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8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF ALAMEDA**

11 KEISHA ST. CLAIR, an individual,
12
13 Plaintiff,

14 v.

15 NCS MOVING SERVICES, a California
corporation; PETER RODRIGUEZ, an
16 individual; and DOES 1 through 25, inclusive,
17 Defendants.

Case No.: RG21110757
Assigned to: Hon. Stephen Kaus

PLAINTIFF KEISHA ST. CLAIR'S:

**(1) NOTICE OF UNOPPOSED
MOTION AND UNOPPOSED
MOTION FOR PAGA
SETTLEMENT APPROVAL; AND**

**(2) MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT**

*(Declaration of Arash Sadat and
[Proposed] Order filed concurrently)*

Date: April 3, 2023
Time: 3:00 p.m.
Dept.: 19

Complaint Filed: August 25, 2021
Trial Date: Vacated

RES. ID: 414077565842

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that, on April 3, 2023, at 3:00 p.m., or as soon thereafter as this
3 matter may be heard in Department 19 of the above-captioned Court, located at 1221 Oak Street,
4 Oakland, California 94612, Plaintiff Keisha St. Clair (“Plaintiff”) will and hereby does move for
5 an order approving the settlement of Plaintiff’s Private Attorneys General Act (“PAGA”) claim in
6 this case. Defendant NCS Moving Services (“NCS,” and, collectively with Plaintiff, the
7 “Parties”) does not oppose this relief and has consented to it. A true and correct copy of the
8 PAGA Settlement Agreement between the Parties is attached as **Exhibit A**.

9 This motion is made pursuant to Labor Code section 2699, subdivision (1)(2)
10 on the grounds that all PAGA settlements must be reviewed and approved by the Court and that
11 the Parties’ settlement of this case is contingent upon on this Court’s approval.

12 Specifically, Plaintiff moves for an order from this Court:

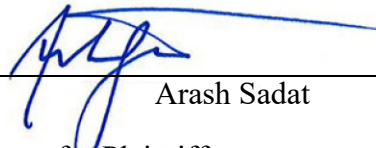
- 13 (1) Approving the Gross Settlement Amount¹ of \$15,000.00;
- 14 (2) Awarding Plaintiff’s counsel, Mills Sadat Dowlat LLP, \$5,000.00 in reasonable
15 attorney’s fees and \$1,000.00 in costs and expenses pursuant to the PAGA
16 Settlement Agreement and Labor Code section 2699, subdivision (g)(1);
- 17 (3) Appointing CPT Group, Inc. (“CPT”) as Settlement Administrator;
- 18 (4) Directing NCS to deposit \$9,000.00 into an account for administration of the
19 settlement and directing the Settlement Administrator to distribute the Net
20 Settlement Amount in accordance with the PAGA Settlement Agreement;
- 21 (5) Awarding up to \$3,750.00 to CPT as settlement administration costs;
- 22 (6) Approving the Net Settlement Amount, which is the Gross Settlement Amount,
23 less: (a) Plaintiff’s counsel’s fees; (b) Plaintiff’s counsel’s costs; and (c) settlement
24 administration costs, of which 75 percent will be distributed to LWDA and 25
25 percent will be distributed to PAGA Settlement Employees pursuant to California
26 Labor Code section 2699, subdivision (i).

27
28 ¹ All capitalized terms not defined herein shall have the meanings provided in the PAGA Settlement Agreement.

1 The motion shall be based on this notice, the attached memorandum of points and
2 authorities, the concurrently filed Declaration of Arash Sadat, the concurrently submitted
3 [Proposed] Order, all records on file in this case, and on such other evidence as may properly
4 come before the Court at or before the time of the hearing of this motion. The PAGA Settlement
5 Agreement and moving and supporting papers are being submitted concurrently to LWDA in
6 accordance with Labor Code section 2699, subdivision (l)(2).

7
8 Dated: March 7, 2023

MILLS SADAT DOWLAT LLP

9
10 By: 

Arash Sadat

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12 Attorneys for Plaintiff
Keisha St. Clair

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND RELEVANT FACTUAL BACKGROUND**

3 **A. Plaintiff's Individual and Representative Action**

4 Plaintiff Keisha St. Clair ("Plaintiff") worked as a Move Coordinator for NCS Moving
5 Services ("NCS") from November 11, 2019 through January 2021. (Complaint, ¶¶ 7-24;
6 Declaration of Arash Sadat ["Sadat Decl.," ¶ 2.) Plaintiff filed this action on August 25, 2021
7 against NCS and its owner, Peter Rodriguez. Plaintiff's Complaint asserts 12 causes of action: (1)
8 Misclassification (Lab. Code §§ 226.8, 2750.5); (2) Failure to Pay Overtime Wages (Lab. Code §§
9 510, 558, 1194, and IWC Wage Orders); (3) Failure to Provide Accurate Wage Statements (Lab.
10 Code § 226); (4) Failure to Provide Meal and Rest Periods (Lab. Code §§ 226.7, 512, and IWC
11 Wage Orders); (5) Failure to Provide Notice of Available Sick Leave (Lab. Code § 246, subd. (i));
12 (6) Failure to Reimburse Expenses (Lab. Code § 2802); (7) Failure to Pay Wages and Waiting
13 Time Penalties (Lab. Code §§ 201-203); (8) Unfair Competition (Bus. & Prof. Code § 17200, *et*
14 *seq.*); (9) Wrongful Termination in Violation of Public Policy; (10) Retaliation (Lab. Code §
15 246.5); (11) Retaliation (Lab. Code § 1102.5); and (12) violation of the Private Attorneys General
16 Act ("PAGA") (Lab. Code §§ 2698, *et seq.*).

17 Before filing this action, Plaintiff exhausted her administrative remedies under PAGA by
18 sending a letter to the PAGA Administrator of the Labor and Workforce Development Agency
19 ("LWDA") on July 28, 2021. (Sadat Decl.," ¶ 3, Ex. B.) Plaintiff submitted an amended letter to
20 the PAGA Administrator of LWDA on August 20, 2021. (*Id.*, ¶ 4, Ex. C.) Both letters provided
21 written notice of the alleged violations of the Labor Code by NCS and sought penalties stemming
22 from such violations. (*Id.*, ¶¶ 3-4, Exs. B-C.) Plaintiff received no response from LWDA. (*Id.*,
23 ¶ 5.)

24 The thrust of Plaintiff's PAGA claim is that NCS misclassified Plaintiff and other
25 employees as independent contractors, resulting in unpaid overtime and other derivative Labor
26 Code violations, including failure to provide meal and rest breaks, failure reimburse business
27 expenses, failure to provide accurate wage statements, and waiting time penalties upon
28 termination. (Complaint, ¶¶ 7-14; Sadat Decl., ¶ 6.) The number of "aggrieved employees"

1 covered by the complaint and this settlement is relatively small, as the records produced by NCS
2 show that Plaintiff was one of only eight moving personnel that NCS paid as independent
3 contractor during the PAGA period. (Sadat Decl., ¶ 6.)

4 On January 14, 2021, NCS filed its Answer, denying Plaintiff's allegations. (Answer, p. 1;
5 Sadat Decl., ¶ 7.) NCS has defended this action by asserting that it properly classified Plaintiff and
6 the other aggrieved employees, claiming that they did not work regular schedules, were free to
7 accept or decline jobs, and operated independently of NCS's supervision. (Sadat Decl., ¶ 7.) NCS
8 has further argued that even if Plaintiff and other aggrieved employees were misclassified, this
9 resulted in little liability or exposure, as NCS began transitioning independent contractor movers
10 and move coordinators to payroll beginning in April 2020 and completed the transition by 2021.
11 (*Ibid.*)

12 In February 2022, Plaintiff propounded on NCS and Rodriguez written discovery
13 comprised of Form Interrogatories, Special Interrogatories, Requests for Production of Documents,
14 and Requests for Admission. (*Id.*, ¶ 8.) NCS served responses on May 20, 2022 and produced
15 responsive documents the following week, including timecards and summary reports. (*Ibid.*)
16 Thereafter, and in anticipation of private mediation, Plaintiff requested, and NCS produced,
17 additional timesheets deemed necessary by Plaintiff to ascertain the full scope of available PAGA
18 penalties. (*Ibid.*)

19 After extensive, arms-length negotiations between the Parties through their respective
20 counsel, including a full-day private mediation on October 12, 2022 before mediator David
21 Phillips, Esq., the Parties reached a settlement, completely resolving this action, including
22 Plaintiff's individual claims and her representative PAGA claims. (*Id.*, ¶ 9.)

23 NCS does not admit any liability, but in an effort to resolve this matter in its entirety, the
24 Parties agreed to settle Plaintiff's PAGA claim for \$15,000.00. (Ex. A [PAGA Settlement
25 Agreement], ¶ III.1; Sadat Decl., ¶ 10.) Plaintiff agreed to this settlement based on: (a) the
26 potential risk of loss on the merits; (b) the fact there are only eight aggrieved employees during the
27 PAGA period, which began on July 28, 2020; and (c) PAGA penalties are limited by the fact that
28

1 movers and move coordinators were moved to payroll within one year after the start of the PAGA
2 period. (Sadat Decl., ¶ 10.)

3 A number of legal and factual disputes arose in connection with the PAGA claim.
4 Specifically, the Parties disputed: (a) whether, as a matter of law, PAGA penalties stack (*i.e.*,
5 whether more than one civil penalty may be imposed per employee, per pay period for different
6 Labor Code violations); and (b) the total number of pay periods during the PAGA period.
7 According to the records produced by NCS, the aggrieved employees worked a total of 111 bi-
8 weekly pay periods. (Sadat Decl., ¶ 11.) Assuming one PAGA violation per pay period, and
9 assuming that PAGA penalties do not stack, this equates to less than \$22,200 in PAGA penalties.
10 (Lab. Code § 2699, subd. (f)(2) [providing for default PAGA penalties of up to \$100 for each
11 aggrieved employee per pay period for an initial violation and up to \$200 for each aggrieved
12 employee per pay period for a subsequent violation]; Sadat Decl., ¶ 11.)

