has been very significant, particularly if we would not be
22 successful in pursuing this class action. In that case, we would have been left with no compensation
23 for all the time taken in litigating this case. Indeed, I have taken on a number of class action cases
24 that have resulted in thousands of attorney hours being expended and ultimately having
25 certification denied or the defendant company going bankrupt. The contingent risk in these types
26 of cases is very real and they do occur regularly. Furthermore, we were precluded from focusing
27 on, or taking on, other cases which could have resulted in a larger, and less risky, monetary gain.

28 39. Because most individuals cannot afford to pay for representation in litigation on an

1 hourly basis, Wilshire Law Firm, PLC represents virtually all of its employment law clients on a
2 contingency fee basis. Pursuant to this arrangement, we are not compensated for our time unless
3 we prevail at trial or successfully settle our clients' cases. Because Wilshire Law Firm, PLC is
4 taking the risk that we will not be reimbursed for our time unless our client settles or wins his or
5 her case, we cannot afford to represent an individual employee on a contingency basis if, at the
6 end of our representation, all we are to receive is our regular hourly rate for services. It is essential
7 that we recover more than our regular hourly rate when we win if we are to remain in practice so
8 as to be able to continue representing other individuals in civil rights employment disputes.

9 MY EXPERIENCE AND QUALIFICATIONS

10 40. Wilshire Law Firm, PLC was selected by Best Lawyers and U.S. News & World
11 Report as one of the nation's Best Law Firms in 2022 and is comprised of over 55 attorneys and
12 over 300 employees. Wilshire Law Firm, PLC is actively and continuously practicing in
13 employment litigation, representing employees in both individual and class actions in both state
14 and federal courts throughout California.

15 41. Wilshire Law Firm, PLC is qualified to handle this Litigation because its attorneys
16 are experienced in litigating Labor Code violations in both individual, class action, and
17 representative action cases. Wilshire Law Firm, PLC has handled, and is currently handling,
18 numerous wage and hour class action lawsuits, as well as class actions involving consumer rights
19 and data privacy litigation.

20 42. I graduated from the University of California, Los Angeles's College Honors
21 Program in 2004 with Bachelor of Arts degrees in History and Japanese, magna cum laude and Phi
22 Beta Kappa. As an undergraduate, I also received a scholarship to study abroad for one year at
23 Tokyo University in Tokyo, Japan. I received my Juris Doctor from Notre Dame Law School in
24 2008.

25 43. My practice is focused on advocating for the rights of consumers and employees in
26 class action litigation and appellate litigation. I am currently the primary attorney in charge of
27 litigating several class action cases in state and federal courts across the United States.

28 44. I have received numerous awards for my legal work. From 2017 to 2020, Super

1 Lawyers selected me as a “Southern California Rising Star,” and in 2022, I was selected as a
2 “Southern California Super Lawyer.” I was selected as one of the “Best Lawyers in America” in
3 2023. In 2016 and 2017, the National Trial Lawyers selected me as a “Top 40 Under 40” attorney.
4 I am also rated 10.0 (“Superb”) by Avvo.com.

5 45. I am on the California Employment Lawyers Association (“CELA”)’s Wage and
6 Hour Committee and Mentor Committee, and I was selected to speak at CELA’s 2019 Advanced
7 Wage & Hour Seminar on the topic of manageability of class actions. Since 2013, I have actively
8 mentored young attorneys through CELA’s mentorship program.

9 46. I am also a past member of the Consumer Attorneys of California (“CAOC”). In
10 2020, I was selected for a position on CAOC’s Board of Directors. I am also a past member of
11 CAOC’s Diversity Committee, and I helped assist the CAOC in defeating bills that harm
12 employees. Indeed, I recently helped assist Jacqueline Serna, Esq., Legislative Counsel for CAOC,
13 in defeating AB 443, which proposed legislation that sought to limit the enforceability of California
14 Labor Code § 226.

15 47. As the attorney responsible for day-to-day management of this matter at the
16 Wilshire Law Firm, PLC, I have over thirteen years of experience with litigating wage and hour
17 class actions. Over the last thirteen years, I have managed and assisted with the litigation and
18 settlement of several wage and hour class actions. In those class actions, I performed similar tasks
19 as those performed in the course of prosecuting this action. My litigation experience includes:

- 20 a. I served as lead or co-lead in negotiating class action settlements worth over \$10
21 million in gross recovery to class members for each year since 2020, including over
22 \$30 million in 2022.
- 23 b. I was part of the team of attorneys that prevailed in *Moore v. Centrelake Medical*
24 *Group, Inc.* (2022) 83 Cal.App.5th 515, the first California appellate decision in a
25 data breach class action holding that consumer plaintiffs adequately alleged injury
26 in fact under the benefit of the bargain theory and monitoring-costs theory.
- 27 c. In 2022, Top Verdict recognized Wilshire Law Firm and myself for having one case
28 in the Top 20 Labor & Employment Settlements (including number 19 for the \$1.6

- 1 million settlement in *Moreno v. Pretium Packaging, L.L.C*) and four additional
2 cases in the Top 50 Labor & Employment Settlements (numbers 27, 30, 33, and 37).
- 3 d. To my knowledge, I am the only attorney to appear on each of the following Top
4 Verdict lists for 2018 in California: Top 20 Civil Rights Violation Verdicts, Top 20
5 Labor & Employment Settlements, and Top 50 Class Action Settlements.
- 6 e. As lead counsel, on April 29, 2021, I prevailed against CVS Pharmacy, Inc. by
7 winning class certification on behalf of hundreds of thousands of consumers for
8 misleading advertising claims in *Joseph Mier v. CVS Pharmacy, Inc.*, U.S. Dist. Ct.
9 C.D. Cal. no. SA CV 20-1979-DOC-(ADSx).
- 10 f. As lead counsel, I prevailed against Bank of America by: winning class certification
11 on behalf of thousands of employees for California Labor Code violations; defeating
12 appellate review of the court's order certifying the class; defeating summary
13 judgment; and defeating a motion to dismiss. (*Frausto v. Bank of America, N.A.*
14 (N.D. Cal. 2019) 334 F.R.D. 192, 2020 WL 1290302 (9th Cir. Feb. 27, 2020), 2019
15 WL 5626640 (N.D. Cal. Oct. 31, 2019), 2018 W.L. 3659251 (N.D. Cal. Aug. 2,
16 2018).). The decision certifying the class in *Frausto* is also discussed in Class
17 Certification Under Fed. R. Civ. P. 23 in Action by Information Technology or Call
18 Center Employees for Violation of State Law Wage and Hour Rules, 35 A.L.R. Fed.
19 3d Art. 8.
- 20 g. I was the primary author of the class certification and expert briefs in *ABM*
21 *Industries Overtime Cases* (2017) 19 Cal.App.5th 277, a wage and hour class action
22 for over 40,000 class members for off-the-clock, meal period, split shift, and
23 reimbursement claims. *ABM Industries Overtime Cases* is the first published
24 California appellate authority to hold that an employer's "auto-deduct policy for
25 meal breaks in light of the recordkeeping requirements for California employers is

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also an issue amenable to classwide resolution.” (*Id.* at p. 310.)⁴ Notably, the Court of Appeal also held that expert analysis of timekeeping records can also support the predominance requirement for class certification. (*Id.* at p. 310-11.) In 2021, the case settled for \$140 million, making it one of the largest ever wage and hour class action settlements for hourly-paid employees in California.

- h. I briefed, argued, and won *Yocupicio v. PAE Group, LLC* (9th Cir. 2015) 795 F.3d 1057. The Ninth Circuit ruled in my client’s favor and held that non-class claims under the PAGA cannot be used to calculate the amount in controversy under the Class Action Fairness Act (“CAFA”). This case is cited in several leading treatises such as Wright & Miller’s Federal Practice & Procedure, and Newberg on Class Actions. In October 2016, the U.S. Supreme Court denied review of a case that primarily concerned *Yocupicio*. That effort was led by Theodore J. Boutrous, who brought the cert petition, with amicus support from a brief authored by Andrew J. Pincus.⁵ Considering that leading Supreme Court practitioners from the class action defense bar were very motivated in undermining *Yocupicio* case, but failed, this demonstrates the national importance of the *Yocupicio* decision.
- i. On December 13, 2018, the United States District Court granted final approval of the \$2,500,000 class action settlement in *Mark Brulee, et al. v. DAL Global Services, LLC* (C.D. Cal. Dec. 13, 2018) No. CV 17-6433 JVS(JCGx), 2018 WL 6616659 in which I served as lead counsel. In doing so, the Court found: “Class Counsel’s declarations show that the attorneys are experienced and successful litigators.” (*Id.* at p. *10.)
- j. *Gasio v. Target Corp.* (C.D. Cal. Sep. 12, 2014) 2014 U.S. Dist. LEXIS 129852, a reported decision permitting class-wide discovery even though the employer has a

⁴ As a California district court observed before the *ABM Industries Overtime* decision, “[t]he case law regarding certification of auto-deduct classes is mixed.” (*Wilson v. TE Connectivity Networks, Inc.* (N.D. Cal. Feb. 9, 2017) No. 14-CV-04872-EDL, 2017 WL 1758048, *7.)

⁵ <http://www.chamberlitigation.com/cases/abm-industries-inc-v-castro>.

1 lawful policy because “[t]he fact that a company has a policy of not violating the
2 law does not mean that the employees follow it, which is the issue here.” The court
3 also ordered defendant to pay for the cost of *Belaire-West* notice.

4 k. In 2013, I represented a whistleblower that reported that his former employer was
5 defrauding the State of California with the help of bribes to public employees. The
6 case, a false claims (qui tam) action, resulted in the arrest and criminal prosecution
7 of State of California employees by the California Attorney General’s Office.

8 l. In 2013, I was part of a team of attorneys that obtained conditional certification for
9 over 2,000,000 class members in a federal labor law case for misclassification of
10 independent contractors that did crowdsourced work on the Internet, *Otey v.*
11 *CrowdFlower, Inc.*, N.D. Cal. Case No. 12-cv-05524-JST (MEJ), resulting in the
12 following pro-plaintiff reported decisions:

13 i. 2013 U.S. Dist. LEXIS 151846 (N.D. Cal. Oct. 22, 2013) (holding that an
14 unaccepted Rule 68 offer doesn’t moot plaintiff’s claims, and granting
15 plaintiff’s motion to strike defendant’s affirmative defenses based on
16 *Twombly/Iqbal*).

17 ii. 2013 U.S. Dist. LEXIS 122007 (N.D. Cal. Aug. 27, 2013) (order granting
18 conditional collective certification).

19 iii. 2013 U.S. Dist. LEXIS 95687 (N.D. Cal. July 8, 2013) (affirming the
20 magistrate judge’s discovery ruling which held that “evidence of other
21 sources of income is irrelevant to the question of whether a plaintiff is an
22 employee within the meaning of the FLSA”).

23 iv. 2013 U.S. Dist. LEXIS 91771 (N.D. Cal. June 20, 2013) (granting broad
24 discovery because “an FLSA plaintiff is entitled to discovery from locations
25 where he never worked if he can provide some evidence to indicate
26 company-wide violations”).

27 m. From 2012 to 2013, I was part of a team of attorneys that obtained class certification
28 for over 60,000 class members for off-the-clock claims, *Linares v. Securitas*

1 *Security Services USA, Inc.*, Los Angeles Superior Court. Case No. BC416555. We
2 also successfully opposed subsequent appeals to the California Court of Appeal and
3 California Supreme Court.

4 48. My current contingent billing rate of \$850.00 per hour is consistent with my practice
5 area, lead appellate experience in the Ninth Circuit Court of Appeals, numerous awards received,
6 legal market and accepted hourly rates:

7 a. In the December 8, 2008 article “Billable Hours Aren’t the Only Game in Town
8 Anymore,” NATIONAL LAW JOURNAL, the following hourly billing rates were
9 reported by Sheppard, Mullin, Richter & Hampton, a leading firm in the defense of
10 wage and hour class actions that I opposed when litigating wage and hour class
11 actions: Partners: \$475-\$795; Associates: 1st Year - \$275, 2nd Year - \$310, 3rd
12 Year - \$335, 4th Year - \$365, 5th Year - \$390, 6th Year - \$415, 7th Year - \$435,
13 8th Year - \$455. I am a 14th year attorney and Senior Partner, with most of my
14 experience in class action litigation as a primary practice area. Having successfully
15 briefed and argued a published appeal in the Ninth Circuit Court of Appeals
16 involving CAFA and PAGA, having experience certifying large class actions
17 (including *ABM Industries Overtime Cases*, which was decided on appeal), and
18 having received numerous awards for my legal work, my hourly rate should be
19 adjusted upward.