13 With respect to the proposed settlement of \$15,000, after attorney's fees, costs, and
14 settlement administration expenses, and pursuant to Labor Code section 2699, subdivision (i), 75
15 percent will be awarded to LWDA, and 25 percent will be awarded to the eight aggrieved
16 employees. (Ex. A [PAGA Settlement Agreement], ¶ III.4; Sadat Decl., ¶ 12.) This settlement is a
17 compromise by both Parties and reflects a reasonable assessment of the risks for each, as well as
18 the recognition that continued litigation will cause extensive and costly discovery for all parties,
19 followed by a jury trial, and that further litigation would cause inconvenience, distraction,
20 disruption delay, and expense disproportionate to the potential benefits of litigation. (Sadat Decl.,
21 ¶ 12.)

22 **B. The Parties' Settlement Agreement**

23 On October 12, 2022, the Parties participated in a full-day mediation with David Phillips,
24 Esq., a mediator with extensive experience in California employment law actions. (*Id.*, ¶ 13.)
25 Mediation concluded with a mediator's proposal to which all Parties later agreed. (*Ibid.*)

26 The Parties then finalized and executed two settlement agreements: a settlement agreement
27 for Plaintiff's individual claims (the "Individual Settlement Agreement") (Sadat Decl., ¶ 15) and
28

1 the PAGA settlement agreement for which the Parties now seek approval from the Court (the
2 “PAGA Settlement Agreement”). (*Ibid.*; Ex. A [PAGA Settlement Agreement].)

3 Plaintiff settled her individual claims—including her causes of action for retaliation and
4 wrongful termination—with NCS and Peter Rodriguez for a total of \$60,000. As part of the
5 PAGA Settlement Agreement executed by the Parties on November 13 and 18, 2023, NCS agreed
6 to pay Plaintiff and the aggrieved individuals the amount of \$15,000 (the “Gross Settlement
7 Amount”) in consideration for a full and complete release of Plaintiff’s representative claims under
8 PAGA. (Ex. A, ¶ III.2.) Pursuant to the PAGA Settlement Agreement, Plaintiff and the aggrieved
9 employees shall recover 25 percent of the Net Settlement Amount (defined as the amount
10 remaining to distribute after plaintiff’s attorney’s fees of up to \$5,000, Plaintiff’s costs up to
11 \$1,000, and PAGA Settlement Administration Costs of an estimated \$3,750). (Ex. A, ¶ III.3-4.)
12 75 percent of the Net Settlement Amount will be paid directly to LWDA. (Ex. A, ¶ III.3-4.)

13 After the Parties signed the PAGA Settlement Agreement, Plaintiff solicited seven bids
14 from potential settlement administrators. (Sadat Decl., ¶ 16.) Plaintiff received four bids in
15 response. (*Ibid.*) Three bidders indicated that they would charge minimum fees, ranging from
16 \$5,000 to \$10,000. (*Ibid.*) The fourth bidder, CPT Group Inc. agreed to act as settlement
17 administrator for an estimated \$3,750 in fees, the lowest bid received. (*Ibid.*) The Parties
18 thereafter prepared and executed an Addendum to the PAGA Settlement Agreement identifying
19 CPT Group as settlement administrator and incorporating CPT’s estimated fee. (*Ibid.*)

20 The Parties have agreed that, upon entry of the order approving this settlement, LWDA
21 and any NCS employees who worked between July 28, 2020 and the date upon which the Court
22 enters the order approving the PAGA Settlement Agreement will be barred from pursuing any
23 action for civil penalties under PAGA against NCS stemming from any violations of the California
24 Labor Code. (Sadat Decl., ¶ 17; Ex. A, ¶ III.5-6.) Payment of the Gross Settlement Amount by
25 NCS serves as a full and complete satisfaction of the PAGA claims asserted on behalf of the
26 aggrieved employees, which is defined as all current and former individuals who were classified as
27 independent contractors who worked for NCS in the State of California from July 28, 2020
28 through the date of the Court’s order approving the Settlement Agreement. (Sadat Decl., ¶ 17;

Ex. A, ¶ III.3-4.) Nothing in this Motion, the Individual Settlement Agreement, the PAGA Settlement Agreement, nor the Proposed Order will prevent any current or former employee except for Keisha St. Clair from claiming or pursuing individual claims against NCS for violations of the California Labor Code. (Sadat Decl., ¶ 17.)

II. LEGAL ANALYSIS

Under Labor Code section 2699, subdivision (1)(2), the Parties must obtain approval of the PAGA Settlement Agreement. The Parties seek that approval through this Motion. As explained by the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th 969, the Parties are not required to follow class action procedural rules in this PAGA action and therefore need not follow class action procedures for obtaining an approval of approval of a PAGA settlement and therefore seek approval of the PAGA Settlement Agreement through this motion. Other than the requirement in section 2699(1)(2) that the court “review and approve” a settlement of a civil action filed under PAGA, neither the California legislature, nor the California Supreme Court, nor the California Courts of Appeal, nor the [LWDA] has provided any definitive answer to [the] vexing question” of the appropriate standard for approving the settlement of PAGA claims, whether brought as a class or representative action. (*Alonzo v. First Transit, Inc.* (Cal. Ct. App. Oct. 22, 2018) No. B277109, 2018 WL 5118644, at *8.)

A. Plaintiff Submitted a Copy of the Settlement to the LWDA

Labor Code section 2699, subdivision (1)(2) requires that any proposed settlement of a PAGA action be submitted to the LWDA. Plaintiff has satisfied this requirement by submitting a copy of the PAGA Settlement Agreement to LWDA through its online submission portal concurrently with the filing of this motion. (Sadat Decl., ¶ 18.)

B. PAGA Settlement Approval Is Unlike Class Action Settlement Approval

Labor Code section 2699, subdivision (1)(2) provides that the Superior Court shall review and approve any settlement of any civil action filed pursuant to PAGA. “Since a representative action under PAGA allows an individual employee to seek monetary relief arising out of unlawful conduct directed at a group of employees, PAGA actions bear a superficial resemblance to a type of class action. There are, however, several factors distinguishing representative PAGA actions

1 and class actions. First, a unique feature of a representative action under PAGA is that it is
2 ‘fundamentally a law enforcement action designed to protect the public and penalize the employer
3 for past illegal conduct.’ The purpose is not to collect damages on behalf of other
4 employees or provide restitution to victims of Labor Code violations.” (*Cunningham v. Leslie’s*
5 *Poolmart, Inc.* (C.D. Cal. June 25, 2013) 2013 U.S. Dist. LEXIS 90256, at *16-17, 2013 WL
6 3233211, internal citations omitted; *see also Franco v. Athens Disposal Co., Inc.* (2009) 171
7 Cal.App.4th 1277, 1300 [“Restitution is not the primary object of a PAGA action, as it is in most
8 class actions.”].)

9 Moreover, there is no requirement that the Court apply the same level of scrutiny in
10 approving a PAGA settlement as it does with class actions. Indeed, the California Supreme Court
11 has held that an employee who sues an employer under the PAGA need not satisfy class action
12 requirements. (*Arias, supra*, 46 Cal.4th at p. 974.) For example, “PAGA has no notice
13 requirements for unnamed aggrieved employees, nor may such employees opt out of a PAGA
14 action.” (*Baumann v. Chase Inv. Servs. Corp.* (9th Cir. 2014) 747 F.3d 1117, 1122.)

15 **C. LWDA Did Not Investigate Plaintiff’s PAGA Allegations**

16 The Labor Code requires that a proposed PAGA settlement be sent to the LWDA at the
17 same time that it is submitted to the Superior Court for review and approval. (Lab. Code § 2699,
18 subd. (l)(2).) However, the Labor Code does not authorize LWDA to interfere with, obstruct,
19 object, or otherwise impede a request for approval of a PAGA settlement. Indeed, the time for
20 LWDA to comment on a settlement is during the short window in which it must inform the
21 aggrieved employee that it declines to investigate. (Lab. Code § 2699.3, subd. (a)(2)(B).) Once
22 that window shuts, the aggrieved employee is deputized to act on behalf of LWDA in a civil
23 action. The Labor Code is clear that all that is required to obtain court approval of a PAGA
24 settlement is for the proposed settlement to be sent to LWDA. (Lab. Code § 2699, subd. (l)(2).)

25 Here, LWDA had opportunity to investigate and obtain civil penalties by citation after
26 Plaintiff submitted her PAGA notice to the LWDA. (Sadat Decl., ¶¶ 3-4, Exs. B-C.) “If the
27 [LWDA] intends to investigate the alleged violation, it shall notify the employer and the aggrieved
28 employee or representative by certified mail of its decision within 65 calendar days of the

1 postmark date of the notice.” (Lab. Code § 2699.3, subd. (a)(2)(B). “Within 120 calendar days of
2 that decision, the [LWDA] may investigate the alleged violation and issue any appropriate
3 citation.” (*Id.*) That ship has sailed. All that is required now regarding LWDA involvement is for
4 the requisite documentation to be submitted to the LWDA pursuant to Labor Code section 2699,
5 subdivision (*l*)(2).) That has been done. (Sadat Decl., ¶ 18.)