20 b. On May 6, 2022 the Hon. Jay A. Garcia-Gregory of the United States District Court
21 in Puerto Rico approved my \$850 hourly rate when he granted final approval of the
22 class action settlement in *Serrano v. Inmediata Corp.*, No. 3:19-cv-01811-JAG, Dkt.
23 57 (U.S. Dist. Ct. P.R. May 6, 2022).

24 c. On September 9, 2021, the Hon. Peter Wilson of the Orange County Superior Court
25 approved my \$800 hourly rate when he granted final approval of the class action
26 settlement in *Ricardo Campos Hernandez v. Adams Iron Co., Inc.*, Case No. 30-
27 2019-01066522-CU-OE-CXC.

28 d. On August 6, 2021, the Hon. Stanley Blumenfeld, Jr. of the United States District

1 Court granted final approval of the \$1,600,000 class action settlement in *Carlos*
2 *Moreno v. Pretium Packaging, Inc.* (C.D. Cal. Aug. 6, 2021) No. 8:19-cv-02500-
3 SB-DFM, 2021 WL 3673845 in which I served as lead counsel. In doing so, the
4 Court approved my then \$750 hourly rate after finding it was “reasonable, given the
5 qualifications of the attorneys who worked on this matter.” (*Id.* at p. *3.)

- 6 e. On January 19, 2021, the Hon. Elihu M. Berle of the Los Angeles County Superior
7 Court approved my \$750 hourly rate when he granted final approval of the class
8 action settlement in *Faye Zhang v. Richemont North America, Inc.*, Case No.
9 19STCV32396.

10 I declare under penalty of perjury under the laws of the State of California and the United
11 States that the foregoing is true and correct.

12 Executed on April 28, 2023, at Los Angeles, California.

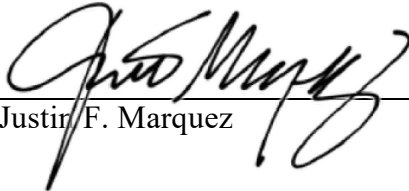
13
14 
15 Justin F. Marquez
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28

Exhibit 1

WILSHIRE LAW FIRM, PLC

3055 Wilshire Blvd, 12th Floor
Los Angeles, CA 90010
Tel: (213) 381-9988
Fax: (213) 381-9989
wilshirelawfirm.com



Bobby Saadian, Esq. JD/MBA

Colin M. Jones, Esq.
A. Ilyas Akbari, Esq.
Gail Richardson, Esq.
Justin F. Marquez, Esq.
Robert Dart, Esq.
Jon Teller, Esq.
Sutton A. Shapiro, Esq.
Daniel B. Miller, Esq.
Hazel Chang, Esq.

Daniel DeSantis, Esq.
Tae Kim, Esq.
Peter Cho, Esq.
Gregory Stuck, Esq.
Nicol Hajjar, Esq.
Thiago Coelho, Esq.
Erik Harper, Esq.
Johnny Ogata, Esq.

March 12, 2021

LWDA

Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
(Via Online Submission)

Gabriel Container
8844 Millergrove Dr.
Santa Fe Springs, CA 90670
(Via Certified Mail, Return Receipt Requested)
#9489 0090 0027 6272 9747 62

Roald Gabriel
Agent for Service of Process for
Gabriel Container
8844 Millergrove Dr.
Santa Fe Springs, CA 90670
(Via Certified Mail, Return Receipt Requested)
#9489 0090 0027 6272 9747 79

Re: ***Tony Nunez v. Gabriel Container***
Notice of Labor Code Violations and PAGA Penalties

To Whom It May Concern:

Please be advised that my office has been retained by Tony Nunez (Plaintiff) to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against his former employer, Gabriel Container ("Defendant"). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant's Aggrieved Employees.

Plaintiff wishes to pursue this action on behalf of himself as an aggrieved employee, on behalf of the State of California, as well as on behalf of all other persons who worked for Defendant in California as a non-exempt or hourly-paid employee at any time within the applicable statutory period (hereafter, the "Aggrieved Employees").

Plaintiff and the Aggrieved Employees suffered the Labor Code violations described below.

Plaintiff's Employment with Defendant

Defendant own/owned and operate/operated an industry, business, and establishment within the State of California, including Los Angeles County. As such, and based upon all the facts and circumstances incident to Defendant's business in California, Defendant is subject to the California Labor Code, Wage Orders issued by the Industrial Welfare Commission ("IWC"), and the California Business & Professions Code.

Plaintiff Tony Nunez is a resident of Los Angeles County, California who worked for Defendant in Santa Fe Springs, California as an hourly-paid, non-exempt employee from approximately April 2007 to approximately May 2020. Throughout Plaintiff's employment, Defendant failed to pay for all hours worked (including minimum wage, straight time, and overtime wages), failed to provide Plaintiff with legally compliant meal periods, failed to authorize and permit Plaintiff to take rest periods, failed to timely pay all final wages to Plaintiff when Defendant terminated Plaintiff's employment, and failed to furnish accurate wage statements to Plaintiff. As discussed below, Plaintiff's experience working for Defendant was typical and illustrative.

Defendant Failed to Pay for All Hours Worked, Including Minimum, Straight Time, and Overtime Wages

Under California law, an employer must pay for all hours worked by an employee. "Hours worked" is the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

Throughout the statutory period, Defendant maintained a policy and practice of not paying Plaintiff and the Aggrieved Employees for all hours worked, including minimum, straight time, and overtime wages. Defendant frequently paid Plaintiff and the Aggrieved Employees less than all their work time. Defendant also regularly used a system of time rounding and/or synthetic timekeeping that resulted, over a period of time, in failing to compensate Plaintiff and the Aggrieved Employees properly for all the time they have actually worked, even though the realities of Defendant's operations are such that it is possible, practical, and feasible to count and pay for work time to the minute. Accordingly, Defendant frequently paid Plaintiff and the

Aggrieved Employees less than all their work time. Some of this unpaid work also should have been paid at the overtime rate. In failing to pay for all hours worked, Defendant also failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

Throughout the statutory period, Defendant also denied Plaintiff and the Aggrieved Employees the opportunity to take their legally mandated 30-minute, uninterrupted, and duty-free meal period. Plaintiff and the Aggrieved Employees routinely worked through meal periods “off-the-clock,” and Defendant frequently paid Plaintiff and the Aggrieved Employees less than all their work time. Much of this unpaid work should have been paid at the overtime rate. In failing to pay for all hours worked, Defendant also failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including minimum, straight time, and overtime wages.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendant wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendant regularly, but not always, required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, uninterrupted, and duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Instead, Defendant continued to assert control over Plaintiff and the Aggrieved Employees by requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory meal periods, or by denying Plaintiff and the Aggrieved Employees permission to take a meal period. Defendant also never informed Plaintiff or the Aggrieved Employees their right to, nor permitted them to take, a second meal period when Plaintiff or the Aggrieved Employees worked at least 10 hours of work in a workday. Accordingly, Defendant’s policy and practice was not to provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to

which they were entitled for meal periods and that were not provided.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210 and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit breaks of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Throughout the statutory period, Defendant have wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take legally compliant rest periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10-minute, uninterrupted, duty-free rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Instead, Defendant continued to assert control over Plaintiff and the Aggrieved Employees by requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory rest periods, or by denying Plaintiff and the Aggrieved Employees permission to take a rest period. Accordingly, Defendant's policy and practice was to not authorize and permit Plaintiff and the Aggrieved Employees to take rest periods in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210 and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Pay All Earned Wages Twice Per Month

Based on its failure to pay Plaintiff and the Aggrieved Employees for all wages as discussed above, Defendant also violated Labor Code § 204.

Labor Code § 204 requires employers to pay employees all earned wages two times per month. Throughout the statute of limitations period applicable to this cause of action, employees were

entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for overtime hours worked. However, during all such times, Defendant systematically failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendant, all wages for all rest periods not authorized and permitted by Defendant, and all wages for all hours worked. As a result, Defendant owe employees the legally required wages for unpaid wages, and Plaintiff and the Aggrieved Employees suffered damages in those amounts.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

Plaintiff seeks penalties under California Labor Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by California Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendant, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiff and the Aggrieved Employees.

Defendant's failure to provide and maintain records required by the California Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendant to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendant's knowing failure to comply with the California Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an

employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended, i.e., was terminated by quitting or being discharged, and the employment of others will be terminated. However, during the relevant time period, Defendant failed, and continue to fail to pay Plaintiff and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employment. These unpaid wages include wages for unpaid work time (including minimum, straight time, and overtime wages), missed meal period premium wages, and missed rest period premium wages.

Defendant's conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendant their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. (Lab. Code § 226(e)(2)(B)(iii).)

The statute further provides: "An employee suffering injury as a result of a knowing and

intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees." (Lab. Code § 226(e)(1).)

Throughout the statutory period, Defendant failed to furnish Plaintiff and the Aggrieved Employee with accurate, itemized wage statements showing all applicable hourly rates, and all gross and net wages earned (including correct hours worked, correct wages for meal periods that were not provided in accordance with California law, and correct wages for rest periods that were not authorized and permitted to take in accordance with California law).

Because Defendant violated Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights. Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendant the greater of their actual damages caused by Defendant's failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendant violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages, and overtime wages;
2. Labor Code § 226.7 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 204 by failing to pay all earned wages two times per month;
5. California Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
6. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination; and
7. Labor Code § 226 by failing to provide accurate itemized wage statements.

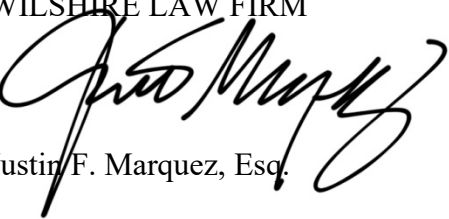
Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 1174.5, 1197.1, and 2699(f)(2).

LWDA
Notice of Labor Code Violations and PAGA
March 12, 2021
Page 8 of 8

Plaintiff has placed Defendant on notice by mailing a certified copy of this correspondence, as indicated on the first page. Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

WILSHIRE LAW FIRM

A handwritten signature in black ink, appearing to read "Justin Marquez", written over the printed name.

Justin F. Marquez, Esq.

Min Jee Kim

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
Sent: Friday, March 12, 2021 12:08 PM
To: Min Jee Kim
Subject: Thank you for submission of your PAGA Case.

3/12/2021

LWDA Case No. LWDA-CM-825310-21
Law Firm : Wilshire Law Firm, PLC
Plaintiff Name : Tony Nunez
Employer: Gabriel Container
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:

https://nam12.safelinks.protection.outlook.com/?url=http%3A%2F%2Flabor.ca.gov%2FPrivate_Attorneys_General_Act.htm&data=04%7C01%7Cminjee%40wilshirelawfirm.com%7Cf27d20421ba6485d468208d8e59287b2%7C9ada260a4f194da187b814d372333753%7C1%7C0%7C637511764801210948%7CUnknown%7CTWFpbGZsb3d8eyJWlloiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IjEhaWwiLCJXVCi6Mn0%3D%7C1000&data=705veqpyVAvc76Ddclied%2BhUaBq06MQOZDVhIHu%2BLhQ%3D&reserved=0

Min Jee Kim

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
Sent: Friday, March 12, 2021 12:08 PM
To: Min Jee Kim
Subject: State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation

Thank you for your payment.

Order Information

Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-825310-21

Order Number: ORD-000099291

Total:\$75.00

Card Type: Master Card

Date: 3/12/2021

Billing Information

Name: Bobby Saadian

Email: minjee@wilshirelawfirm.com

Billing Address:

3055 Wilshire Blvd., 12th Floor

Los Angeles, California

90010

Exhibit 2

1 **INTRODUCTION**

2 This Class and Representative Action Settlement Agreement (“Settlement Agreement”) is
3 made and entered into by and between Plaintiff TONY NUNEZ (“Class Representative,”
4 “Plaintiff,” or “NUNEZ”), individually and on behalf of all putative class members and aggrieved
5 employees, on the one hand, and Defendant GABRIEL CONTAINER CORPORATION
6 (“Defendant” or “GABRIEL CONTAINER”), on the other hand. NUNEZ and GABRIEL
7 CONTAINER are collectively referred to herein as the “Parties.” This Settlement Agreement is
8 subject to the terms and conditions set forth below and the Court’s approval. This Settlement
9 Agreement completely and fully resolves the wage and hour class and representative action filed
10 by NUNEZ against Defendant GABRIEL CONTAINER on March 12, 2021, Los Angeles
11 Superior Court, Case No. 21STCV09787.

12 **I. DEFINITIONS**

13 The following definitions are applicable to this Settlement Agreement. Definitions
14 contained elsewhere in this Settlement Agreement shall also be applicable.

15 1. “Action” means the case entitled *Tony Nunez v. Gabriel Container Corporation*,
16 Case No. 21STCV09787, pending before the Court.

17 2. “Class” means all hourly-paid or non-exempt employees who were employed by
18 GABRIEL CONTAINER during the Class Period. Members of the Class are referred to herein
19 individually as a “Class Member” and collectively as “Class Members.” GABRIEL
20 CONTAINER represents that the Class includes approximately 142 Class Members as of May 27,
21 2022 that worked 20,594 work weeks.

22 3. “Class List” means a list of Class Members that GABRIEL CONTAINER will
23 compile from its records.

24 4. “Class Period” means the time period from September 15, 2016 through the earlier
25 of (i) the date of Preliminary Approval or (ii) the date Class Members workweeks equals 22,653
26 (i.e. 10% above the total work weeks as of May 27, 2022).

27 5. “Court” means the Los Angeles Superior Court.

28 6. “Defendant’s Counsel” means ATKINSON, ANDELSON, LOYA, RUUD &

ROMO.

7. “Effective Date” means the latter of: (a) if no objections to the Settlement Agreement are made in writing or at the hearing for Final Approval, the date the Court enters Judgment and service of entry of judgment is received by Defendant; (b) if objections are made in writing or at the hearing for Final Approval and overruled, and no appeal is taken of the order granting Final Approval, then the Effective Date shall be three (3) calendar days after the deadline to file an appeal of the order granting Final Approval; or (c) if one or more appeals are taken from the Court’s overruling of any objections to the settlement, then the Effective Date shall be three (3) calendar days after any appeal is dismissed or the order granting Final Approval of the settlement is affirmed after an appeal, and the order granting Final Approval is not subject to further review and becomes final.

8. “Final Approval” means the Court Order granting final approval of the Settlement Agreement and entering final judgment thereon.

9. “Individual Settlement Payment” means each Participating Class Member’s and/or PAGA Group member’s pro rata share of the Net Settlement Proceeds calculated in accordance with the Individual Settlement Payment calculations described below.

10. “Maximum Settlement Amount” means the total amount (excluding employer payroll taxes for wage payments under the Settlement Agreement) GABRIEL CONTAINER is required to pay under this Settlement Agreement, subject to NUNEZ obtaining Final Approval and the Effective Date occurring. The Maximum Settlement Amount includes only (and all subject to Court approval): (1) the attorneys’ fees of Class Counsel; (2) the litigation costs and expenses of Class Counsel; (3) the Service Award to the Class Representative; (4) the payment to the Labor Workforce and Development Agency (“LWDA”) pursuant to PAGA; (5) all costs of administration, including, without limitation, the Settlement Administrator’s fees and expenses; and (6) the Individual Settlement Payments paid to Participating Class Members and PAGA Group Members.

11. “Net Settlement Amount” means the portion of the Maximum Settlement Amount, less the amounts approved and awarded by the Court for: (1) the attorneys’ fees of Class Counsel;

(2) the litigation costs and expenses of Class Counsel; (3) the Service Award to the Class Representative; (4) the payment to the LWDA pursuant to PAGA; (5) all costs of administration, including, without limitation, the Settlement Administrator's fees and expenses.

12. "Notice Deadline" means the date by which Class Members must submit to the Settlement Administrator a valid request to be excluded from the settlement, object to the settlement, or dispute the number of workweeks worked during the Class Period. If the date of the Notice Deadline falls on a Sunday or federal holiday, the time to object will be extended to the next calendar day on which the U.S. Postal Service is open.

13. "Notice of Settlement" means the notice that the Court approves and orders to be sent to all Class Members advising them of their rights under this Settlement Agreement. The Notice of Settlement is attached hereto as Exhibit 1.

14. "PAGA" means the California Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*).

15. "PAGA Group" means all non-exempt, hourly-paid California employees employed by GABRIEL CONTAINER during the PAGA Period. Members of the PAGA Group are referred to herein individually as a "PAGA Group Member" and collectively as "PAGA Group Members."

16. "PAGA Payment" means the amount that the Parties have agreed to allocate from the Maximum Settlement Amount in order to settle claims arising under PAGA.

17. "PAGA Period" shall mean the period from September 15, 2019 through the end of the Class Period (as defined above in Section I. Paragraph 4 herein).

18. "Participating Class Members" or "Settlement Class" means all Class Members who do not submit a valid request to be excluded from the settlement, consistent with the terms set forth in this Settlement Agreement.

19. "Plaintiff's Counsel" or "Class Counsel" means WILSHIRE LAW FIRM, PLC, counsel of record for NUNEZ.

20. "Preliminary Approval" means the Court Order granting preliminary approval of the Settlement Agreement.

21. “Qualified Settlement Account” means the account established by the Settlement Administrator into which the Maximum Settlement Amount and all employer payroll taxes associated therewith shall be deposited by GABRIEL CONTAINER.

22. “Released Parties” means GABRIEL CONTAINER, its past, present, and/or future owners, officers, directors, managing agents, trustees, payroll processors, independent contractors, members, managers, shareholders, employees, attorneys, insurers, assigns, shareholders, successors, predecessors and agents, GABRIEL CONTAINER’s past, present, and/or future parent, subsidiary, or affiliated entities, DBAs and franchisors, and each of their owners, officers, directors, shareholders, managing agents, trustees, payroll processors, independent contractors, members, managers, employees, attorneys, insurers, assigns, successors, predecessors and agents.

23. “Released Claims” means any and all claims, damages, or causes of action alleged in, or arising out of, the allegations in the Complaint and First Amended Complaint, filed in the Action and the PAGA Notice, which were alleged or that could have been alleged by NUNEZ and/or any Participating Class Member in such complaints and/or the PAGA Notice based on any of the factual allegations contained in such complaints and/or the PAGA Notice, including, but not limited to, claims under state, federal (i.e., Fair Labor Standards Act (FLSA)) or local law, including, but not limited to claims for unpaid wages, claims for the failure to pay minimum wages, claims for the failure to pay overtime wages, claims related to missed meal and rest breaks or periods and nonpayment of premium pay for such, failure to comply with itemized employee wage statement provisions, failure to pay wages due at separation, failure to timely pay wages during employment, failure to keep requisite payroll records, unfair competition, the payment of any penalties (including PAGA). The Released Claims specifically include, but are not limited to, all claims arising under California Labor Code sections 201, 202, 203, 204, 210, 218.5, 226, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698 *et seq.*, 2800, the Wage Orders of the California Industrial Welfare Commission, California Business and Profession Code sections 17200, *et seq.*, California Code of Civil Procedure section 1021.5, and California common law of contract, interest and claims for attorney’s fees relating in any way to those claims alleged and mentioned in the complaint(s) and/or PAGA Notice.

24. “Released PAGA Claims” means any and all claims for civil penalties under PAGA based on the labor code violations alleged in the PAGA Notice sent by Plaintiff to the LWDA, including California Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1197.1, 1198, 2800, 2698, *et seq.*, the IWC Wage Orders as well as all facts, theories, or claims for civil penalties that would be considered administratively exhausted under applicable law by the PAGA Notice Plaintiff sent to the LWDA.

25. “Service Award” means an award approved by the Court to the Class Representative in exchange for a general release, and in recognition of his efforts and work in prosecuting the Action on behalf of all Class Members.

26. “Settlement Administrator” means a third-party class action settlement administrator mutually agreed to by the Parties and approved by the Court for the purposes of administering this settlement.

27. “Settlement Administration Costs” mean all the expenses payable from the Maximum Settlement Amount to the Settlement Administrator for administering this Settlement Agreement, including, but not limited to, calculating weeks of employment from the Class List, printing, translating into Spanish, distributing and tracking forms for this settlement, mailing notices, calculating awards, processing requests for exclusion and objections, performing necessary skip traces on Notices of Settlement returned as undeliverable, mailing Participating Class Members and PAGA Group Members settlement checks, issuing any required tax reporting forms, distributing the Maximum Settlement Amount and Net Settlement Amounts and providing necessary reports and declarations, as requested by the Parties, Class Counsel and Defendant’s Counsel, among other things in this Settlement Agreement.

28. “Workweeks” mean the total number of weeks Class Members worked at least one shift for GABRIEL CONTAINER in a non-exempt, hourly-paid position in California at any of its locations during the Class Period. Workweeks shall be calculated by counting the number of days between each Class Member’s first date employed by GABRIEL CONTAINER in a non-exempt, hourly-paid position during the Class Period and the last day they were employed by GABRIEL CONTAINER in a non-exempt, hourly-paid position during the Class Period, and dividing that

sum by seven and rounding up to the nearest whole number.

II. PROCEDURAL AND FACTUAL BACKGROUND

29. On March 12, 2021, Plaintiff Tony Nunez (“Plaintiff”) filed a Complaint on behalf himself and on behalf of all other allegedly similarly situated employees (i.e., on a class basis) against Defendant Gabriel Container Corporation (“Gabriel Container”). In his Complaint, Plaintiff alleged seven causes of action, each related to various wage and hour violations pertaining to his employment with Gabriel Container. Plaintiff’s claims include: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal breaks; (4) failure to provide rest breaks; (5) failure to pay all wages at the end of employment; (6) failure to provide accurate itemized wage statements; and (7) violation of California Business & Professions Code. On December 3, 2021, Plaintiff filed a First Amended Complaint to include an eighth cause of action for civil penalties under the California Private Attorneys General Act (“PAGA”) Plaintiff complied with the PAGA notice provisions by filing a notice with the California Labor and Workforce Development Agency (“LWDA”)

30. After the filing of the Action, NUNEZ and GABRIEL CONTAINER engaged in significant informal discovery including the production of policy records, time records, and payroll records for GABRIEL CONTAINER’s employees, as well as other data regarding, and a representative sampling of, GABRIEL CONTAINER’s employees. The parties exchanged substantial informal discovery and engaged in conferences regarding NUNEZ’s claims and the claims of the alleged aggrieved employees, the value of those claims, and GABRIEL CONTAINER’s defenses to those claims.

31. The Parties have engaged in sufficient investigation and discovery to assess the relative merits of NUNEZs claims and of GABRIEL CONTAINER’s defenses to them. On May 27, 2022, the Parties attended a full-day mediation with experienced employment law mediator Hon. Steven R. Denton (Ret.), which, via the mediation and a mediator’s proposal therefrom, reached an arm’s-length, mediated confidential settlement of the dispute between them, the terms of which are elaborated in this Agreement.

32. GABRIEL CONTAINER denies any liability or wrongdoing of any kind associated

1 with the claims alleged in the PAGA Notice, originally filed Complaint, and First amended
2 Complaint, and further denies that the Action is appropriate for class treatment for any purpose
3 other than this settlement. GABRIEL CONTAINER contends that it has complied with the
4 California Labor Code at all times. It is GABRIEL CONTAINER's position that, if this case were
5 to be litigated, class certification would be denied, and the PAGA claims would be found to be
6 without procedural and substantive merit.

7 33. The Parties expressly acknowledge that this Settlement Agreement is entered into
8 solely for the purpose of compromising significantly disputed claims. The Action, the negotiation
9 and execution of this Settlement Agreement, and all acts performed or documents executed
10 pursuant to or in furtherance of the Settlement Agreement (i) shall not be used as an admission or
11 evidence of wrongdoing on behalf of GABRIEL CONTAINER; (ii) shall not be an admission or
12 evidence of fault on behalf of GABRIEL CONTAINER in any action before a civil, criminal, or
13 administrative agency; and (iii) shall not be deemed to be, and may not be used as, an admission
14 or evidence of the appropriateness of these or similar claims for class certification in the Action or
15 with respect to any other proceeding.