6 **D. The PAGA Settlement in this Case is Fair, Adequate, and Reasonable**

7 Plaintiff conducted a thorough investigation into the facts of NCS’s alleged PAGA
8 violations, including by propounding formal written discovery and reviewing NCS’s productions
9 of responsive documents and information. (*Id.*, ¶ 19.) Plaintiff also informally requested and
10 received additional information from NCS to evaluate potential PAGA penalties and for the Parties
11 to engage in meaningful settlement discussions. (*Ibid.*) Plaintiff’s counsel received, among other
12 things, the following information and evidence with which to properly evaluate both her individual
13 claim and the PAGA claim: (1) information bearing on the number of “aggrieved employees” and
14 the number of pay periods during the PAGA period; (2) wage statements and timesheets for
15 Plaintiff and other aggrieved individuals; and (3) emails and text messages between Plaintiff and
16 NCS during Plaintiff’s employment. (*Ibid.*) Plaintiff’s counsel carefully reviewed the documents
17 and data provided by NCS to determine the amount of potential PAGA penalties, wages owed to
18 Plaintiff, and other remedies potentially available to Plaintiff and the aggrieved individuals based
19 on the causes of action and legal theories asserted in this action. (*Ibid.*)

20 The documents and information produced by NCS shows that there are eight total
21 aggrieved employees, including Plaintiff, throughout the State of California for the period between
22 July 28, 2020 and the present. (*Id.*, ¶ 20.) NCS’s records show that these eight aggrieved
23 individuals worked 111 total pay periods during this time, or 13.875 pay periods per aggrieved
24 employee (calculated by dividing 111 pay periods by 8 aggrieved employees). (*Ibid.*) The amount
25 of the settlement therefore equals a penalty of \$135.13 per pay period. This amount is fair and
26 reasonable considering the probability of recovery in this matter and the role of judicial discretion
27 in right-sizing any penalty amount. (*Ibid.*)

1 The settlement amount of \$135.13 per pay period is fair and reasonable in light of
2 applicable case law:

- 3 • *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1136
4 [“In summary, the trial court stated that the evidence showed “that after January 1,
5 2003 for meal periods and after June 7, 2004 for rest periods, defendants took their
6 obligations under Wage Order No. 9 seriously and attempted to comply with the law.”
7 In light of that undisputed finding, and the facts and circumstances that the trial court
8 specified in its statement of decision in support of the finding, the trial court reasonably
9 determined that imposition of the maximum statutory penalty amount against
10 defendants would be unjust — if not also arbitrary, oppressive, or confiscatory.”].
- 11 • *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 (2018) [“Although the
12 trial court may have disagreed with Starbucks regarding the issue of liability, it clearly
13 took the circumstances proffered by Starbucks into consideration when it imposed the
14 penalty, as evident from the significant reduction of the \$50 maximum penalty (per
15 initial violation) to the penalty imposed—only \$5 per initial violation. The trial court
16 stated this reduction was warranted because imposing the maximum penalty would be
17 unjust, arbitrary, and oppressive based on Starbucks's “good faith attempts” to comply
18 with meal break obligations and because the court found the violations were
19 minimal.”.)

20 Furthermore, PAGA settlements of amounts similar to \$15,000 have been approved as part
21 of larger global settlements. (*See, e.g., Navarro v. Ordaz Cultured Marble & Onyx, Inc.* (N.D. Cal.
22 Feb. 23, 2015) No. C 13-00847 LB, Doc No. 71, slip op. at *2 [approving \$20,000 PAGA
23 settlement for 13 aggrieved employees]; *Franco v. Ruiz Food Prods., Inc.* (E.D. Cal. Nov. 27,
24 2012) 2012 WL 5941801 at *14 [approving PAGA penalties of \$10,000 for 2,055 class members
25 and aggrieved employees]; *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL
26 5364575, at *3 [approving PAGA settlement payment of \$10,000 for approximately 1,869 class
27 members and aggrieved employees]; *Chu v. Wells Fargo Investments, LLC* (N.D. Cal. Feb. 16,
28 2011) 2011 WL 672645, at *1 [approving \$10,000 PAGA settlement payment for approximately

2,700 class members and aggrieved employees].). This action, by contrast, is a settlement of a small PAGA claim, involving only eight total employees. (Sadat Decl., ¶ 21.)

Further, the procedure by which the settlement was reached is sound. The California appellate court in *Alonzo v. First Transit, Inc.*, No. B277109, 2018 WL 5118644, (Cal. Ct. App. Oct. 22, 2018), approved a PAGA settlement amount of \$13,333.33 and found that the PAGA settlement “was entered into in good faith” and was “fair, reasonable, and adequate” where the parties “thoroughly litigated” the case before reaching settlement, where the parties attended mediation with an experienced employment law mediator, where the parties reached the settlement through arm’s length bargaining in a mediation, and where investigation and discovery were sufficient to fully apprise the court and counsel of the claims, which gave the settlement a presumption of fairness. Additionally, the Court approved the PAGA penalty award after taking into consideration “that Plaintiffs admitted that Defendants had significant defenses which could result in greatly reduced PAGA penalties” to conclude that the allocation of settlement funds to the PAGA penalty to be “fair, reasonable, and adequate.” (*Id.*, at p *8.)

Approval of the Parties’ PAGA Settlement Agreement is warranted because counsel for all Parties agree that the amount allocated for civil penalties under PAGA is fair and reasonable (Sadat Decl., ¶ 21.) Specifically, this PAGA settlement is reasonable because:

1. The number of alleged “aggrieved employees” is small, totaling only eight employees during the PAGA period.
2. NCS moved its independent contractors to payroll by 2021, significantly shortening the PAGA period and limiting PAGA penalties.
3. The PAGA settlement was negotiated as part of an informed, non-collusive, arms-length negotiation following a full day mediation with a private mediator with substantial experience in employment law.
4. Plaintiff and her counsel bore significant risk of not recovering full PAGA penalties. NCS had good faith arguments that it properly paid Plaintiff and other aggrieved employees did not work regular schedules, were free to accept or decline jobs, operated independently of NCS’s supervision, received meal and rest breaks, and were paid accurately.

1 5. The differences among the aggrieved employees’ job responsibilities and work
2 schedules may have presented manageability issues for the Court, which could have undermined
3 this claim. (*Salazar v. McDonald’s Corp.* (N.D. Cal. Jan. 5, 2017) No. 14-cv-2096, 2017 WL
4 88999, at *7-9 [striking representative PAGA claims as unmanageable where underlying claims
5 would require individualized determinations]; *see also Raphael v. Tesoro Ref. & Mktg. Co. LLC*
6 (C.D. Cal. Sept. 25, 2015) No. 15-cv-2862-ODW, 2015 WL 5680310 at *2-3 [granting motion for
7 judgment on the pleadings where resolving a PAGA claim would require the court to “engage in a
8 multitude of individualized inquires making the PAGA action unmanageable and inappropriate”].)

9 6. Even if a court determined that the aggrieved employees were misclassified, there
10 were hurdles in establishing that they were entitled to overtime pay, or were denied meal and rest
11 breaks, or other violations that would result in substantial violations. NCS maintains that the
12 aggrieved employees worked independently and largely set their own schedules, and, as a result,
13 always had ample opportunity to take meal or rest breaks at will. There was a risk that the Court
14 could have accepted this argument and found that the aggrieved employees were entitled to little or
15 no penalties.

16 7. This PAGA settlement only covers PAGA claims for the period covered by the
17 PAGA period. It does not affect any other employee’s ability to bring their own claims for non-
18 PAGA claims.

19 8. Finally, with respect to the PAGA Settlement Agreement, the PAGA penalties will
20 be distributed pursuant to the percentages as required by the Labor Code. (*See Alonzo v. First*
21 *Transit, Inc.* (Cal. Ct. App. Oct. 22, 2018) No. B277109, 2018 WL 5118644, at *10–12 [finding no
22 collusion between class counsel and the aggrieved employees where the PAGA settlement
23 properly allocated the PAGA settlement funds as required by the Labor Code, and requiring no
24 further investigation].) (Sadat Decl., ¶ 21.)

25 E. **The Attorney’s Fees and Costs Sought by Plaintiff’s Counsel Are Fair and**
26 **Reasonable**

27 The PAGA Settlement Agreement provides for a Gross Settlement Amount of \$15,000.
28 (Ex. A, ¶ III.21 Sadat Decl., ¶ 22.) It further provides for payment of up to \$5,000 for attorney’s

1 fees to Plaintiff's counsel and for payment of costs of up to \$1,000 for costs incurred by Plaintiff's
2 counsel. (*Id.*, Ex. A, ¶ III.3; Sadat Decl., ¶ 22.) Both attorney's fees and costs are subject to
3 approval by the Court. (*Ibid.*)

4 Through this motion, Plaintiff's counsel seeks \$5,000 in attorney's fees. (Sadat Decl.,
5 ¶ 23.) The requested fee award is commensurate with: (1) the risk that Plaintiff's counsel took in
6 bringing and litigating the PAGA component of this action; (2) the time, effort, and expense
7 dedicated to the case; (3) the skill exhibited by Plaintiff's counsel; (4) the results achieved through
8 the litigation; (5) the value provided to Plaintiff, the PAGA Settlement Employees, and the State of
9 California; and (6) the fact that Plaintiff's counsel turned down other work in order to devote time
10 and effort to this matter. (*Ibid.*)

11 Plaintiff's counsel is entitled to recover reasonable attorneys' fees and costs as a matter of
12 right under PAGA. (*See* Lab. Code § 2699, subd. (g)(1) ["Any employee who prevails in any
13 [PAGA] action shall be entitled to an award of reasonable attorney's fees and costs"].) Plaintiff's
14 counsel is also entitled to fees and costs under California Code of Civil Procedure section 1021.5,
15 as this PAGA action is by definition "for the benefit" of others and secures monetary recovery for
16 aggrieved employees and the State of California. (*Estrada v. FedEx Ground Package Sys. Inc.*
17 (2007) 154 Cal.App.4th 1, 16-17.)

18 **1. Plaintiff Requests the Court Approve Attorney's Fees of 33.3 Percent of**
19 **the Gross Settlement Amount**

20 The propriety of calculating and awarding attorneys' fees as a percentage of a monetary
21 fund that has, by litigation, been preserved or recovered for the benefit of others, has been
22 confirmed by the California Supreme Court. (*Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th
23 480, 486, 506.) The California Supreme Court has taken the position that trial courts "retain the
24 discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a
25 requested percentage fee" and "[t]he percentage of fund method survives in California." (*Id.*,
26 internal quotation marks omitted; see also *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66,
27 fn. 11 ["Empirical studies show that, regardless whether the percentage method or the lodestar
28 method is used, fee awards in class actions average around one-third of the recovery."].)

1 The percentage fee method is preferred in representative actions because “it better
2 approximates the workings of the marketplace than the lodestar approach.” (*Lealao v. Beneficial*
3 *Cal., Inc.* (2000) 82 Cal.App.4th 19, 49.) California law provides that the award for attorneys’ fees
4 should be equivalent to fees freely negotiated in the legal marketplace and paid in comparable
5 litigation based on the result achieved and risk incurred. *Id.* pp. 47-50; *Laffitte, supra*, 1 Cal.5th at
6 p. 503.)

7 Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their
8 decisions will “not be disturbed on appeal absent a manifest abuse of discretion.” (*Lealao v.*
9 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41; *see also Laffitte, supra*, 1 Cal.5th at p. 506
10 [holding that “trial court did not abuse its discretion in using [the percentage of fund method], in
11 part to approve the fee request”].)