16 34. Class Counsel represent they have conducted a thorough investigation into the facts
17 and law during the prosecution of the Action, including the exchange of extensive informal
18 discovery and the review and verification of statistical data and other facts and information
19 provided by GABRIEL CONTAINER. Counsel for the Parties also represent they have
20 investigated the applicable law as applied to the facts discovered regarding the alleged claims of
21 NUNEZ, the putative Class, allegedly aggrieved employees, and the potential defenses thereto.

22 35. Based on their own independent investigation and evaluation, Class Counsel are of
23 the opinion (and will so represent to the Court) that settlement for the consideration and on the
24 terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best
25 interest of the Settlement Class in light of all known facts and circumstances, including the risk of
26 significant delay, the risk any class claims would not be certified by the Court, and the risk of
27 successful defenses asserted by GABRIEL CONTAINER. GABRIEL CONTAINER and its
28 counsel also agree (and will so represent to the Court) that this settlement is fair and in the best

1 interest of the Settlement Class.

2 36. The Parties agree that the Class described herein may be certified for settlement
3 purposes only and that any motion for preliminary approval seeking, *inter alia*, certification of the
4 Class is for purposes of the settlement only. If for any reason the settlement is not approved, the
5 certification will have no force or effect and will immediately be revoked. The Parties further
6 agree that certification for purposes of the settlement is in no way an admission that class
7 certification is proper under the more stringent standard applied for litigation and that evidence of
8 this limited stipulation for settlement purposes only will not be admissible for any purpose in this
9 or any other proceeding. The Parties further agree that by entering this settlement, GABRIEL
10 CONTAINER is not waiving any other defenses to the claims.

11 **III. TERMS OF AGREEMENT**

12 37. Terms of this Settlement Agreement are Subject to Court Approval. All terms set
13 forth in this Settlement Agreement are subject to Court approval. The Parties stipulate to class
14 certification for purposes of settlement only. NUNEZ shall apply to the Court for approval of the
15 Settlement Agreement and for class certification solely for purposes of effectuating this
16 settlement. GABRIEL CONTAINER shall not oppose such application, provided it does not
17 deviate from this Settlement Agreement. If, for any reason, the settlement is not approved, the
18 stipulation to certification will be void. The Parties further agree that certification for purposes of
19 settlement is not an admission that class certification is proper under the standard applied to
20 contested certification motions and that this settlement will not be admissible in this, or in any
21 other, legal process or proceeding as evidence that (i) a class should be certified or (ii) GABRIEL
22 CONTAINER is liable to NUNEZ or any other Class Members

23 38. Overview of Payment Structure. This settlement is made on a non-reversionary
24 basis. This settlement shall consist of a Maximum Settlement Amount which, in turn, includes
25 only (and all subject to Court approval): (1) the attorneys' fees of Class Counsel; (2) the litigation
26 costs and expenses of Class Counsel; (3) the Service Award to the Class Representative; (4) the
27 payment to the LWDA pursuant to PAGA; (5) all costs of administration, including, without
28 limitation, the Settlement Administrator's fees and expenses; and (6) the Individual Settlement

1 Payments paid to Participating Class Members and PAGA Group Members.

2 39. Payments Made by GABRIEL CONTAINER. The following are all amounts
3 GABRIEL CONTAINER will pay pursuant to this Settlement Agreement:

4 a. *Maximum Settlement Amount.* GABRIEL CONTAINER shall pay Three
5 Hundred Ninety Thousand Dollars and Zero Cents (\$390,000) to fund settlement of the Action.
6 The payments by GABRIEL CONTAINER pursuant to this Settlement Agreement shall settle all
7 claims released herein. The settlement payment is not being made for any other purpose and will
8 not be construed as compensation for determining eligibility for any health and welfare benefits or
9 unemployment compensation. The Maximum Settlement Amount shall also include any interest
10 that accrues in the Qualified Settlement Account created by the Settlement Administrator.

11 b. *Employer Payroll Taxes.* GABRIEL CONTAINER shall be responsible for
12 paying employer payroll taxes on wage payments made pursuant to the Settlement Agreement in
13 addition to the Maximum Settlement Amount.

14 c. *No Other Amounts.* GABRIEL CONTAINER is under no obligation under
15 this Settlement Agreement to pay, and shall not pay, anything other than the Maximum Settlement
16 Amount and the employer payroll taxes referred to above.

17 40. Escalator: The Maximum Settlement Amount was calculated based on the premise
18 that there are approximately 142 class members eligible to participate in the settlement who
19 worked approximately 20,594 workweeks. In the event the actual number of workweeks in the
20 settlement is greater than 10% of this estimate, then the Maximum Settlement Amount will be
21 increased by the same proportion. For instance, if the actual number of workweeks in the
22 settlement is 22,859, then the Maximum Settlement Amount will be increased by 11%.

23 41. Funding and Disbursement of Payments Made by GABRIEL CONTAINER.
24 GABRIEL CONTAINER shall deposit the Maximum Settlement Amount, plus all employer taxes
25 due under on wage payments to be made under this Settlement Agreement, with the Settlement
26 Administrator no later than ninety (90) calendar days after the Effective Date. The Settlement
27 Administrator shall disburse the Maximum Settlement Amount to the recipients designated herein
28 no later than 15 calendar days after GABRIEL CONTAINER's payment above.

42. Payment of Class Counsel's Attorneys' Fees and Litigation Costs and Expenses. GABRIEL CONTAINER agrees not to object to, undermine or oppose any application or motion by Class Counsel for an award of attorneys' fees not to exceed 33.33% or One-Hundred Twenty Nine Thousand Eighty Seven Dollars and Zero Cents (\$130,000) of the Maximum Settlement Amount, and reasonable litigation-related costs and expenses not to exceed \$20,000, which is subject to review and final approval by the Court. If approved, the Court's award of attorneys' fees and reimbursement of litigation costs and expenses to Class Counsel shall be paid from the Maximum Settlement Amount. Any portion of the amounts sought by Class Counsel not awarded by the Court shall revert back to the Net Settlement Amount for distribution to Participating Class Members, and will not revert to GABRIEL CONTAINER under any circumstance. The attorneys' fees and litigation costs and expenses of Class Counsel include, without limitation, all such fees and costs incurred to date, as well as such fees and costs to be incurred in documenting the settlement, securing Court approval of the settlement, and obtaining judgment in the Action. Neither Plaintiff nor Class Counsel will be entitled to any other attorney fees or costs from GABRIEL CONTAINER other than awarded by the Court pursuant to this Settlement Agreement. Class Counsel shall be solely and legally responsible to pay all applicable taxes on the payments made pursuant to this paragraph. IRS Form 1099 shall be provided to Class Counsel for the payments made pursuant to this paragraph.

43. Service Award. GABRIEL CONTAINER agrees not to oppose or object to any application or motion for a Service Award to the Class Representative in an amount equal to or less than Ten Thousand Dollars and Zero Cents (\$10,000), subject to court approval, which if approved shall be payable from the Maximum Settlement Amount and shall be in addition to payment of the Individual Settlement Payment payable to him, and is further consideration for settling this matter and in exchange for the release of all claims by Participating Class Members. The Settlement Administrator shall issue an IRS Form 1099 for the Service Award. The Class Representative shall be solely and legally responsible to pay any and all applicable taxes on the payment made pursuant to this paragraph. Any reduction in the amount of the Service Award by the Court shall remain in the Net Settlement Amount to be distributed to Participating Class

Members.

44. PAGA Payment. The Parties agree that Twenty Five Thousand Dollars and Zero Cents (\$25,000) shall be allocated to settle the claims pursuant to the PAGA. Of this amount, seventy-five percent (75%) or \$18,750 shall be made payable to the LWDA and twenty-five percent (25%) or \$6,250 shall be distributed to PAGA Group Members as part of the Net Settlement Amount. The amount of any reduction of the PAGA Payment by the Court shall remain in the Net Settlement Amount to be distributed to Participating Class Members.

45. Settlement Administration Costs. Subject to Court approval, the Parties have agreed that Phoenix Settlement Administrators will serve as a neutral third-party claims or settlement administrator to perform all acts required by the Settlement Agreement. The Parties each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest. The Settlement Administrator shall be paid for the Settlement Administration Costs. Settlement Administration Costs are expected to total no more than \$10,000. Any portion of the Settlement Administration Costs which is not used shall be returned to the Net Settlement Amount for pro rata distribution to Participating Class Members, and will not revert to GABRIEL CONTAINER under any circumstance. The Settlement Administration Costs shall be paid from the Maximum Settlement Amount and shall cover all costs of the administration of the settlement. No fewer than ten (10) calendar days prior to the Final Approval hearing, the Settlement Administrator shall provide the Court and all counsel for the Parties with a statement detailing the Settlement Administration Costs. The Parties agree to cooperate in the settlement administration process and to make all reasonable efforts to control and minimize the costs and expenses incurred in the administration of the settlement. An IRS Form 1099 shall be issued to the Settlement Administrator.

46. Net Settlement Amount. The Net Settlement Amount shall be available for distribution to Participating Class Members and PAGA Group Members in accordance with the notice procedure and formula set forth in this Settlement Agreement.

IV. DUTIES OF THE PARTIES BEFORE PRELIMINARY APPROVAL AND

BETWEEN PRELIMINARY AND FINAL APPROVAL

47. Promptly after the execution of this Settlement Agreement, Class Counsel shall move the Court for Preliminary Approval of the Settlement and obtain entry of an order accomplishing the following:

a. Provisionally certifying the Action under California law as a class action for purposes of this settlement only;

b. Preliminarily approving the settlement subject only to objections of Class Members, the terms of the Parties' Settlement Agreement, and final approval by the Court;

c. Approving as to form and content the proposed Notice of Settlement attached hereto as Exhibit 1;

d. Directing the mailing of the Notice of Settlement by first-class mail to the Class Members;

e. Preliminarily appointing NUNEZ as Class Representative and Plaintiff's Counsel as Class Counsel (only for purposes of effectuating and implementing this Settlement Agreement);

f. Preliminarily approving the application for payment of reasonable attorneys' up to 33.33% of the Maximum Settlement Amount, but not to exceed \$130,000; and reimbursement of reasonable litigation-related costs and expenses not to exceed [\$20,000 payable to Class Counsel;

g. Preliminarily approving the Service Award to the Class Representative in an amount equal to \$10,000;

h. Preliminarily approving settlement administration services by Settlement Administrator and its estimated Settlement Administration Costs of up to \$10,000.

i. Preliminarily approving the allocation of civil penalties pursuant to PAGA in the amount of \$25,000, seventy-five percent (75%) of which or \$18,750 shall be payable to the LWDA and twenty-five percent (25%) of which or \$6,250 shall be distributed to PAGA Group Members from the Net Settlement Amount; and

j. Scheduling a hearing for Final Approval on the question whether the

1 proposed settlement should be finally approved as fair, reasonable and adequate to Class
2 Members.

3 k. The form and content of the proposed Preliminary Approval order is
4 attached as Exhibit 2 to this Settlement Agreement.

5 48. NUNEZ shall submit this Settlement Agreement in support of the Motion for
6 Preliminary Approval. Class Counsel shall not file said motion or any other documents associated
7 with same unless and until Defendant's Counsel has approved the contents thereof.

8 49. NUNEZ shall also submit this Settlement Agreement to the LWDA (as required by
9 Labor Code § 2699(1)(2)).

10 50. Class Counsel will file a Motion for Final Approval of the Settlement and
11 supporting documents with the Court no later than sixteen (16) court days prior to the Final
12 Approval Hearing. Supporting documents shall include, but are not limited to: (a) a declaration by
13 the Settlement Administrator of due diligence and proof of mailing of the Notice of Settlement
14 required to be mailed to Class Members by this Settlement Agreement, and of the delivery results
15 of the Settlement Administrator's mailings, including tracing and re-mailing efforts; and (b) a
16 proposed Order and Judgment granting Final Approval. Class Counsel will send Defendant's
17 Counsel the final approval motion for review and approval prior to the filing of same.
18 Defendant's Counsel shall have at least five (5) business days in which to review, comment on,
19 and approve the language of the Motion for Preliminary Approval and the Motion for Final
20 Approval.

21 51. GABRIEL CONTAINER will not object to or oppose Preliminary or Final
22 Approval of the settlement, including application by Class Counsel for the Service Award,
23 attorneys' fees and reimbursement of litigation-related costs and expenses as set forth above,
24 provided the motions do not deviate from the terms of this Settlement Agreement.

25 52. Class Counsel will submit with the motion for Final Approval a proposed Order
26 and Judgment granting Final Approval. The proposed Order and Judgment granting Final
27 Approval shall include the following findings and orders:

28 a. Approving the settlement, adjudging the terms thereof to be fair, reasonable

1 and adequate, and directing that its terms and provisions be carried out;

2 b. Approving payment of the Service Award to the Class Representative;

3 c. Approving Class Counsel's application for an award of reasonable
4 attorneys' fees and reimbursement of reasonable litigation-related costs and expenses;

5 d. Approving the Settlement Administration Costs;

6 e. Approving payment of civil penalties to the LWDA and the PAGA Group
7 Members;

8 f. Ordering the payment of Individual Settlement Payments in accordance
9 with the terms of this Agreement;

10 g. Listing the individuals who opted-out of the Settlement and will not be
11 included in the releases or bound by the Judgment.

12 h. Entering Final Approval releasing all Released Claims of the Participating
13 Class Members against all Released Parties;

14 i. Entering judgment in this Action in accordance with this Settlement
15 Agreement, pursuant to Cal. Rules of Court, Rule 3.769(h);

16 j. Requiring the Settlement Administrator to post a copy of the Judgment on
17 its website for a period of at least 30 days from the date the Judgment is executed in compliance
18 with Cal. Rules of Court, Rule 3.771(b); and

19 k. Providing that the Court will retain jurisdiction to oversee administration
20 and enforcement of the terms of the settlement and the Court's orders; and

21 l. The form and content of the proposed Order and Judgment granting Final
22 Approval is attached as Exhibit 3 to this Settlement Agreement.

23 **V. DUTIES OF THE PARTIES AFTER FINAL APPROVAL**

24 53. Following entry of the Court's Order and Judgment granting Final Approval of the
25 Settlement Agreement, the Parties will each act to assure its timely execution and the fulfillment
26 of all its provisions, including, but not limited to the following:

27 a. Class Counsel will immediately file and serve a written Notice of Entry of
28 judgment or a filed-endorsed copy of the judgment, accompanied by proof of service, on any

1 person who objected to the settlement in writing or at the hearing on the Motion for Final
2 Approval;

3 b. Should an appeal be taken from the Order and Judgment granting Final
4 Approval of the Settlement Agreement, all Parties will support the Order and Judgment granting
5 Final Approval on appeal;

6 c. Class Counsel and Defendant's Counsel will reasonably assist the
7 Settlement Administrator as needed or requested in the process of identifying and locating
8 Participating Class Members and PAGA Group Members entitled to payments from the Net
9 Settlement Amount and assuring delivery of such payments;

10 d. Class Counsel and Defendant's Counsel will reasonably assist the
11 Settlement Administrator as needed or requested in responding to late requests for payments from
12 the Net Settlement Amount;

13 e. Class Counsel and Defendant's Counsel will ensure that the Settlement
14 Administrator will certify to the Court completion of all payments required to be made by this
15 Settlement Agreement.

16 **VI. PROCEDURE AND ADDITIONAL TERMS**

17 54. Notice Procedure. The Settlement Administrator shall be responsible for the
18 following notice procedure:

19 a. *Delivery of the Class List.* Within fourteen (14) calendar days from Class
20 Counsel providing notice to Defendant's Counsel that the order granting preliminary approval has
21 been provided to the Settlement Administrator, GABRIEL CONTAINER shall provide the Class
22 List to the Settlement Administrator. The Class List shall contain (to the extent available in
23 GABRIEL CONTAINER's business records) Class Members' full name, last known addresses,
24 social security numbers, and dates of employment as non-exempt, hourly-paid employees of
25 GABRIEL CONTAINER during the Class Period. The Class List information shall remain
26 confidential and shall not be disclosed to anyone, including Class Counsel, except to carry out
27 reasonable efforts described below, or pursuant to express written authorization by GABRIEL
28 CONTAINER. The Settlement Administrator shall use due care with respect to the storage,

1 custody, use, and/or dissemination of the confidential information. The Settlement Administrator
2 will perform address updates and verifications as necessary prior to the first mailing.

3 b. *Notice.* A notice of pendency of class action, proposed settlement and
4 hearing date for Court approval (previously defined as Notice of Settlement), substantially in the
5 form attached hereto as Exhibit 1 and as approved by the Court, shall be sent by the Settlement
6 Administrator to the Class Members (in English and Spanish), by first class mail, within fourteen
7 (14) calendar days after receipt of the Class List. The Notice of Settlement shall be sent via
8 regular First Class U.S. Mail, using the most updated mailing addresses, and advise Class
9 Members of the terms of the settlement, their ability to object to the settlement in writing and/or in
10 person, and their ability to submit a Request for Exclusion. The Notice of Settlement will further
11 inform Class Members of the Court-established deadlines for filing objections and requesting to be
12 excluded from the Class. The Notice of Settlement will also include the calculation of Workweeks
13 during the applicable Class Period and calculation of the Class Member's estimated payment
14 (which will be based upon the assumption that the requests for attorney's fees and costs and the
15 Service Award are awarded in full).

16 c. *Procedure for Lost and Undeliverable Notices.* Any Notice of Settlement
17 returned to the Settlement Administrator as non-delivered on or before the Notice Deadline shall
18 be sent to the forwarding address affixed thereto, if a forwarding address is provided. If no
19 forwarding address is provided, the Settlement Administrator shall promptly, but no later than five
20 (5) business days of receiving notice that the Notice of Settlement was undeliverable, attempt to
21 determine a correct mailing address using a skip-trace, or similar search, using the name, address
22 and/or social security number of the Class Member involved, and promptly re-mail the Notice of
23 Settlement. If after the Notice of Settlement is still returned to the Settlement Administrator as
24 non-deliverable after re-mailing, that individual will be deemed a Participating Class Member for
25 purposes of the Released Claims (as defined below), and the Settlement Administrator will have
26 no further obligation to obtain the Class Member's current address. The Notice Deadline for any
27 Class Member who is re-mailed a Notice of Settlement shall be extended fifteen (15) calendar
28 days from the date of the re-mailing or the original sixty (60) calendar day deadline, whichever is

1 later.

2 55. Request for Exclusion Procedure. The Notice of Settlement shall provide Class
3 Members with instructions on how to exclude themselves or “opt out” if they do not wish to
4 participate in this settlement.

5 a. Class Members who wish to opt out of this settlement must mail a written
6 request to be excluded from the Settlement (“Request for Exclusion”) to the Settlement
7 Administrator no later than sixty (60) calendar days after the initial mailing of the Class Notice,
8 unless extended pursuant to a re-mailing, or unless the Court requires a longer period, in which
9 case the Court-ordered deadline period will apply. To be valid, a Request for Exclusion must
10 include the Class Member’s name, signature, the last four digits of their Social Security Number,
11 and a clear statement indicating they wish to be excluded from the settlement. In order to be valid,
12 a Class Member’s Request for Exclusion must be postmarked, faxed, or e-mailed to the Settlement
13 Administrator no later than the Notice Deadline.

14 b. Within five (5) calendar days after receipt by the Service Administrator of
15 each timely-submitted Request for Exclusion, the Service Administrator will send a deficiency
16 notice to such Class Members requesting exclusion and note any irregularities in the Request for
17 Exclusion (such as failure to sign or include last four (4) digits of the Class Member’s social
18 security number). The deficiency notice will provide the Class Members no more than five (5)
19 calendar days from the mailing of the deficiency notice to resubmit a revised Request for
20 Exclusion that cures all deficiencies. The failure of a Class Member to cure all deficiencies in a
21 timely manner shall invalidate the Request for Exclusion and will not be subject to cure.

22 c. A Class Member who does not properly and timely submit a Request for
23 Exclusion of the Settlement Agreement in the manner and by the deadline specified above will
24 automatically become a Participating Class Member and will be bound by all terms and conditions
25 of the Settlement Agreement, including its release of claims, if the Settlement Agreement is
26 approved by the Court, and be bound by the Final Approval Order, regardless of whether he or she
27 has objected to the Settlement Agreement. In consideration for settlement and release of all claims
28 of the Participating Class Members against GABRIEL CONTAINER, each Participating Class

Member will receive a pro rata share of the Net Settlement Amount.

d. A Class Member who properly and timely submits a Request for Exclusion of the Settlement Agreement will not become a Participating Class Member, will not be bound by the Settlement Agreement, and will not have a right to appear at the Final Approval hearing to have any objections to the settlement heard by the Court.

e. To the extent any Class Member submits a Request for Exclusion, that Class Member's unclaimed portion shall be reallocated to the Net Settlement Amount. Increases to Participating Class Member payments shall be allocated on a proportional basis based on the size of each Participating Class Member's Workweeks.

f. Counsel for the Parties shall not discourage any Class Member from participating in, objecting to or opting out of the settlement.

g. If more than fifteen percent (15%) of Class Members timely and properly submit a Request for Exclusion, then GABRIEL CONTAINER shall have the right, in its sole discretion, to void and revoke the Settlement Agreement and its stipulation to class certification. All signatories and their counsel must not encourage opt-outs. The Parties specifically agree not to solicit opt-outs, directly or indirectly, through any means. Objective statements to Class Members who call Class Counsel with inquiries regarding the settlement, or the exercise of Class Counsel's ethical obligations, shall not be deemed a violation of the prohibitions contained herein. In the event of such a rescission, no party may use the fact that the Parties agreed to settle this case as evidence of GABRIEL CONTAINER's liability in this Action or the lack thereof.

h. The Settlement Administrator will notify the Parties of the total number of valid Requests for Exclusion forms and identify the individuals who submitted a request for exclusion within ten (10) calendar days after the Notice Deadline. GABRIEL CONTAINER shall have five (5) business days to notify Class Counsel in writing of GABRIEL CONTAINER's intent to revoke the Settlement Agreement, including conditional class certification.

i. Class Members who are also PAGA Group Members will not be permitted to exclude themselves from the PAGA claim portion of the settlement. PAGA penalty settlement payments in the appropriate amounts will be distributed by the Settlement Administrator by mail

1 to the PAGA Group Members including to those Class Members who are PAGA Group Members
2 who submitted a request for exclusion.

3 56. Objection Procedure. Class Members who wish to object to this settlement should
4 notify the Settlement Administrator in writing, via mail, e-mail, or fax, that they object to the
5 settlement by the Notice Deadline. In the alternative, Participating Class Members may appear in
6 Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval
7 Hearing. A Participating Class Member who elects to send a written objection the Settlement
8 Administrator must do so no later than the Notice Deadline. The Settlement Administrator shall
9 notify and submit a copy of the objection to Class Counsel and Defendant's Counsel forthwith and
10 Class Counsel shall lodge a copy of the objection with the Court. Any objection sent to the
11 Settlement Administrator must be postmarked no later than the Notice Deadline, unless the Court
12 requires a longer period, in which the Court ordered objection period will apply. The objection
13 should provide the name of the Class Member, all facts and reasons why the Class Member is
14 objecting to the settlement along with any legal authority, and signed by the Class Member. Class
15 Members shall be permitted to rescind their objections in writing by submitting a rescission
16 statement to the Settlement Administrator not later than one (1) business day before the Court's
17 Final Approval hearing or as otherwise ordered by the Court. Whether or not they timely submit a
18 written objection, Class Members may appear at the Final Approval hearing to have their
19 objections heard by the Court.

20 57. Disputed Information on Notice of Settlement. Each Class Member shall have an
21 opportunity to dispute the employment dates and number of Workweeks attributed to him or her as
22 identified in the Class Notice. To the extent a Class Member disputes the employment dates or
23 number of Workweeks identified and listed in the Class Notice, the Class Member may produce
24 evidence to the Settlement Administrator showing that such information is inaccurate. In order to
25 be valid, a Class Member's dispute the employment dates and number of Workweeks, and the
26 evidence in support of such dispute, must be received by the Settlement Administrator no later
27 than the Notice Deadline. Absent evidence rebutting GABRIEL CONTAINER's records,
28 GABRIEL CONTAINER's records will be presumed determinative. Defense Counsel and Class

Counsel shall jointly determine the number of eligible Workweeks that should apply. If the Defense Counsel and Class Counsel cannot agree the dispute will be submitted to the Court.