12 **2. The Fee Award Requested by Plaintiff’s Counsel Is Reasonable**

13 Plaintiff’s counsel has substantial experience litigating complex class and representative
14 actions, including wage-and-hour litigation. (Sadat Decl., ¶ 24.) He currently represents over 100
15 clients in individual and representative employment actions. (*Ibid.*) Prior to founding Mills Sadat
16 Dowlat LLP, he worked as an associate at White & Case LLP where he defended multinational
17 corporations in consumer class actions throughout the country. (*Ibid.*) Plaintiff’s counsel’s
18 customary hourly billing rate is \$625, which is reasonable based on his training and experience.
19 (*Ibid.*)

20 “Testimony of an attorney as to the number of hours worked on a particular case is
21 sufficient evidence to support an award of attorney fees, even in the absence of detailed time
22 records.” (*Martino v. Denevi* (1986) 182 Cal.App.3d 553, 559.) Plaintiff’s counsel began work on
23 this case on April 5, 2021. (Sadat Decl., ¶ 25.) Prior to commencing this lawsuit, Plaintiff’s
24 counsel investigated the factual and legal issues raised, NCS’s business operations, and its
25 operations and employment policies, practices, and procedures. (*Ibid.*) Before and after
26 commencement of litigation, Plaintiff’s counsel interviewed and obtained information from
27 Plaintiff and other NCS employees, one of whom submitted a declaration in support of Plaintiff in
28 connection with mediation. (*Ibid.*) Plaintiff propounded discovery and reviewed and analyzed the

1 information and documents provided by NCS in response. (*Ibid.*) Plaintiff's counsel then sought
2 and obtained additional information that he deemed necessary to adequately prepare for mediation
3 and protect the interests of aggrieved employees. (*Ibid.*) Plaintiff's counsel prepared a PAGA
4 penalty model and incorporated the same into plaintiff's 12-page single-space mediation brief,
5 prepared for and attended mediation, assisted in preparation of the PAGA Settlement Agreement,
6 and drafted this motion. (*Ibid.*)

7 Plaintiff's counsel estimates this representation has required in excess of 50 hours of
8 attorney time. (*Id.*, ¶ 26.) Of this time, roughly half is fairly attributable to Plaintiff's PAGA
9 claim. (*Ibid.*) This works out to an hourly rate of approximately \$200, which is well below both
10 Plaintiff's counsel's standard hourly rate and the reasonable hourly rate for attorneys of similar
11 education, experience, and skill in the Northern California area. (*Ibid.*)

12 Moreover, Plaintiff's counsel represented Plaintiff and other aggrieved employees on a
13 contingent basis and Plaintiff's counsel bore all of the risks and costs of litigation. (*Id.*, ¶ 27.)
14 Considering the amount of fees requested, work performed, risks incurred, results obtained, and
15 experience of Plaintiff's counsel, Plaintiff maintains that the requested attorneys' fees of \$5,000
16 are reasonable and should be awarded. (*Ibid.*)

17 **3. Costs Attributable to the PAGA Claim Should Be Reimbursed**

18 Plaintiff's counsel advanced \$8,518.52 in litigation costs. (*Id.*, ¶ 28, Ex. D.) Of this
19 amount, \$173.93 was paid as a jury fee deposit and is therefore attributable solely to Plaintiff's
20 individual claims. (*Ibid.*) The remaining \$8,287.45—which includes \$7,450 in mediation fees—is
21 attributable to both Plaintiff's individual claims and the PAGA claim. (*Ibid.*) All of these costs—
22 including the \$7,450 mediation fees²—were reasonable and necessary to prosecute this matter.

23
24
25 ² Voluntary mediation fees are recoverable as costs. (*Berkeley Cement, Inc. v. Regents of*
26 *University of California* (2019) 30 Cal.App.5th 1133, 1140-1143 [awarding voluntary mediation
27 fees where mediation was reasonably necessary to the conduct of litigation].) Here, the Court at
28 the Case Management Conference on September 27, 2022 referred this action to mediation and set
a completion deadline of December 30, 2022. (Sept. 27, 2022 Order re: Case Management.) The
parties thereafter mediated the action, which resulted in settlement of both Plaintiff's individual
claims and the PAGA claim. Absent this mediation, it is unlikely that a settlement would have
been reached. (Sadat Decl., ¶ 9.)

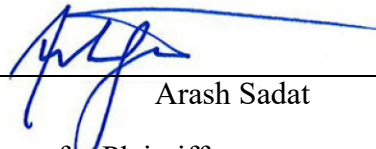
1 (*Ibid.*) In accordance with the terms of the PAGA Settlement Agreement, Plaintiff's counsel seeks
2 recovery of only \$1,000 in costs incurred. (*Ibid.*)

3 **III. CONCLUSION**

4 Based on the foregoing, the Parties respectfully request that the Court grant this motion,
5 approve the Parties' PAGA Settlement Agreement and dismiss this action accordingly.

6
7 Dated: March 7, 2023

MILLS SADAT DOWLAT LLP

8
9 By: 

Arash Sadat

10
11 Attorneys for Plaintiff
Keisha St. Clair

EXHIBIT A

PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698 ET SEQ.)
SETTLEMENT AGREEMENT

Subject to the approval of the Court, this Settlement Agreement (“Settlement Agreement” or “Settlement”) is made and entered into between Plaintiff **Keisha St. Clair**, acting in a private attorney general capacity, on behalf of the State of California on behalf of herself and all PAGA Settlement Employees, and Defendants **NCS Moving Services and Peter Rodriguez** (collectively, the “Parties”).

I. DEFINITIONS

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

1. “Action” means the matter entitled *Keisha St. Clair v. NCS Moving Services, et al.*, pending in the Alameda County Superior Court of the State of California, Case No. RG21110757.
2. “Complaint” means the operative pleading filed in the Action.
3. “Defendant” means NCS Moving Services (“NCS”) and includes Peter Rodriguez any of NCS’s past, present, and future officers, directors, employees, agents, board members, shareholders, attorneys, insurers, reinsurers, partners, investors, members, representatives, predecessors, parent companies, subsidiaries, affiliates, divisions, successors, agents, and principals, and its heirs, estates, executors, administrators, servants, insurers, attorneys, and assigns.
4. “Effective Date” of the Settlement means the date upon which the Court enters the order approving this Settlement.
5. “Gross Settlement Amount” is the sum of Fifteen Thousand Dollars and Zero Cents (\$15,00.00), which represents the total amount payable by Defendant under this Settlement Agreement for the release of the Released Claims and includes payments to all PAGA Settlement Employees, payment to the LWDA, payment of Plaintiff’s attorneys’ fees and costs, and payment to the Settlement Administrator, but not for Plaintiff’s General Release Payments, which will be paid separately from the Gross Settlement Amount.
6. “Individual PAGA Payment” means the pro rata amount to be paid to each PAGA Settlement Employee from the twenty-five percent (25%) portion of the PAGA Payment; such individual share to be based on the number of pay periods during which a PAGA Settlement Employee worked for Defendant during the PAGA Period.
7. “LWDA” means the California Labor and Workforce Development Agency.
8. “LWDA Letter” means the letters Plaintiff submitted to the LWDA on July 28, 2021, and August 20, 2021.
9. “Net Settlement Amount” is the amount remaining to distribute to the LWDA and PAGA Settlement Employees after the following amounts, if approved by the Court, are subtracted from the Gross Settlement Amount: (a) Plaintiff’s Attorneys’ Fees of up to Five Thousand Dollars and Zero Cents (\$5,000.00); (b) Plaintiff’s Costs up to One Thousand Dollars and Zero Cents

(\$1,000.00); and (c) PAGA Settlement Administration costs currently estimated at One Thousand Five Hundred Dollars and Zero Cents (\$1,500.00).

10. “Parties” means Plaintiff and Defendant.

11. “PAGA” means the California Labor Code Private Attorneys General Act, California Labor Code section 2698, *et seq.*

12. “PAGA Period” means the time period from July 28, 2020, through the Effective Date. As of the execution of this Settlement Agreement, Defendant estimates there are approximately 111 eligible pay periods worked during the PAGA Period by approximately 8 PAGA Settlement Employees.

13. “PAGA Representative Counsel” means Mills Sadat Dowlat, LLP, located at 333 South Hope Street, Los Angeles, California 90071.

14. “PAGA Settlement Employee” or “PAGA Settlement Employees” means and includes all current and former individuals who were classified as independent contractors who worked for Defendant in the State of California during the PAGA Period.

15. “Plaintiff” means Keisha St. Clair.

16. Plaintiff’s General Release Payments: In consideration for her general release of all claims against Defendant arising out of her employment, Defendant agrees to pay separately from the Gross Settlement Amount the sum of Sixty Thousand Dollars and Zero Cents (\$60,000.00) to Plaintiff (“General Release Payment”) separate and apart from any PAGA payment under this agreement.

17. “PAGA Payment” means the Net Settlement Amount of which seventy-five percent (75%) will be paid to the LWDA, and of which twenty-five percent (25%) will be paid to PAGA Settlement Employees.

18. “QSF” means qualified settlement fund.

19. “Released Claims” means all claims, rights, demands, liabilities, and causes of action, for PAGA civil penalties arising from the claims which were asserted in the Action and Complaint under PAGA based on facts alleged in the operative Complaint in the Action and LWDA Letter, including a PAGA claim against Defendant for civil penalties on behalf of Plaintiff and the LWDA based on the following underlying Labor Code violations: 201, 203, 226, subdivision (a), 226.7, 226.8, subdivision (a), 246, 510, subdivision (a), 512, 515, 558, 558.1, 1194, subdivision (a), 1197.1, and 2750.5, 2802, 2699, *et seq.*, violation of any provision of an Industrial Welfare Commission Order related to those Labor Code sections, and any other claims asserted on a representative basis in the Action and operative Complaint.

20. “Released Parties” means Defendants NCS Moving Services and Peter Rodriguez, and NCS’s past, present, and future officers, directors, employees, board members, shareholders, attorneys, insurers, reinsurers, customers, partners, investors, members, representatives, predecessors, franchisors, parent companies, subsidiaries, affiliates, divisions, successors, agents, and principals, and its heirs, estates, executors, administrators, servants, insurers, attorneys, assigns, and any individual or entity that could be jointly liable with Defendant.

21. “Settlement Administrator” means the entity that will administer the PAGA settlement, including delivering the PAGA payment to the PAGA Settlement Employees. The parties shall mutually select and agree on the Settlement Administrator.

22. “PAGA Settlement Administration Costs” means the cost, currently estimated at One Thousand Five Hundred Dollars (\$1,500), to be paid to the Settlement Administrator for administering the Settlement, including sending checks and Settlement Notices to the PAGA Settlement Employees.

23. “Settlement Notice” means an explanatory letter similar to that attached hereto as Exhibit A to be sent by Settlement Administrator to PAGA Settlement Employees.

II. RECITALS

1. Plaintiff was an independent contractor who worked for Defendant during the PAGA Period.

2. On July 28, 2021, and August 20, 2021, Plaintiff provided written notice to the LWDA and Defendant pursuant to Labor Code section 2699.3 of *inter alia* alleged violations of the California Labor Code and Industrial Welfare Commission Orders.

3. On August 25, 2021, Plaintiff filed the Action under the PAGA with the Court on behalf of the State of California and other aggrieved employees alleging multiple violations of the California Labor Code and Industrial Welfare Commission Wage Orders by Defendant.

4. The Parties have independently analyzed and investigated the facts and law relevant to this case through discovery, including, but not limited to, the employment policies, procedures, and practices implicated by the Complaint and/or the LWDA Letter; a sampling of timekeeping and payroll records relating to Plaintiff and other independent contractors on whose behalf the Complaint and/or the LWDA Letter PAGA Representative Claims are asserted; and summaries of data pertaining to the number of employees allegedly affected by the policies, procedures, and practices implicated by the Complaint and/or the LWDA Letter.

5. After evaluating the strengths and weaknesses of their respective positions, after considering the time, expense, and risk associated with litigating this case to judgment, and after engaging in arm’s-length settlement negotiations through informed counsel, the Parties agreed to fully and finally, and exclusively, resolve the Released Claims as to Plaintiff and the PAGA Settlement Employees, subject to Court approval.

6. This Settlement contemplates the entry of an Order by the Court approving the payment allocated for settlement of PAGA penalties to Plaintiff and PAGA Settlement Employees, and the dismissal with prejudice of the Action.

III. OPERATIVE TERMS OF SETTLEMENT AGREEMENT

The Parties agree as follows:

1. **Non-Admission.** Nothing in this Settlement Agreement shall be construed to be an admission by Plaintiff that her claims do not have merit or by Defendant of any liability or wrongdoing as to Plaintiff, PAGA Settlement Employees or any other person, and Defendant

specifically disclaims any such liability or wrongdoing. Defendant specifically disclaims any liability to Plaintiff or any other allegedly aggrieved employee for any alleged violation of his/her/their rights, or for any alleged violation of any order, law, statute, duty or contract. The Parties have entered into this Settlement Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and risks. This Settlement Agreement and any related court documents or orders are not and may not be cited or admitted as evidence of liability.

2. **Gross Settlement Amount.** Defendant shall pay Fifteen Thousand Dollars and Zero Cents (\$15,000.00) as the Gross Settlement Amount. With the exception of Plaintiff's General Release Payments, Defendant will not pay more than the Gross Settlement Amount. Defendant shall distribute the Gross Settlement Amount to the Settlement Administrator within thirty (30) business days after the Effective Date.

3. **Net Settlement Amount.** The Parties agree that the following amounts should be subtracted from the Gross Settlement Amount, if approved by the Court, resulting in a Net Settlement Amount to be distributed to the LWDA and PAGA Settlement Employees hereinafter referred to as the ("PAGA Payment"):

a. **Plaintiff's Attorneys' Fees and Costs.** Defendant will not oppose Plaintiff's request for Plaintiff's Attorneys' Fees of up to Five Thousand Dollars (\$5,000.00) and Plaintiff's Costs up to One Thousand Dollars (\$1,000.00) incurred in prosecuting this Action. In the event the Court approves a payment of less than the amount of fees and costs requested by Plaintiff, the difference will be added to the PAGA Payment.

b. **Administration Cost.** Defendant will not oppose the Settlement Administrator's costs, currently estimated at One Thousand Five Hundred Dollars (\$1,500), for administering the Settlement. In the event the Court approves a payment of less than this amount, the difference will be added to the PAGA Payment.

4. **PAGA Payment.** A portion of the PAGA Payment will be allocated to the LWDA and the remainder will be allocated to PAGA Settlement Employees in settlement of the Released Claims. The PAGA Payment will be subject to Court approval consistent with California Labor Code section 2699.3(b)(4). Upon approval, the PAGA Payment shall be allocated as follows:

a. Seventy-five percent (75%) will be paid to the LWDA, as required by California Labor Code section 2699(i).

b. Twenty-five percent (25%) will be divided on a pro rata basis among PAGA Settlement Employees and distributed by the Settlement Administrator in Individual PAGA Payments, as required by California Labor Code section 2699(i).

c. The payments will be reported on IRS Forms 1099 issued to the LWDA and each PAGA Settlement Employee. The Settlement Administrator will be responsible for issuing to PAGA Settlement Employees and PAGA Representative Counsel any 1099 or other tax forms as may be required by law for all amounts paid pursuant to this Settlement.

5. **Representative PAGA Release.** As of the Effective Date, all PAGA Settlement Employees and the State of California, in consideration of the PAGA Payment, shall be bound by this Agreement and shall have recourse exclusively to the benefits, rights, and remedies provided hereunder. Plaintiff, PAGA Settlement Employees, and the State of California shall be deemed to have, and by operation of the Order granting approval of the payment of the PAGA Payment as described in this Agreement, fully, finally, and forever released, relinquished, and discharged each and all of the Released Parties from the Released Claims through the Effective Date.

6. **Released Claims.** Upon the Effective Date, Plaintiff and all PAGA Settlement Employees and the LWDA will be forever barred from pursuing any and all Released Claims. The LWDA or PAGA Settlement Employees may discover facts in addition to those they now know or believe to be true with respect to the subject matter of the Released Claims, but upon the Effective Date, the LWDA and PAGA Settlement Employees shall be deemed to have, and by operation of the Court's Order approving Settlement shall have, fully, finally, and forever settled and released any and all of the Released Claims, without regard to the subsequent discovery or existence of such different or additional facts. The LWDA and PAGA Settlement Employees may not sue or otherwise make a claim seeking recovery for any of the Released Claims against any of the Released Parties. It is the intent of the Parties that the Settlement approval order entered by the Court shall have full res judicata effect and be final and binding upon the LWDA and PAGA Settlement Employees regarding the Released Claims. In light of the binding nature of a PAGA judgment on non-party employees pursuant to *Arias v. Sup. Ct. (Angelo Dairy)*, 46 Cal.4th 969 (2009) and *Cardenas v. McLane Foodservice, Inc.*, 796 F.Supp.2d 1246 (2011), PAGA Settlement Employees shall be deemed to have released the Released Claims regardless if the check is cashed or not.

7. **Filing of Request for Approval of PAGA Settlement by Plaintiff's Counsel.**

The Parties will cooperate in obtaining through an unopposed or joint motion/stipulation, an order from the Court approving the terms of this Agreement at the earliest possible date following the execution of this Agreement. Plaintiff's counsel shall be responsible for filing either a joint or unopposed motion / stipulation for approval of the Settlement. Plaintiff shall provide the requisite notice of this Settlement Agreement to the LWDA on or before the date Plaintiff requests approval of this Settlement Agreement from the Court. If the Court approves this Settlement, the Parties shall request that the Court enter an Order approving the settlement.

As part of the request to approve the Settlement, Plaintiff shall submit a proposed order granting approval of this Settlement. The Order granting approval of the settlement shall provide for a dismissal, with prejudice, of the entire Action and the Complaint. The Court shall retain jurisdiction to enforce the terms of this Agreement. This Settlement is expressly conditioned upon the Court entering such an Order approving this Settlement as set forth herein.

IV. ADMINISTRATION OF SETTLEMENT

1. **Settlement Administrator.** The Settlement Administrator will be responsible for establishing a qualified settlement fund ("QSF") and issuing payments and appropriate tax forms to PAGA Settlement Employees, the LWDA, and Plaintiff's counsel.

2. **Provision of Information for PAGA Settlement Employees.** Within fourteen (14) calendar days after the Effective Date, Defendant will provide the information regarding the PAGA Settlement Employees to the Settlement Administrator. This information will include the name, most recently known address, social security number, and total pay periods worked as independent contractors for each of the PAGA Settlement Employees during the PAGA Period. The list shall also include the sum total of all pay periods worked as independent contractors by PAGA Settlement Employees during the PAGA Period. As social security numbers are included in the list, the Settlement Administrator will maintain the list in confidence, and access shall be limited to those with a need to use the list as part of the administration of the Settlement.

The Settlement Administrator will calculate the amount to be received by each PAGA Settlement Employee. Within five (5) calendar days of receiving the Gross Settlement Amount, the Settlement Administrator will circulate to counsel for both Parties an anonymized spreadsheet containing the estimated individual settlement payments to each PAGA Settlement Employee and the data used to calculate said payments. The Settlement Administrator shall obtain approval from all counsel of the calculations before mailing Individual PAGA Payments.

3. **Explanatory Letter and Individual PAGA Payments.** Upon receipt of the information for PAGA Settlement Employees, the Settlement Administrator will perform a search on the National Change of Address database to update the PAGA Settlement Employees' addresses.

Within ten (10) court days of receiving approval from counsel of the payment calculations as provided above, the Settlement Administrator will issue payments to: (a) PAGA Settlement Employees along with an explanatory letter ("Settlement Notice"); (b) the LWDA; (c) Plaintiff's counsel; (d) Plaintiff; and (e) itself.