58. The Settlement Terms Bind All Class Members Who Do Not Submit a Timely and Valid Request for Exclusion. Any Class Member who does not affirmatively opt-out of the Settlement Agreement by submitting a timely and valid Request for Exclusion consistent with the terms of this Settlement Agreement shall be bound by all of its terms, including those pertaining to the Released Claims (as defined below), as well as any Final Approval that may be entered by the Court when it grants Final Approval of the settlement.

59. Certification Reports Regarding Requests for Exclusion, Disputes, and Undeliverable Notices. The Settlement Administrator shall provide Defendant's Counsel and Class Counsel a weekly report which certifies: (a) the number of Class Members who have submitted a valid or defective Request for Exclusion; (b) the number of Class Member who have disputed the employment dates and number of Workweeks contained in their Notice of Settlement; and (c) the number of returned, undeliverable and/or re-mailed Notices of Settlement. Additionally, the Settlement Administrator shall provide to Defendant's Counsel and Class Counsel any updated reports regarding the administration of the Settlement Agreement as needed or requested.

60. Individual Settlement Payment Calculations. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement Payments under the terms of this Settlement Agreement. Should any question arise regarding the determination of eligibility for participation in the settlement or the amount of any Individual Settlement Payment under the terms of this Settlement Agreement, Class Counsel and Defendant's Counsel will meet and confer and attempt to reach agreement. Any unresolved disputes concerning the administration of the Settlement Agreement will be resolved by the Court, under the laws of the State of California.

61. Method of Calculating the Individual Settlement Payments: Individual Settlement Payments will be calculated as follows:

a. *PAGA Group Members.* The Settlement Administrator will calculate the

total Workweeks for all PAGA Group Members by adding the number of workweeks worked by each PAGA Group Member during the PAGA Period. The amount that each PAGA Group Member will be eligible to receive will be calculated by dividing each PAGA Group Member's individual Workweeks by the total Workweeks of all PAGA Group Members, and multiplying the resulting fraction by \$6,250. The Settlement Administrator will determine the total number of qualifying Workweeks for each PAGA Group Member which will be finalized after approval by the Parties.

b. *Participating Class Members.* The Settlement Administrator will calculate the total Workweeks for all Participating Class Members by adding the number of workweeks worked by each Participating Class Member during the Class Period. The amount that each Participating Class Member will be eligible to receive will be calculated by dividing each Participating Class Member's individual Workweeks by the total Workweeks of all Participating Class Members, and multiplying the resulting fraction by the Net Settlement Amount less the \$6,250. The Settlement Administrator will determine the total number of qualifying Workweeks for each Participating Class Member which will be finalized after approval by the Parties.

c. *Calculation of Individual Settlement Payment.* For Participating Class Members who are also PAGA Group Members the Individual Settlement Payment will be the sum of the amounts calculated for that Class Member in paragraphs 61.a. and 61.b. For Participating Class Members who not are also PAGA Group Members the Individual Settlement Payment will be the amount calculated for that Class Member in paragraph 61.b. For PAGA Group Members who are not also Participating Class Members, the Individual Settlement Payment will be the amount calculated for that PAGA Group Member in paragraphs 61.a. The Settlement Administrator will determine the amounts of the payments to each Class Member will be finalized after approval by the Parties.

62. Allocation and Tax Treatment of Individual Settlement Payments. Individual Settlement Payments shall be allocated as follows: 20% of the Individual Settlement Payment (excluding any portion of the share of the PAGA Payment) to Participating Class Members as wages; 73.5% of the Individual Settlement Payment (excluding any portion of the share of the

PAGA Payment) to Participating Class Members as non-wage statutory damages and interest; and 6.5% (i.e. PAGA civil penalties) as penalties. Portions of each Individual Settlement Payment allocated as wages will be reported on an IRS Form W-2. Portions allocated as non-wage statutory damages and interest, and those portions allocated as PAGA penalties, will be reported on an IRS Form 1099.

63. Payment of Individual Settlement Payments. The Settlement Administrator shall have the authority and obligation to make all payments, credits and disbursements, calculated in accordance with the methodology set forth in this Settlement Agreement and orders of the Court. The Settlement Administrator's duties will include reporting payment of the Individual Settlement Payments to all required taxing and other authorities, taking appropriate withholding from the Individual Settlement Payments, and issuing the appropriate IRS Forms W-2 and 1099. No person shall have any claim against GABRIEL CONTAINER, Defendant's Counsel, NUNEZ, Class Counsel, the Settlement Administrator, or any Participating Class Member and/or PAGA Group Member based on distributions and payments made in accordance with this Settlement Agreement.

64. No Credit Toward Employer Provided Benefit Plans. All Individual Settlement Payments to Participating Class Members and PAGA Group Members shall be deemed to be income to such Participating Class Members or PAGA Group Members solely in the year in which such awards actually are received by the Participating Class Members and PAGA Group Members. It is expressly understood and agreed that the receipt of such Individual Settlement Payments will not entitle any Participating Class Member or PAGA Group Member to additional compensation or benefits under any company bonus, paid time off (including vacation and sick leave), or other compensation or benefit plan or agreement in place during the period covered by the Settlement Agreement, nor will it entitle any Participating Class Member or PAGA Group Member to any increased retirement, 401(k) benefits or matching benefits, or deferred compensation benefits. It is the intent of this Settlement Agreement that the Individual Settlement Payments provided for in this Agreement are the sole payments to be made by GABRIEL CONTAINER to the Participating Class Members and PAGA Group Members in connection with this Settlement Agreement, and that the Participating Class Members and PAGA Group Members

1 are not entitled to any new or additional compensation or benefits as a result of having received
2 the Individual Settlement Payments (notwithstanding any contrary language or agreement in any
3 benefit or compensation plan document that might have been in effect during the period covered
4 by this Settlement Agreement).

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

66. Non-Negotiated Settlement Checks. Participating Class Members and PAGA Group Member must cash each of their Individual Settlement Payment checks within one hundred eighty (180) calendar days after they are mailed by the Settlement Administrator. The Parties agree that any uncashed checks, subject to Court approval, shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code §1500, *et. seq.* for the benefit of those Participating Class Members and PAGA Group Members who did not cash their checks until such time that they claim their property. The Parties agree that this disposition results in no “unpaid residue” under California Civil Procedure Code section 384, as the entire Net Settlement Amount will be paid out to Participating Class Members and PAGA Group Members.

67. Settlement Administrator’s Final Report(s). Not less than ten (10) calendar days after the Notice Deadline, the Settlement Administrator shall report to Defendant’s Counsel and Class Counsel: (i) the names of individuals who opted-out of the settlement; (ii) the Individual Settlement Payments owed to each Participating Class Member and/or PAGA Group Member; and (iii) the final number of Class Members who have submitted objections and/or valid Requests for Exclusion requests from the settlement. Upon completion of administration of the settlement, the Settlement Administrator will provide a written declaration under oath to certify such completion to the Court and counsel for all Parties. Additionally, once GABRIEL CONTAINER fully funds the Maximum Settlement Amount and payroll taxes, the Settlement Administrator will provide a written declaration under oath to certify GABRIEL CONTAINER’s full and final satisfaction of the Maximum Settlement Amount and payroll taxes and for GABRIEL CONTAINER’s use and records.

68. Release of Claims. Upon the funding of the Maximum Settlement Amount and all applicable employer-side payroll taxes, and except as to such rights or claims as may be created by this Settlement Agreement, each and every Participating Class Member, on behalf of themselves and their heirs and assigns, releases the Released Parties from the Released Claims that arose during the Class Period. A Participating Class Member’s cashing of the settlement check will be considered a consent and opt-in to the settlement of all federal wage and hour claims under the

FLSA which are encompassed within these Released Claims, and each Participating Class Member who cashes his or her settlement check will waive his or her rights to bring such claims under the FLSA which arose during the Class Period. A Participating Class Member who does not cash his or her settlement check will retain all rights and claims under the FLSA. However, the settlement will still discharge and extinguish the claims described herein under California law, including those for Participating Class Members who do not cash their settlement checks or who do not opt out of the settlement.

69. Release of PAGA Claims. Upon the funding of the Maximum Settlement Amount and all applicable employer-side payroll taxes, and except as to such rights or claims as may be created by this Settlement Agreement, each and every PAGA Group Member, on behalf of themselves and their heirs and assigns, and Plaintiff, on behalf of the State of California, releases the Released Parties from the Released PAGA Claims that arose during the PAGA Period.

70. General Release of Any and All Claims of Any Kind by Class Representative Only. Upon the funding of the Maximum Settlement Amount and all applicable employer-side payroll taxes, the Class Representative releases the Released Claims against the Released Parties, and makes the additional following General Release in favor of the Released Parties:

a. The Class Representative individually hereby unconditionally waives and forever releases, waives, discharges, any and all demands, damages, debts, liabilities, contracts, obligations, actions, causes of action and claims of every kind, nature, and description whatsoever, whether now known or unknown, suspected or unsuspected, including in equity or otherwise, which he ever had or now has against the Released Parties arising or accruing at any time prior to the Effective Date, including without limitation without limitation any matter, cause or claim arising out of or related to facts or events occurring prior to the execution of this Settlement Agreement, and/or related to NUNEZ's employment with GABRIEL CONTAINER and his separation therefrom. At a minimum, the claims released by the Class Representative include but are not limited to: (a) any claims that were or could have been brought under California Labor Code sections 132a, 201, 202, 203, 204, 216, 218, 218.5, 218.6, 225.5, 226, 226.3, 226.7, 432.5, 510, 512, 558, 1050, 1054, 1194, 1194.2, 1197, 1198, 2698 et seq., 2800, et seq., the applicable

1 Industrial Welfare Commission Wage Orders, the FLSA, and all related or corresponding federal
2 laws, and all implementing regulations and interpreting guidance; (b) any claims that were or
3 could have been brought under California Corporations Code, and California Business and
4 Professions Code, including but not limited to California Business and Professions Code section
5 17200 et seq. as unlawful, fraudulent or misleading based on the claims, facts and allegations
6 alleged in the Action (including, but not limited to, claims of conduct unlawful under state or
7 federal law); (c) any other causes of action, including those seeking premiums, penalties, interest,
8 punitive damages, costs, attorneys' fees, injunctive relief, declaratory relief, or accounting,
9 whether such causes of action are in tort, contract, equity, statute, or common law; (d) any claims
10 under the Fair Employment and Housing Act, Americans with Disabilities Act, Age
11 Discrimination in Employment Act, and Title VII of the Civil Rights Act of 1964, and (e) any
12 other claims the Class Representative could have made related to her employment with GABRIEL
13 CONTAINER. The Class Representative may hereafter discover facts in addition to or different
14 from those which he now knows or believes to be true, but stipulates and agrees that, upon the
15 funding of the Maximum Settlement Amount and all applicable employer-side payroll taxes, he
16 fully, finally, and forever settles and releases any and all claims, known or unknown, suspected or
17 unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist,
18 or heretofore have existed, upon any theory of law or equity and without regard to the subsequent
19 discovery or existence of such different or additional facts. NUNEZ is deemed, by operation of the
20 Order granting Final Approval, to have agreed not to sue or otherwise make a claim against any of
21 the Released Parties for any claim.

22 b. The Class Representative acknowledges that he has had the opportunity to
23 review, and has reviewed, California Civil Code section 1542, which provides:

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

1 Being fully informed of this provision of the Civil Code and understanding its provisions,
2 the Class Representative agrees to waive any rights under that section, and acknowledges that this
3 Settlement Agreement and the release contained herein extends to all claims that he has or might
4 have against the Released Parties, including those which are presently unknown to him or that he
5 does not know or suspect to exist, which, if known by NUNEZ, might have affected his settlement
6 with, and release of, the Released Parties or might have affected his decision.

7 71. Final Approval Hearing and Entry of Judgment. Upon expiration of the deadlines
8 to postmark a request to be excluded from or objection to the Settlement Agreement, and with the
9 Court's permission, a Final Approval hearing shall be conducted to finally determine the fairness
10 of the settlement, along with the amounts properly payable for (a) Individual Settlement
11 Payments; (b) The Class Representative's Service Award; (c) Class Counsel's attorneys' fees and
12 litigation costs and expenses; (d) Settlement Administration Costs; and (e) the PAGA Payment.
13 Class Counsel will be responsible for drafting the attorneys' fees and costs application/motion to
14 be heard at the Final Approval hearing, which such application/motion may be part of the Class
15 Representative's motion for final approval.

16 72. Judgment and Continued Jurisdiction. Upon Final Approval of the settlement by
17 the Court or at the time of or subsequent to the Final Approval hearing, the Parties shall present a
18 Final Approval to the Court for approval and entry. After entry of the Final Approval, the Court
19 shall have continuing jurisdiction under Code of Civil Procedure section 664.6 solely for purposes
20 of addressing: (a) the interpretation and enforcement of the terms of the settlement, (b) Settlement
21 Administration matters, (c) failure to timely pay all amounts owed by Defendant, and (d) such
22 post-Final Approval matters as may be appropriate under court rules or as set forth in this
23 Settlement Agreement.

24 73. No Solicitation of Settlement Objections or Exclusions. The Parties agree to use
25 their best efforts to carry out the terms of this Settlement Agreement. At no time shall any of the
26 Parties or their counsel seek to solicit or otherwise encourage Class Members to submit either a
27 Request for Exclusion or written objections to the Settlement Agreement or to appeal from the
28 Court's Final Approval.

1 74. Interim Stay of Proceedings. Pending completion of the settlement process, the
2 Parties agree to a stay of all proceedings in the Action except such as are necessary to implement
3 the Settlement itself and the Parties agree to refrain from further litigation of this matter, except as
4 to proceedings necessary to implement and obtain an order granting Final Approval of the terms of
5 the settlement.

6 75. Nullification of Settlement Agreement. In the event (i) GABRIEL CONTAINER
7 timely and properly revokes this Settlement Agreement as set forth in Section VI. Paragraph
8 54.(g) herein; (ii) the Court does not finally approve the Settlement Agreement as provided herein;
9 (iii) the Court does not enter Final Approval as provided herein, which becomes final as a result of
10 the occurrence of the Effective Date; or (iv) the Settlement Agreement does not become final for
11 any other reason, this Settlement Agreement shall be null and void and any order or judgment
12 entered by the Court in furtherance of this Settlement Agreement shall be treated as void from the
13 beginning. In such a case, the Parties shall be returned to their respective statuses as of the date
14 and time immediately prior to the execution of this Settlement Agreement and the Parties shall
15 proceed in all respects as if this Settlement Agreement had not been executed (and the terms and
16 existence of the Settlement Agreement will be confidential). In the event an appeal is filed from
17 the Court's Final Approval, or any other appellate review is sought prior to the Effective Date,
18 administration of the Settlement Agreement shall be stayed pending final resolution of the appeal
19 or other appellate review (unless otherwise agreed to by the Parties).

20 76. No Admission. Nothing contained herein, nor the consummation of this Settlement
21 Agreement, is to be construed or deemed an admission of liability, culpability, negligence, or
22 wrongdoing on the part of GABRIEL CONTAINER or any of the other Released Parties.
23 GABRIEL CONTAINER specifically denies any and all liability. Each of the Parties hereto has
24 entered into this Settlement Agreement with the intention of avoiding further disputes and
25 litigation with the attendant inconvenience and expenses. This Settlement Agreement is a
26 settlement document and, pursuant to California Evidence Code section 1152 and/or Federal Rule
27 of Evidence 408 and/or any other similar law, shall be inadmissible in evidence in any proceeding,
28 except an action or proceeding to approve the settlement, and/or interpret or enforce this

Settlement Agreement, including but not limited to use as a bar or affirmative defense, in whole or in part, to other or future claims or actions.

77. Construction. The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms-length negotiations between the Parties, and that this Settlement Agreement shall not be construed in favor of or against any party by reason of the extent to which any Party or his, her, or its counsel participated in the drafting of this Settlement Agreement.

78. Notices. Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by U.S. registered or certified mail, return receipt requested, addressed as follows:

To Class Counsel:	To Defendant's Counsel:
WILSHIRE LAW FIRM, PLC 3055 Wilshire Blvd., Suite 12th Floor Los Angeles, CA 90010 Justin F. Marquez Benjamin H. Haber Arrash T. Fattahi Email: Justin@wilshirelawfirm.com Email: bemnjamin@wilshirelawfirm.com Email: Arrash@wilshirelawfirm.com	ATKINSON, ANDELSON, LOYA, RUUD & ROMO 4275 Executive Square, Suite 700 La Jolla, CA 92307 Michael J. O'Connor, Jr. Sarkis A. Atoyan Email: Michael.OConnor@aalrr.com Email: Sarkis.Atoyan@aalrr.com

79. Tax Liability. The Parties make no representations as to the tax treatment or legal effect of the payments called for hereunder, and Participating Class Members and PAGA Group Members are not relying on any statement or representation by the Parties in this regard. Participating Class Members and PAGA Group Members understand and agree that Participating Class Members and PAGA Group Members will be solely responsible for the payment of any taxes and penalties assessed on the payments described herein.

80. Headings. The descriptive headings of any paragraphs or sections of this Settlement Agreement are inserted for convenience of reference only and do not constitute a part of this Settlement Agreement, and in no way, define, limit, extend, or describe the scope of this Settlement Agreement or any provision herein.

1 81. Amendment or Modification. Unless otherwise provided herein, this Settlement
2 Agreement may be amended or modified only by a written instrument signed by counsel for all
3 Parties or their successors-in-interest, and approved by the Court.

4 82. Entire Agreement. This Settlement Agreement, any supplemental written
5 agreement subsequently incorporated, and any attached exhibits constitute the entire Settlement
6 Agreement among these Parties, and no oral or written representations, warranties or inducements
7 have been made to any Party concerning this Settlement Agreement or its exhibits other than the
8 representations, warranties and covenants contained and memorialized in such documents.

9 83. Authorization to Enter into Settlement Agreement. The signatories hereto represent
10 that they are fully authorized to enter into this Settlement Agreement and bind the Parties hereto to
11 the terms and conditions hereof.

12 84. Mutual Full Cooperation. The Parties and their counsel will cooperate with each
13 other and use their best efforts to effect the implementation of the Settlement Agreement,
14 including but not limited to, execution of such documents and to take such other action as may be
15 reasonably be necessary to implement the terms of this Settlement Agreement. As soon as
16 practicable after execution of this Settlement Agreement, Class Counsel shall, with the assistance
17 of GABRIEL CONTAINER and Defendant's Counsel, take all necessary steps to secure the
18 Court's Preliminary Approval and Final Approval of this Settlement Agreement. In the event the
19 Parties are unable to reach agreement on the form or content of any document needed to
20 implement the Settlement Agreement, or on any supplemental provisions that may become
21 necessary to effectuate the terms of this Settlement Agreement, the Parties may seek the assistance
22 of the Court to resolve such disagreement.

23 85. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
24 they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign,
25 transfer, or encumber to any person or entity any portion of liability, claim, demand, action, cause
26 of action, or rights herein released and discharged except as set forth herein.

27 86. Binding on Successors and Assigns. This Settlement Agreement shall be binding
28 on the Parties' successors, assigns, and agents, and inures to the benefit of the Released Parties,

1 including GABRIEL CONTAINER and its past, present, and/or future owners, officers, directors,
2 managing agents, trustees, payroll processors, independent contractors, members, managers,
3 shareholders, employees, attorneys, insurers, assigns, shareholders, successors, predecessors and
4 agents, GABRIEL CONTAINER's past, present, and/or future parent, subsidiary, or affiliated
5 entities, DBAs and franchisors, and each of their owners, officers, directors, managing agents,
6 trustees, payroll processors, independent contractors, members, managers, employees, attorneys,
7 insurers, assigns, shareholders, successors, predecessors and agents.

8 87. Participating Class Member Signatories. It is agreed that because the Participating
9 Class Members are so numerous, it is impossible or impractical to have each Participating Class
10 Member execute this Settlement Agreement. The Notice of Settlement will advise all Class
11 Members of the binding nature of the release and, upon Final Approval, such shall have the same
12 force and effect as if this Settlement Agreement were executed by each Participating Class
13 Member. Notice of Entry of Judgment shall be served by the Class Representative on GABRIEL
14 CONTAINER.

15 88. California Law Governs. All terms of this Settlement Agreement shall be governed
16 by and interpreted according to the laws of the State of California, without giving effect to any
17 conflict of law principles or choice of law principles.

18 89. Counterparts. This Settlement Agreement may be executed in one or more
19 counterparts. All executed counterparts and each of them shall be deemed to be one and the same
20 instrument provided that counsel for the Parties to this Settlement Agreement shall exchange
21 among themselves original signed counterparts.

22 90. The Class Representative's Waiver of Right to be Excluded and Object. The Class
23 Representative agrees that by signing this Settlement Agreement, he is bound by the terms herein
24 stated and further agrees not to request to be excluded from the settlement and agrees not to object
25 to any of the terms of this Settlement Agreement. Any such letter requesting to be excluded from
26 the settlement or objection shall therefore be void and of no force or effect. Efforts by the Class
27 Representative to circumvent the terms of this paragraph shall be void and of no force or effect.

28 91. Confidentiality Preceding Preliminary Approval, Non-Reporting. The Class

Representative and Class Counsel agree that the terms of this settlement (including, but not limited to, the Maximum Settlement Amount), the negotiations leading to this settlement, and all documents related to the settlement shall not be discussed with, advertised, marketed, publicized, published, reported, posted, or promoted to the public, except as necessary to effectuate and/or enforce the terms of this Settlement Agreement and its approval. The Class Representative and Class Counsel further will not publicize, post, market, advertise, or report the terms of this Settlement Agreement and will not issue any press releases, except that the Class Representative and Class Counsel may disclose in legal proceedings, if and only as necessary, a summary of the terms of the Settlement Agreement and may communicate with Class Members regarding the settlement, its terms, and its history (apart from settlement communications).

Dated: September 19, 2022

GABRIEL CONTAINER CORPORATION

By: Ron Gabriel

Title: Pres.

Dated:

TONY NUNEZ

By: _____

TONY NUNEZ

APPROVED AS TO FORM ONLY

Dated: September 19, 2022

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

By: Sarkis Atoyan

Michael J. O'Connor Jr.
Sarkis A. Atoyan
Attorneys for Defendant

Dated:

WILSHIRE LAW FIRM, PLC

By: _____

Justin F. Marquez
Benjamin H. Haber
Arrash T. Fattahi
Attorneys for Plaintiff

Representative and Class Counsel agree that the terms of this settlement (including, but not limited to, the Maximum Settlement Amount), the negotiations leading to this settlement, and all documents related to the settlement shall not be discussed with, advertised, marketed, publicized, published, reported, posted, or promoted to the public, except as necessary to effectuate and/or enforce the terms of this Settlement Agreement and its approval. The Class Representative and Class Counsel further will not publicize, post, market, advertise, or report the terms of this Settlement Agreement and will not issue any press releases, except that the Class Representative and Class Counsel may disclose in legal proceedings, if and only as necessary, a summary of the terms of the Settlement Agreement and may communicate with Class Members regarding the settlement, its terms, and its history (apart from settlement communications).

Dated:

GABRIEL CONTAINER CORPORATION

By: _____

Title:

Dated: 12-8-22

TONY NUNEZ

By: 
TONY NUNEZ

APPROVED AS TO FORM ONLY

Dated:

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

By: _____
Michael J. O'Connor Jr.
Sarkis A. Atoyan
Attorneys for Defendant

Dated: December 8, 2022

WILSHIRE LAW FIRM, PLC

By: 
Justin F. Marquez
Benjamin H. Haber
Arrash T. Fattahi
Attorneys for Plaintiff

Exhibit 1

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

Nunez v. Gabriel Container
(Los Angeles Superior Court, Case No. 21STCV09787)

***The Superior Court for the State of California authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

You may be eligible to receive money from an employee class action lawsuit (“Action”) against Gabriel Container for alleged wage and hour violations. The Action was filed by former Gabriel Container employee Tony Nunez (“Plaintiff”) and seeks payment of (1) unpaid minimum and overtime wages, meal period premiums, rest period premiums, and related penalties for a class of non-exempt or hourly-paid employees (“Class Members”) who worked for Gabriel Container during the Class Period (September 15, 2016 to [date]); and (2) penalties under the California Private Attorney General Act (“PAGA”) for all non-exempt or hourly-paid employees who worked for Gabriel Container during the PAGA Period (September 15, 2019 to [date]) (“Aggrieved Employees”). Defendant has not admitted, and is not admitting to any allegations of wrongdoing in this case, and in fact expressly *denies* that any of its practices at issue in this lawsuit were or are unlawful, and that any liability can attach. Specifically, Defendant contends, among other things, that it correctly compensated all employees; provided all employees with proper meal and rest periods or paid required premiums for missed or non-compliant breaks; provided all employees with compliant wage statements; and timely paid all employees all wages owing at the time of termination. Defendant contends this matter cannot ultimately proceed as a class and/or representative action. Ultimately, the Parties have entered into the settlement solely for purposes of resolving this dispute and avoiding continuing litigation, risk, time, and costs.