4. **Undeliverable Notices.** The Settlement Administrator will issue each PAGA Settlement Employee a check for his, her, or their share of the PAGA Payment along with a Settlement Notice. Prior to mailing, the Settlement Administrator will perform a search based on the National Change of Address database for information to update and correct for any known or identifiable address changes. Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip trace, or other search using the name, address or social security number of the PAGA Settlement Employees involved, and will then perform a single re-mailing. Individual PAGA Payment checks will remain negotiable for one hundred and eighty (180) calendar days, and PAGA Settlement Employees will have one hundred and eighty (180) calendar days from the date of the mailing to cash their Individual PAGA Payment checks. If an PAGA Settlement Employee's check is returned to the Settlement Administrator with a forwarding address provided by the United States Postal Service, the Settlement Administrator will promptly resend the check to that PAGA Settlement Employee to that address, but this re-mailing will not extend the 180-day period to cash a check. Funds represented by Individual PAGA Payment checks returned as undeliverable and those Individual PAGA Payment checks remaining un-cashed for more than one hundred and eighty (180) calendar days after issuance will be paid to Court Appointed Special Advocates of Alameda County.

Defendant fully discharges its obligations to those PAGA Settlement Employees who are entitled to an Individual PAGA Payment through the Settlement Administrator's mailing of a check, regardless of whether such checks are actually received and/or negotiated by PAGA Settlement Employees.

5. **Accounting.** Within fifteen (15) calendar days of receiving approval from both Parties' counsels of the payment calculations, the Settlement Administrator will provide an accounting under oath to the Parties of the amounts paid from the Settlement, via a declaration or otherwise.

6. **Tax Consequences.** Individual PAGA Payments made under this Settlement will be attributed one hundred percent (100%) as penalties and interest and paid via IRS Form 1099 issued to each PAGA Settlement Employee. Defendant makes no representations or warranties with respect to tax consequences of any payment under this Settlement Agreement.

V. MISCELLANEOUS PROVISIONS

1. **Mutual Preparation and Drafting.** The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement. The Parties agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties through informed counsel and that neither Party shall be considered the "drafter" of this Settlement Agreement for purposes of having terms construed against that Party.

2. **No Impact on Benefit Plans.** Neither the Settlement Agreement nor any amounts paid to Plaintiff or any PAGA Settlement Employee under the Settlement will modify any previously credited hours or service under any employee benefit plan, policy or bonus program sponsored by Defendant. Such amounts will not form the basis for additional contributions to, benefits under or any other monetary entitlement under Defendant's sponsored benefit plans, policies or bonus programs. The payments made under the terms of this Settlement Agreement shall not be applied retroactively, currently or on a going-forward basis, as salary, earnings, wages or any other form of compensation for the purposes of any Defendant's benefit plan, policy, or bonus program. Defendant retains the right, if necessary, to modify the language of its benefit plans, policies and bonus programs to effect this intent, and to make clear that any amounts paid pursuant to this Settlement Agreement are not for "hours worked," "hours paid," "hours of service," or any similar measuring term as defined by applicable plans, policies, and bonus programs for purposes of eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are not required by this Settlement Agreement.

3. **Successors.** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, and successors.

4. **Costs and Fees.** The Parties shall each bear their own costs, attorneys' fees, and other fees incurred in connection with this Settlement Agreement, the Action, and Plaintiff's claims, except as otherwise set forth specifically herein.

5. **Authority.** Defendant represents and warrants that the undersigned has the authority to act on behalf of Defendant and to bind Defendant to the terms of this Settlement Agreement. Plaintiff represents and warrant that Plaintiff has the authority to enter into this Settlement Agreement.

6. **Governing Law.** This Settlement Agreement shall be construed under and governed by the laws of the State of California.

7. **Complete Agreement.** The Parties each acknowledge and represent that no promise or representation not contained in this Settlement Agreement has been made to them, and acknowledge and represent that this Settlement Agreement contains the entire understanding between them and contains all terms and conditions pertaining to the compromise and settlement of the PAGA claim. This Settlement Agreement cannot be amended or modified except by a writing signed by the Parties hereto.

8. **Nullification of Settlement Agreement.** In the event that: (i) the Court does not approve the Settlement as provided herein; or (ii) the Settlement does not become final for any other reason, then this Settlement Agreement and any documents generated to bring it into effect, will be null and void, and the Parties will be returned to their original respective positions, without prejudice. Neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect.

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

The Parties further agree that upon the occurrence of the dismissal of the Action pursuant to the terms of this Agreement, this Agreement shall be enforceable by the Court pursuant to California Code of Civil Procedure Section 664.6 and the Court shall retain exclusive and continuing equity jurisdiction of this Action over all Parties and PAGA Settlement Employees to interpret and enforce the terms, conditions and obligation of the Agreement.

10. **Entire Agreement.** This Settlement Agreement constitutes the entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements may be deemed binding on the Parties.

11. **Amendment or Modification.** This Settlement Agreement may be amended or modified only by a written instrument, signed by either the Parties or their successors-in-interest or counsel for all Parties.

12. **Binding on Successors and Assigns.** This Settlement Agreement will be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

13. **Execution and Counterparts.** This Settlement Agreement is subject only to the execution of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, including facsimile, DocuSign, and

scanned copies of the signature page, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange among themselves original signed counterparts.

14. **Acknowledgement that the Settlement is Fair and Reasonable.** The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action, and have arrived at this settlement after arm's-length negotiations by experienced counsel. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this settlement.

15. **Invalidity of Any Provision.** Before declaring any provision of this Settlement Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Settlement Agreement valid and enforceable. Invalidation of any material portion of this Agreement shall invalidate this Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

16. **Severability.** If any term or provision of this Settlement Agreement is held to be invalid or unenforceable, the remaining portions of this Settlement Agreement will continue to be valid and will be performed, construed and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the Parties, as determined from the face of the Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

17. **Waiver.** No waiver of any condition or covenant contained in this Settlement Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such Party of the same or any other condition, covenant, right or remedy.

18. **Enforcement Action.** In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement Agreement or to declare rights and/or obligations under this settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

19. **Dispute(s).** Should any dispute(s) arise among the Parties or their respective counsel regarding the implementation or interpretation of this Agreement, the Parties agree to submit any such dispute(s) to the Court. To the extent any Party seeks to enforce any of the terms of this Agreement in or before the Court, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

20. **Non-Evidentiary Use.** Neither this Agreement nor any of its terms shall be offered or used as evidence by any of the Parties, or their respective counsel in the Action or in any other action or proceeding; provided, however, this shall not prevent this Agreement from being used, offered, or received in evidence in any proceeding to enforce, construe, or finalize this Agreement.

21. **Representation by Counsel.** The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed in full.

22. **No Public Comment.** Neither the Parties nor their counsel shall make or issue any public statements to the press or any other third party, nor post any information on websites or other public forums, concerning the Action in any way.

23. **Cooperation and Execution of Necessary Documents.** All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.

24. **Binding Agreement.** The Parties warrant that they understand and have full authority to enter into this settlement, and further intend that this Settlement Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

25. **Denial of Liability.** The Parties expressly recognize that the making of this Settlement Agreement does not in any way constitute an admission or concession of wrongdoing on the part of Defendant. Nothing in this settlement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of this Action, is intended by the Parties to, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in any other judicial, arbitral, administrative, investigative or other forum or proceeding, as evidence of any violation of any federal, state or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, this Settlement Agreement may be used in any court proceeding that has as its purpose the interpretation, implementation or enforcement of the settlement or any orders or judgments of the Court entered into in connection therewith.

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

Dated: Nov 13, 2022

By: 
Keisha St. Clair (Nov 13, 2022 15:34 PST)
Plaintiff Keisha St. Clair

Dated: _____

By: _____
Defendant NCS Moving Services
Peter Rodriguez

21. **Representation by Counsel.** The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed in full.

22. **No Public Comment.** Neither the Parties nor their counsel shall make or issue any public statements to the press or any other third party, nor post any information on websites or other public forums, concerning the Action in any way.

23. **Cooperation and Execution of Necessary Documents.** All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.

24. **Binding Agreement.** The Parties warrant that they understand and have full authority to enter into this settlement, and further intend that this Settlement Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

25. **Denial of Liability.** The Parties expressly recognize that the making of this Settlement Agreement does not in any way constitute an admission or concession of wrongdoing on the part of Defendant. Nothing in this settlement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of this Action, is intended by the Parties to, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in any other judicial, arbitral, administrative, investigative or other forum or proceeding, as evidence of any violation of any federal, state or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, this Settlement Agreement may be used in any court proceeding that has as its purpose the interpretation, implementation or enforcement of the settlement or any orders or judgments of the Court entered into in connection therewith.

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

Dated: _____

By: _____
Plaintiff Keisha St. Clair

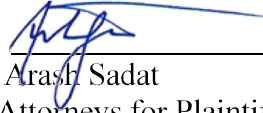
Dated: 11/18/22

By: _____
Defendant NCS Moving Services
Peter Rodriguez

Approved as to form:

Dated: November 11, 2022

MILLS SADAT DOWLAT LLP



Arash Sadat
Attorneys for Plaintiff Keisha St. Clair

LITTLER MENDELSON, P.C.

Dated: _____

Gregory G. Iskander
Michael W. Nelson
Attorneys for Defendants

Approved as to form:

MILLS SADAT DOWLAT LLP

Dated: _____

Arash Sadat
Attorneys for Plaintiff Keisha St. Clair

LITTLER MENDELSON, P.C.

Dated: December 2, 2022



Gregory G. Iskander
Michael W. Nelson
Attorneys for Defendants

EXHIBIT B

July 28, 2021

**VIA ELECTRONIC SUBMISSION;
VIA CERTIFIED MAIL TO OPPOSING PARTY**

California Labor and Workforce Development Agency
Attn: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

NCS Moving Services
Attn: Peter Rodriguez – Agent for Service of Process
7305 Edgewater Drive, Suite F
Oakland, CA 94621

Re: Notice of Claim Under Private Attorneys General Act (“PAGA”)

To Whom It May Concern:

My firm represents Keisha St. Clair (“Plaintiff”) and all other aggrieved employees who intend to file an action against NCS Moving Services (“Defendant”) in connection with Defendant’s violations of the California Labor Code. This letter shall serve as notice, and a request, pursuant to Labor Code section 2699.3, *et seq.* (“PAGA”), that the Labor and Workforce Development Agency (“LWDA”) investigate the violations by Defendant described herein against Plaintiff and other current and/or former employees. If LWDA does not intend to investigate the violations described herein, we respectfully request that the agency specifically notify our office of the same at your earliest possible opportunity.