The proposed Settlement has two main parts: (1) a Class Settlement requiring Gabriel Container to fund Individual Class Payments, and (2) a PAGA Settlement requiring Gabriel Container to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

Based on Gabriel Container’s records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$_____ (less withholding) and your Individual PAGA Payment is estimated to be \$_____**. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Gabriel Container’s records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.)

The above estimates are based on Gabriel Container’s records showing that **you worked _____workweeks** during the Class Period and **you worked _____workweeks** during the PAGA Period. If you believe that you worked more workweeks during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff's attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires Gabriel Container to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Gabriel Container.

If you worked for Gabriel Container during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

- (1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against Gabriel Container.
- (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against Gabriel Container, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

Gabriel Container will not retaliate against you for any actions or inactions which you may take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Gabriel Container that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice.
The Opt-out Deadline is [date]	You cannot opt-out of the PAGA portion of the proposed

	Settlement. Gabriel Container must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by [date]	All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed Settlement. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.
You Can Participate in the [date] Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on [date]. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks/Pay Periods Written Challenges Must be Submitted by [date]	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Period Workweeks and number of PAGA Period Pay Periods you worked according to Gabriel Container’s records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by [date]. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former Gabriel Container employee. In this Action, Plaintiff alleges that Gabriel Container violated California labor laws by failing to pay all overtime wages, minimum wages, and wages due upon termination, and by failing to provide all meal periods, rest breaks and accurate itemized wage statements. Based on these claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”). Plaintiff is represented by attorneys in the Action: Justin F. Marquez, Benjamin H. Haber, and Arrash T. Fattahi of Wilshire Law Firm (“Class Counsel.”)

Gabriel Container strongly denies violating any laws or failing to pay any wages and contends it complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

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. So far, the Court has made no determination whether Gabriel Container or Plaintiff is correct on the merits. In the meantime, Plaintiff and Gabriel Container hired an experienced, neutral mediator and retired judge to mediate the dispute in an effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Gabriel Container have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Gabriel Container does not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Gabriel Container has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Gabriel Container Will Pay \$390,000.00 as the Gross Settlement Amount (Gross Settlement). Gabriel Container has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s attorney’s fees and expenses, the Administrator’s expenses, and penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, Gabriel Container will fund the Gross Settlement not more than 90 days after the Judgment entered by the Court become final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - A. Up to 130,000.00 (or one-third of the Gross Settlement) to Class Counsel for attorneys’ fees and up to \$20,000.00 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.

- B. Up to \$10,000.00 to Plaintiff as a Class Representative Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.
- C. Up to \$10,000.00 to the Administrator for services administering the Settlement.
- D. Up to \$25,000.00 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

- 3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.
- 4. Taxes Owed on Payments to Class Members. Plaintiff and Gabriel Container are asking the Court to approve an allocation of 20% of each Individual Class Payment to taxable wages ("Wage Portion") and 80% to penalties and interest (broken down as follows (73.5% of the Individual Class Payment (excluding any portion of the share of the PAGA Payment) to Class Members as non-wage statutory damages and interest and 6.5% as penalties) ("Non-Wage Portion.)). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Gabriel Container will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and Gabriel Container have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

- 5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name. If the monies represented by your check is sent to the Controller's Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than [date], that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the [date] Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member's name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Gabriel Container.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against Gabriel Container based on the PAGA Period facts alleged in the Action.

7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and Gabriel Container have agreed that, in either case, the Settlement will be void: Gabriel Container will not pay any money and Class Members will not release any claims against Gabriel Container.
8. Administrator. The Court has appointed a neutral company, Phoenix Settlement Administrators (the "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator's contact information is contained in Section 9 of this Notice.
9. Participating Class Members' Release. After the Judgment is final and Gabriel Container has fully funded the Gross Settlement and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Gabriel Container or related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims, damages, or causes of action alleged in, or arising out of, the allegations in the Complaint and First Amended Complaint, filed in the Action and the PAGA Notice, which were

alleged or that could have been alleged by Plaintiff and/or any Participating Class Member in such complaints and/or the PAGA Notice based on any of the factual allegations contained in such complaints and/or the PAGA Notice, including, but not limited to, claims under state, federal (i.e., Fair Labor Standards Act (FLSA)) or local law, including, but not limited to claims for unpaid wages, claims for the failure to pay minimum wages, claims for the failure to pay overtime wages, claims related to missed meal and rest breaks or periods and nonpayment of premium pay for such, failure to comply with itemized employee wage statement provisions, failure to pay wages due at separation, failure to timely pay wages during employment, failure to keep requisite payroll records, unfair competition, the payment of any penalties (including PAGA). The Released Claims specifically include, but are not limited to, all claims arising under California Labor Code sections 201, 202, 203, 204, 210, 218.5, 226, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698 *et seq.*, 2800, the Wage Orders of the California Industrial Welfare Commission, California Business and Profession Code sections 17200, *et seq.*, California Code of Civil Procedure section 1021.5, and California common law of contract, interest and claims for attorney's fees relating in any way to those claims alleged and mentioned in the complaint(s) and/or PAGA Notice. The Released Parties means Defendant Gabriel Container, its past, present, and/or future owners, officers, directors, managing agents, trustees, payroll processors, independent contractors, members, managers, shareholders, employees, attorneys, insurers, assigns, shareholders, successors, predecessors and agents, Gabriel Container's past, present, and/or future parent, subsidiary, or affiliated entities, DBAs and franchisors, and each of their owners, officers, directors, shareholders, managing agents, trustees, payroll processors, independent contractors, members, managers, employees, attorneys, insurers, assigns, successors, predecessors and agents.

10. Aggrieved Employees' PAGA Release. After the Court's judgment is final, and Gabriel Container has paid the Gross Settlement and separately paid the employer-side payroll taxes, all Aggrieved Employees will be barred from asserting PAGA claims against Gabriel Container, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Gabriel Container or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

The Aggrieved Employees' Releases for Participating and Non-Participating Class Members are as follows:

All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties, from all claims for civil penalties under PAGA based on the labor code violations alleged in the PAGA Notice sent by Plaintiff to the LWDA, including California Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1197.1, 1198, 2800, 2698, *et seq.*, the IWC

Wage Orders as well as all facts, theories, or claims for civil penalties that would be considered administratively exhausted under applicable law by the PAGA Notice Plaintiff sent to the LWDA.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$6,250 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.
3. Workweek/Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in Gabriel Container's records, are stated in the first page of this Notice. You have until [date] to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Gabriel Container's calculation of Workweeks and/or Pay Periods based on Gabriel Container's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Gabriel Container's Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.
2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as *Nunez v. Gabriel Container*, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by [date], or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Gabriel Container are asking the Court to approve. At least 16 court days before the [date] Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement, attorney's fees and costs, and Service Award are fair. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website **[need details]** or the Court's website **[need details]**.

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is [date].** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action [case caption] and include your name, current address, telephone number, and approximate dates of employment for Gabriel Container and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on [date] at [time] in Department 7 of the Los Angeles Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via LACourtConnect (<https://www.lacourt.org/lacc/>). **[confirm]**. Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website [www.etc.] beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Gabriel Container and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to Phoenix Settlement Administrators' website at [URL of website]. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<http://www.lacourt.org/casesummary/ui/index.aspx>) **[confirm]** and entering the Case Number for the Action, Case No. 21STCV09787. You can also make an appointment to personally review court documents in the Clerk's Office at the Stanley Mosk Courthouse by calling (213) 830-0800.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

[Mailing Address]
[Telephone]
[Fax Number]

Settlement Administrator:
[Name of Company]
[Email Address]

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the Unclaimed Property Fund [https://www.sco.ca.gov/search_upd.html] for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

Exhibit 3



CASE ASSUMPTIONS

Class Members	200
Opt Out Rate	1%
Opt Outs Received	2
Total Class Claimants	198
Subtotal Admin Only	\$7,500.00

Not-to-Exceed Total \$7,500.00

For 200 Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

June 16, 2022

Case: Nunez v. Gabriel Container Opt-Out wLanguage

Phoenix Contact: Jodey Lawrence

Contact Number: 949.566.1455

Email: Jodey@phoenixclassaction.com

Requesting Attorney: Justin Marquez

Firm: Wilshire Law Firm, PLC

Contact Number: (213) 381-9988, Ext. 345

Email: justin@wilshirelawfirm.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PSA will need to adjust this Estimate accordingly.

Estimate is based on 200 Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable additional formatting needed. A rate of \$150 per hour will be charged for any additional analysis or programming.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item Estimate
Programming Manager	\$100.00	2	\$200.00
Programming Database & Setup	\$100.00	2	\$200.00
Toll Free Setup*	\$106.32	1	\$106.32
Call Center & Long Distance	\$2.00	16	\$32.00
NCOA (USPS)	\$25.00	1	\$25.00
Total			\$563.32

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Spanish Translation / Reporting

Project Action	Rate	Hours/Units	Line Item Estimate
Notice Packet Formatting	\$125.00	2	\$250.00
Data Merge & Duplication Scrub	\$0.25	200	\$50.00
Notice Packet & Opt-Out Form	\$2.00	200	\$400.00
Estimated Postage (up to 2 oz.)*	\$0.71	200	\$142.00
Static Website	\$200.00	1	\$200.00
Language Translation	\$1,000.00	1	\$1,000.00
Total			\$2,042.00

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



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CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item Estimate
Case Associate	\$55.00	2	\$110.00
Skip Tracing Undeliverables	\$2.00	40	\$80.00
Remail Notice Packets	\$2.00	40	\$80.00
Estimated Postage	\$0.71	40	\$28.40
Programming Undeliverables	\$50.00	1	\$50.00
Total			\$348.40

Database Programming / Processing Opt-Outs, Deficiencies or Disputes

Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Claims Database	\$135.00	2	\$270.00
Non Opt-Out Processing	\$200.00	1	\$200.00
Case Associate	\$55.00	2	\$110.00
Opt-Outs/Deficiency/Dispute Letters	\$10.00	3	\$30.00
Case Manager	\$85.00	2	\$170.00
Total			\$780.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Calculations	\$135.00	2	\$270.00
Disbursement Review	\$135.00	2	\$270.00
Programming Manager	\$95.00	2	\$190.00
QSF Bank Account & EIN	\$100.00	2	\$200.00
Check Run Setup & Printing	\$125.00	2	\$250.00
Mail Class Checks *	\$2.00	198	\$396.00
Estimated Postage	\$0.56	198	\$110.88
Total			\$1,686.88

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



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CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations			
Project Action:	Rate	Hours/Units	Line Item Estimate
Case Supervisor	\$100.00	2	\$200.00
Remail Undeliverable Checks (Postage Included)	\$1.50	40	\$59.40
Case Associate	\$50.00	2	\$100.00
Reconcile Uncashed Checks	\$75.00	2	\$150.00
Conclusion Reports	\$125.00	1	\$125.00
Case Manager Conclusion	\$85.00	2	\$170.00
Final Reporting & Declarations	\$125.00	2	\$250.00
IRS & QSF Annual Tax Reporting * (1 State Tax Reporting Included)	\$725.00	1	\$725.00
Check to Cy-Pres	\$150.00	1	Included
Uncashed Checks to the State of California Controllers Office	\$300.00		\$300.00
Estimated N/A Total Class Members			
Total			\$2,079.40

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$7,500.00



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CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are \$10.00 per opt-out.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

Nunez v. Gabriel Container, et al.
21STCV09787

COUNTY OF LOS ANGELES

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Signature