Statement of Specific Provisions of the Labor Code Violated

Plaintiffs intend to prosecute a civil action against Defendant for violations of Labor Code sections 226, subdivision (a), 246, subdivision (i), 226.7, 226.8, subdivision (a), 515, 558, and 2750.3.

Facts and Theories in Support of Violations

Defendant is a moving company and is registered to do business in the State of California. Defendant employed Plaintiff as a Move Coordinator from on or about November 11, 2019 until approximately January 28, 2021.

Plaintiff’s position as a Move Coordinator, and her duties, which included moving IT equipment, are within the purview of Defendant’s usual course of business as a moving company. Moreover, Defendant exercised requisite control over Plaintiff by setting Plaintiff’s hours. As a result, Plaintiff was Defendant’s employee.

However, Defendant misclassified Plaintiff as an independent contractor when it hired her in 2019. Defendant willfully misclassified Plaintiff in an attempt to avoid providing Plaintiff with meal and rest breaks, overtime, and accurate wage statements. Plaintiff is informed and believes, and on that basis alleges, that Defendant misclassified many of its other employees as independent contractors, as well.

During Plaintiff's employment, Defendant's wage statements to Plaintiff failed to list accrued sick time. Plaintiff is informed and believes, and on that basis alleges, that Defendant failed to notify other employees of their accrued sick time for each payroll period.

Failure to Provide Accurate Wage Statements

Pursuant to Labor Code section 226, subdivision (a), an employer is required to provide itemized wage statements. Labor Code section 246, subdivision (i) works in conjunction with section 226 and requires employers to note available sick leave on the itemized wage statement.

Here, Defendant failed to report sick leave on its wage statements provided to both Plaintiff and its other employees throughout the duration of Plaintiff's employment.

Misclassification as an Independent Contractor

Pursuant to Labor Code section 226.8, it is unlawful for an employer to willfully misclassify an individual as an independent contractor.

An employer in violation of section 226.8 is subject to civil penalties. (See Lab. Code § 226.8, subs. (b)-(c).) The California Supreme Court has set forth the stringent requirements for an individual to be considered an independent contractor. (*Dynamex Operations v. Superior Court* (2018) 4 Cal.5th 903.) The "ABC test" as articulated in *Dynamex* requires the following:

- (a) that the worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact;
- (b) that the worker performs work that is outside the usual course of the hiring entity's business; and
- (c) that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed.

These requirements have been codified in Labor Code section 2750.3. Because the test is phrased in the conjunctive, all three prongs of the ABC test must be answered in the affirmative for a worker to be lawfully classified as an independent contractor.

Here, none of the prongs are satisfied. Plaintiff and other movers working for Defendant were undoubtedly employees and not independent contractors under the ABC test. First, the

employees' schedules were set by Defendant and Defendant directed the work they would perform. This control and direction is expressly set forth in Plaintiff's "Independent Contractor Agreement" with Defendant dated November 11, 2019. The agreement provides that "[Plaintiff] will report directly to NCS Moving Services and to any other party designated by NCS in connection with the performance of the duties under this Agreement and shall fulfill any other duties reasonably requested by the Company and agreed to by the Contractor." (Exhibit A at p. 4.)¹

Plaintiff's experience was consistent with this term of employment, as Defendant: (a) provided a schedule which instructed her where and when she would work; and (b) directed nearly aspect of the moving services she provided. The same was true of Defendant's other movers who were also misclassified as independent contractors.

Second, Plaintiff (a "Move Coordinator") and Defendant's other movers performed moving services. According to its website, NCS's "goal is to be the best moving company in Northern California." (See <https://www.ncsmoving.com/>, emphasis added.) Simply put, Plaintiff's job duties of moving IT equipment and coordinating moves fall squarely within Defendant's business as a moving company. The same is true of Defendant's other misclassified employees, which include movers and move coordinators.

Finally, moving is not an independently established trade, nor were Plaintiff or Defendant's other employees providing such services to other companies or individuals. Nearly all of these employees worked only for Defendant.

It is also clear that Defendant's misclassification of its employees was willful. In or about April 2020, Defendant reclassified some (but not all) of its staff as employees. Plaintiff was not reclassified at that time. Instead, she was reclassified months later, in September 2020. This conduct shows that Defendant knew of its obligations under *Dynamex* and Labor Code section 2750.3 but chose to ignore the law, at the expense of its employees. Moreover, Plaintiff is informed and believes that certain other employees remained unlawfully classified as independent contractors at the time of her termination in January 2021.

Penalties for Unpaid Wages

Pursuant to Labor Code section 558, subdivision (a), and employer who violates "any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty." (Lab. Code § 558, subd. (a).)

An employer's initial violation is subject to a "fifty dollar penalty (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages." *Ibid.* Thereafter, each subsequent violation is subject to a penalty of "one hundred dollars (\$100) for each underpaid employee for each pay

¹ Tellingly—and in clear violation of Labor Code section 1198.5—Defendant did not produce this document in response to Plaintiff's personnel file request.

period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.” *Ibid.*

Here, Defendant’s personnel were often required to work more than 10 hours per day to complete moves within the timeframes dictated by Defendant. Because Defendant misclassified them, they were not paid their earned overtime. Defendant is therefore liable for civil penalties under section 558, subdivision (a).

Unlawful Failure to Provide Uninterrupted Off-Duty Meal and Rest Periods

Plaintiff and similarly situated employees regularly worked in excess of five hours per day without being provided at least one half-hour meal period in which they were relieved of all duties. (Lab. Code §§ 226.7, 512; *see also* Industrial Welfare Commission Order No. 4-2001.) Plaintiff and similarly situated employees also regularly worked in excess of four hours without being provided at least a ten-minute rest period in which they were relieved of all their duties. (Lab. Code §§ 226.7, 512; *see also* Industrial Welfare Commission Order No. 4-2001.)

Throughout Plaintiff’s employment, she was not able to take uninterrupted off-duty meal and rest periods in accordance with Labor Code. Defendant did not maintain a policy that ensured Plaintiff received requisite meal and rest periods until the final months of Plaintiff’s employment. Furthermore, Defendant caused Plaintiff to miss meal and rest periods and failed to pay her the premium compensation mandated by Labor Code section 226.7, subdivisions (b)-(c). As a result of these Labor Code violations, Defendants are liable for civil penalties. (Lab. Code § 2698, *et seq.*)

Conclusion

As described above, Defendants have violated numerous wage and hour provisions of the Labor Code. As a result, Defendant is liable to Plaintiff and other current and former employees for civil penalties, attorney’s fees, and costs, pursuant to Labor Code sections 226, subdivision (a), 246, subdivision (i), 226.7, 226.8, 515, 558, and 2750.3.

This letter shall serve as Plaintiff’s notice pursuant to Labor Code section 2699.3 and we ask that LWDA conduct an investigation concerning the violations described herein. Alternatively, if LWDA does not intend to investigate these violations, we ask that it issue a notification letter to our office confirming the same so that we may proceed with our civil action asserting the PAGA claims described herein.

Please feel free to contact me if you have any questions or if you would like to discuss this matter further. Nothing in this letter is intended to be, or should be construed as, an admission against the interests of Plaintiff or other current or former employees of Defendant and shall not be construed as a waiver of their rights, remedies, claims, or defenses, all of which are expressly reserved.

Sincerely,



Arash Sadat

cc: Eric Samuels <eric@israel-samuels.com>

EXHIBIT C

August 20, 2021

**VIA ELECTRONIC SUBMISSION;
VIA CERTIFIED MAIL TO OPPOSING PARTY**

California Labor and Workforce Development Agency
Attn: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

NCS Moving Services
Peter Rodriguez
7305 Edgewater Drive, Suite F
Oakland, CA 94621

Re: Amended Notice of Claim Under Private Attorneys General Act (“PAGA”)

To Whom It May Concern:

My firm represents Keisha St. Clair (“St. Clair”) and all other aggrieved employees (collectively, “Plaintiffs”) who intend to file an action against NCS Moving Services (“NCS”), Peter Rodriguez (“Rodriguez,” and, collectively with NCS, “Defendants”) in connection with Defendants’ violations of the California Labor Code. This letter shall serve as notice, and a request, pursuant to Labor Code section 2699.3, *et seq.* (“PAGA”), that the Labor and Workforce Development Agency (“LWDA”) investigate the violations by Defendants described herein against Plaintiff and other current and/or former employees. If LWDA does not intend to investigate the violations described herein, we respectfully request that the agency specifically notify our office of the same at your earliest possible opportunity.

Statement of Specific Provisions of the Labor Code Violated

Plaintiffs intend to prosecute a civil action against Defendants for violations of Labor Code sections 201, 203, 226, subdivision (a), 226.7, 226.8, subdivision (a), 246, 510, subdivision (a), 512, 515, 558, 558.1, 1194, subdivision (a), 1197.1, and 2750.5, 2802.

Facts and Theories in Support of Violations

NCS is moving company owned and operated by Rodriguez and registered to do business in the State of California. NCS employed St. Clair as a Move Coordinator from on or about November 11, 2019 until approximately January 28, 2021.

St. Clair’s position as a Move Coordinator, and her duties, which included moving IT equipment, are within the purview of NCS’s usual course of business as a moving company.

Moreover, NCS exercised requisite control over St. Clair by setting her hours. As a result, St. Clair was NCS's employee.

However, NCS misclassified St. Clair as an independent contractor when it hired her in 2019. NCS willfully misclassified St. Clair in an attempt to avoid providing her with meal and rest breaks, overtime, accurate wage statements, and to avoid reimbursing her for expenses incurred in connection with her employment, including mileage. St. Clair is informed and believes, and on that basis alleges, that NCS misclassified many of its other employees as independent contractors, as well.

During St. Clair's employment, NCS's wage statements to St. Clair failed to list accrued sick time. St. Clair is informed and believes, and on that basis alleges, that NCS failed to notify other employees of their accrued sick time for each payroll period.

NCS terminated St. Clair on or about January 28, 2021 in retaliation for St. Clair: (1) taking sick leave after she was exposed to COVID-19 on the job; and (2) opposing NCS's decision to not provide COVID pay. NCS did not, at the time it terminated St. Clair, provide wages earned and unpaid at the time of discharge and has failed to do so as of the date of this writing.

Failure to Provide Accurate Wage Statements

Pursuant to Labor Code section 226 ("Section 226"), subdivision (a), an employer is required to provide itemized wage statements. Labor Code section 246, subdivision (i) works in conjunction with Section 226 and requires employers to note available sick leave on the itemized wage statement.

Here, NCS failed to report sick leave on its wage statements provided to both St. Clair and its other employees throughout the duration of St. Clair's employment.

Misclassification as an Independent Contractor

Pursuant to Labor Code section 226.8 ("Section 226.8"), it is unlawful for an employer to willfully misclassify an individual as an independent contractor. An employer that violates Section 226.8 is subject to civil penalties. (*See* Lab. Code § 226.8, subds. (b)-(c).)

The California Supreme Court has set forth stringent requirements for an individual to be properly classified an independent contractor. (*Dynamex Operations v. Superior Court* (2018) 4 Cal.5th 903.) The "ABC test" as articulated in *Dynamex* requires the following:

- (a) that the worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact;

- (b) that the worker performs work that is outside the usual course of the hiring entity's business; and
- (c) that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed.

These requirements have been codified in Labor Code section 2750.5. Because the ABC test is phrased in the conjunctive, all three prongs must be answered in the affirmative for a worker to be lawfully classified as an independent contractor.

Here, none of the prongs are satisfied. St. Clair and other movers working for NCS were undoubtedly employees and not independent contractors under the ABC test. First, the employees' schedules were set by NCS and NCS directed the work they would perform. This control and direction is expressly set forth in St. Clair's "Independent Contractor Agreement" with NCS dated November 11, 2019. The agreement provides that "[St. Clair] will report directly to NCS Moving Services and to any other party designated by NCS in connection with the performance of the duties under this Agreement and shall fulfill any other duties reasonably requested by the Company and agreed to by the Contractor." (Exhibit A at p. 4.)

St. Clair's experience was consistent with this term of employment, as NCS: (a) provided a schedule which instructed her where and when she would work; and (b) directed nearly aspect of the moving services she provided. The same was true of NCS's other movers who were also misclassified as independent contractors.

Second, St. Clair (whose job title was "Move Coordinator") and NCS's other movers performed moving services. According to its website, NCS's "goal is to be the best moving company in Northern California." (See <https://www.ncsmoving.com/>, emphasis added.) Simply put, St. Clair's job duties of moving IT equipment and coordinating moves fall squarely within NCS's business as a moving company. The same is true of NCS's other misclassified employees, which include movers and move coordinators.

Finally, moving is not an independently established trade, nor were St. Clair or NCS's other employees providing such services to other companies or individuals. Nearly all of these employees worked only for NCS's.

It is also clear that NCS's misclassification of its employees was willful. In or about April 2020, NCS reclassified some (but not all) of its staff as employees. St. Clair was not reclassified at that time. Instead, she was reclassified months later, in September 2020. This conduct shows that Defendant knew of its obligations under *Dynamex* and Labor Code section 2750.5 but chose to ignore the law, at the expense of its employees. Moreover, St. Clair is informed and believes that certain other employees remained unlawfully classified as independent contractors at the time of her unlawful and retaliatory termination in January 2021.

//

Penalties for Unpaid Wages

Pursuant to Labor Code section 558, subdivision (a), and employer who violates “any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty.”

An employer’s initial violation is subject to a “fifty dollar penalty (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.” (*Ibid.*) Thereafter, each subsequent violation is subject to a penalty of “one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.” (*Ibid.*)

Here, NCS’s personnel were often required to work more than 10 hours per day to complete moves within the timeframes dictated by NCS. Because NCS misclassified its employees, they were not paid their earned overtime. NCS is therefore liable for civil penalties under Labor Code section 558, subdivision (a).

Failure to Provide Uninterrupted Off-Duty Meal and Rest Periods

St. Clair and similarly situated employees regularly worked in excess of five hours per day without being provided at least one half-hour meal period in which they were relieved of all duties. (Lab. Code §§ 226.7, 512; *see also* Industrial Welfare Commission Order No. 4-2001.) St. Clair and similarly situated employees also regularly worked in excess of four hours without being provided at least a ten-minute rest period in which they were relieved of all their duties. (Lab. Code §§ 226.7, 512; *see also* Industrial Welfare Commission Order No. 4-2001.)

Throughout St. Clair’s employment, she was not able to take uninterrupted off-duty meal and rest periods in accordance with Labor Code. NCS did not maintain a policy that ensured St. Clair received requisite meal and rest periods until the final months of St. Clair’s employment. Furthermore, NCS caused St. Clair to miss meal and rest periods and failed to pay her the premium compensation mandated by Labor Code section 226.7, subdivisions (b)-(c). As a result of these Labor Code violations, NCS is liable for civil penalties. (Lab. Code § 2698, *et seq.*)

Failure to Pay Wages Upon Termination

Labor Code section 201 (“Section 201”) requires an employer to pay all wages earned and unpaid at the time of termination. (*Id.* at subd. (a).) Here, NCS terminated St. Clair on or about January 28, 2021 when Rodriguez informed St. Clair that she should “go on unemployment.” Because NCS did not pay St. Clair wages earned and unpaid at the time of termination (including but not limited to overtime), it violated Section 201 and has incurred penalties under Labor Code section 203.

//

Failure to Reimburse for Necessary Expenditures While Working

Labor Code section 2802 requires employers to reimburse employees “for all necessary expenditures or losses incurred by the employee” when working.” During St. Clair’s employment, NCS failed to reimburse its misclassified employees for necessary expenses incurred while working. This includes, without limitation, reimbursement for all mileage driven to and from job sites.

Rodriguez and NCS’s Ownership and Management Are Liable for Labor Code Violations

Labor Code section 558 provides that an employer “or other person acting on behalf of an employer” who violates or causes a violation of the state’s applicable wage and hour laws shall be subject to a civil penalties. (*Id.* at subd. (a).)

Labor Code section 558.1 is broader in scope. It applies to “[a]ny employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802.” Subdivision (a) of Labor Code section 558.1 states clearly that any such person “may be held liable as the employer for such violation.” This includes any “natural person who is an owner, director, officer, or managing agent of the employer.” (Lab. Code § 558.1, subd. (b).)

Labor Code section 1197.1 provides that an employer “or other person acting either individually or as an officer, agent, or employee of another person” who pays or causes to pay an employee less than the state’s applicable minimum wage shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203.”

Labor Code sections 558, 558.1, and 1197.1 all impose personal liability on Rodriguez and NCS’s other agents, owners, directors, officers, and managing agents for the Labor Code violations alleged herein.

Conclusion

As described above, Defendants have violated numerous wage and hour provisions of the Labor Code. As a result, Defendant is liable to St. Clair and other current and former employees for civil penalties, attorney’s fees, and costs, pursuant to Labor Code sections 201, 203, 226, subdivision (a), 226.7, 226.8, subdivision (a), 246, 510, subdivision (a), 512, 515, 558, 558.1, 1194, subdivision (a), 1197.1, and 2750.5, 2802.

This letter shall serve as St. Clair’s notice pursuant to Labor Code section 2699.3 and we ask that LWDA conduct an investigation concerning the violations described herein. Alternatively, if LWDA does not intend to investigate these violations, we ask that it issue a notification letter to our office confirming the same so that we may proceed with our civil action asserting the PAGA claims described herein.

Please feel free to contact me if you have any questions or if you would like to discuss this matter further. Nothing in this letter is intended to be, or should be construed as, an admission against the interests of St. Clair or other current or former employees of NCS and shall not be construed as a waiver of their rights, remedies, claims, or defenses, all of which are expressly reserved.

Sincerely,



Arash Sadat

cc: Eric Samuels <eric@israel-samuels.com>

EXHIBIT D

Summary of Litigation Costs

Date	Description	Amount
2021-07-02	Certified mail for personnel file request.	\$34.41
2021-08-19	Certified mail for PAGA letter.	\$36.94
2021-08-27	Case initiation fees.	\$537.91
2021-09-15	Filing fee for proof of service (NSC)	\$69.49
2021-09-15	Filing fee for proof of service (individual defendant)	\$69.49
2021-10-07	Certified mail for personnel file demand.	\$36.30
2021-10-08	Filing and EFM fee for Notice of Case Management Conference.	\$69.49
2021-12-29	Filing and EFM Fee for Case Management Statement.	\$20.54
2022-01-12	Notice of Posting of Jury Fees.	\$173.93
2022-05-18	Mediation Fee.	\$7,450.00
2022-09-14	Filing and EFM Fee for Case Management Statement.	\$20.02
	TOTAL	\$8,518.52

1 **PROOF OF SERVICE**

2 I am employed in the County of Los Angeles, State of California. I am over the age of 18
3 and not a party to the within action. My business address is 333 South Hope Street, 40th Floor,
4 Los Angeles, CA 90071. I made service at the direction of a member of the Bar of this Court.

5 On March 7, 2023, I served the foregoing document(s) described as **PLAINTIFF**
6 **KEISHA ST. CLAIR'S: (1) NOTICE OF UNOPPOSED MOTION AND UNOPPOSED**
7 **MOTION FOR PAGA SETTLEMENT APPROVAL; AND (2) MEMORANDUM OF**
8 **POINTS AND AUTHORITIES IN SUPPORT** on the person(s) below, as follows:

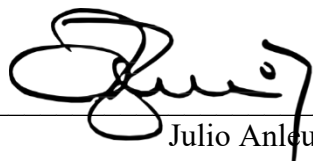
9 Gregory G. Iskander
10 giskander@littler.com
11 Michael W. Nelson
12 mwnelson@littler.com
13 LITTLER MENDELSON, P.C.
14 Treat Towers
15 1255 Treat Boulevard, Suite 600
16 Walnut Creek, California 94597

Attorneys for Defendants
NCS Moving Services and Peter Rodriguez

17 ☒ **(BY E-MAIL OR ELECTRONIC TRANSMISSION)** Pursuant to
18 Code of Civil Procedure section 1010.6, subdivision (e), I transmitted
19 the document(s) electronically to the person(s) at the e-mail address(es)
20 listed above. The transmission was reported as complete and without
21 error.

22 Executed March 7, 2023 at Los Angeles, California.

23 I declare under penalty of perjury under the laws of the State of California and the United
24 States of America that the foregoing is true and correct.

25 
26 _____
27 Julio Anleu
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