

Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
Kristina Bui Carlson, Esq. [CSB No. 294924]
kristina@lmlfirm.com
LAUBY, MANKIN & LAUBY LLP
5198 Arlington Avenue, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

Attorneys for Plaintiff, on a representative basis and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

DANIEL DOMINGUEZ, on behalf of all
Aggrieved Employees and the State of
California;

Plaintiff,

vs.

KENCO LOGISTIC SERVICES, LLC, a
Delaware Limited Liability Company; and
DOES 1 through 20, inclusive;

Defendants.

CASE NO.: CVRI2105393

*[Assigned to Hon. Judge Craig Riemer, Dept
1, for all purposes]*

**DECLARATION OF BRIAN J. MANKIN
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Hearing

Date: April 24, 2023

Time: 8:30 a.m.

Dept.: 1

Complaint filed: 11/19/2021

I, Brian J. Mankin, state and declare:

1. I am an attorney licensed to practice before all of the courts of the State of California. I manage the employment department within my firm where I am also a Partner. I represent Plaintiff in this action and I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I submit this declaration in support of Plaintiff's Motion for Preliminary Approval of this Class Action Settlement. If called as a witness, I could and would competently testify thereto.

1 **COUNSEL'S EXPERIENCE**

2 2. I have been a member, in good standing, of the State Bar of California since 2001.
3 I am admitted to practice in the United States District Courts for the Central and Southern
4 District of California and the Ninth Circuit Court of Appeal and have tried cases in various
5 courts in California.

6 3. I have handled over 500 employee vs. employer litigation matters during my 22
7 years in practice. Over the last 15 years, my practice has almost entirely consisted of
8 representing employees, the majority of which has included class action and representative
9 action wage and hour matters. In total, I have handled over 250 class action and representative
10 action wage/hour cases, and have been appointed by the court as class counsel and have received
11 final court approval and judgment in approximately 125 actions to date, and anticipate receiving
12 final approval in many more of those in the future. I estimate that in cases that I've been
13 involved in as lead counsel or co-counsel that my team and I have certified approximately one
14 dozen cases in contested class certification processes.

15 4. As part of these settlements and judgments, I have recovered in excess of \$250
16 million in damages for my clients and the class members (who often work as nurses, ambulance
17 drivers, technicians, warehouse workers, truck drivers, sales, professional occupations and
18 countless other trades). As of the end of last year, my team and I held the record for the largest
19 known PAGA-only case in California's history as of that time - a \$12.5 million-dollar court
20 approved settlement, which followed extensive litigation, summary adjudication and writs to the
21 CA Supreme Court against a Fortune 50 company (*Garcia v. Macy's*, San Bernardino Superior
22 Court).

23 5. I have tried two class and PAGA cases against Fortune 100 companies. In 2018, I
24 was lead counsel in a PAGA case that my firm tried to the bench in the Orange County Superior
25 Court and received a \$425,000 judgment. In 2019, I was co-counsel in a class action case
26 against Walmart that was tried to the jury in District Court for the Central District, wherein the
27 jury awarded Plaintiffs over \$6 million. Following the successful outcome in trial, both cases
28 were appealed.

6. Over the last four or five consecutive years, I have been selected by my peers as a “Super Lawyer” in Employment Litigation, a distinction that only 5% of lawyers receive.

BRIEF SUMMARY OF THE SETTLEMENT

7. Following mediation, Plaintiff and Defendant (collectively, the “Parties”) eventually entered into a Class Action and PAGA Settlement Agreement and Release of Claims resolving the wage and hour claims of the putative class (the “Settlement Agreement” or “S.A.”), which is attached hereto as **Exhibit A**.

8. The Settlement Agreement seeks to release and discharge Defendant from the claims brought against it in exchange for Defendant’s agreement to pay \$1,455,000 on a non-reversionary, non-claims made basis (each Class Member will receive his/her share of the Net Settlement Amount without having to submit a claim form or take any action, except for those who opt-out).

9. Plaintiff seeks to represent a class of all current and former non-exempt (hourly paid) employees employed by Defendant in California at any time during the Class Period of November 19, 2017, through April 24, 2023.

10. Under the terms of the Settlement Agreement, Defendant will not oppose Class Counsel’s application for a reasonable award of attorneys’ fees not to exceed one-third of the Settlement Amount, Class Counsel’s litigation expenses not to exceed \$25,000, settlement administrator costs of \$10,000, PAGA Penalties of \$150,000 of which \$112,500 will be paid to the LWDA and the remaining \$37,500 will be paid to the Aggrieved Employees, and a service award not to exceed \$5,000 to Plaintiff. After subtracting these deductions from the Settlement Amount, approximately \$780,004.85 will be available to pay individual settlement amounts to approximately 608 Class Members who do not opt-out of the settlement, as follows:

<i>Settlement Amount</i>	\$ 1,455,000.00
Attorneys’ Fees (1/3)	\$ 484,995.15
Litigation Costs (not to exceed)	\$ 25,000.00
Administrator Costs	\$ 10,000.00
PAGA Penalties	\$ 150,000.00
Class Representative Service Award	\$ 5,000.00
<i>Net Settlement Amount</i>	\$780,004.85

1 11. The Net Settlement Amount will be paid to the Class Members on a pro rata basis
2 based on their relative number of weeks worked as compared to the Class. And each Class
3 Member will receive the Class Notice, explaining the nature of the case, and the process for
4 participating, objecting and opting-out, and advising of his/her estimated settlement payment and
5 the number of weeks he/she is credited with working during the Class and PAGA Periods. True
6 and correct copies of the Class Notice, Request for Exclusion Form, Objection Form and Dispute
7 Form are attached hereto as **Exhibits B, C, D and E**, respectively.

8 **PROCEDURAL BACKGROUND**

9 12. My office has performed considerable work and diligently investigated and
10 prosecuted this case to a successful conclusion. Our work has resulted in the creation of a
11 significant settlement fund for the benefit of the Class. We efficiently communicated and
12 exchanged information informally with Defense counsel which enabled the parties to
13 successfully settle the case. Because of the risks involved in litigating the case and the contested
14 legal and factual issues, my office believes this settlement to be fair, reasonable, and adequate.

15 13. After being retained by Plaintiff, we submitted on September 14, 2021, a letter to
16 the California Labor Workforce Development Agency (the “LWDA”) for civil penalties under
17 the Private Attorney General Act of 2004 (the “PAGA”), and simultaneously sent a letter to
18 Defendant requesting the production of Plaintiff’s personnel and timekeeping records to further
19 evaluate the wage and hour claims. The LWDA ultimately declined to assert jurisdiction over
20 the PAGA, thereby giving Plaintiff the right to bring PAGA claims. A true and correct copy of
21 both LWDA Notice Letter is attached hereto as **Exhibit F**.

22 14. On November 19, 2021, we filed a PAGA complaint; and later on May 9, 2022,
23 amended to add corresponding class causes of action, alleging: (1) failure to pay minimum
24 wages, (2) failure to pay overtime, (3) failure to provide meal periods, (4) failure to provide rest
25 breaks, (5) failure to timely pay final wages, (6) failure to pay vested vacation, (7) failure to
26 timely pay final wages, (8) failure to provide accurate itemized wage statements, (9) unfair and
27 unlawful competition pursuant to California Bus. and Prof. Code §§ 17200 *et seq.*, and (10)-(18)
28 related PAGA claims.

1 15. Defendant retained counsel and immediately began to defend the case. Then,
2 after early discussions among counsel, the Parties agreed to attend private mediation.

3 16. In preparation for the mediation, the Parties informally exchanged documents and
4 information that allowed both sides to calculate the potential damages and evaluate potential risk,
5 including policies and procedures pertaining to each claim alleged, and statistics relating to the
6 number of current and former employees, pay periods worked and other things. Defendant also
7 provided their written policies and practices and a robust sampling of payroll and timekeeping
8 records for Class Members. Plaintiff's expert analyzed 43,812 shifts over 9,186 pay periods.
9 This information enabled both parties to take a deep dive into the claims. Additionally, during
10 this process, Plaintiff and their counsel analyzed, researched, and investigated the potential
11 issues, including matters related to the calculation of damages, trial, and appellate issues and
12 risks.

13 17. On January 18, 2023, Plaintiff and Defendant participated in mediation before
14 Jeffrey Krivis, Esq. a well-respected class action wage-and-hour mediator. The matter resolved
15 at mediation for a class-wide settlement of \$1,455,000, and the Parties entered into the
16 Settlement Agreement submitted herewith. Now the Parties seek the Court's preliminary
17 approval of the Settlement.

18 **SUMMARY OF THE CLAIMS AND DEFENSES**

19 18. Plaintiff alleged numerous wage and hour violations on behalf of the Class.
20 However, Defendant vigorously contested and denied each of Plaintiff's material allegations on
21 the merits and as to the propriety of a class action or PAGA representative action, as discussed
22 herein.

23 19. One of the primary claims in the Action is that Defendant failed to pay all
24 required minimum and overtime wages to Plaintiff and Class Members. First, Defendant required
25 Class Members to complete pre-shift temperature checks and screenings prior to clocking in.
26 Second, Plaintiff argued that Defendant utilized a rounding policy that was not neutral in
27 application, thus violating California law. But Kenco vehemently opposed these unpaid wage
28 claims on the merits and as to the propriety of class certification.

1 20. Second, Plaintiff alleged meal and rest break claims against Defendant. However,
2 Kenco raised numerous arguments in response to this claim, including that it maintained fully
3 compliant written policies and specifically authorized the Class Members to take meal and rest
4 breaks, meaning that no one had a reason or cause to miss a break or take a short/late break.
5 Therefore, Defendant asserted that a fact-finder would have to determine for each Class Member
6 whether a break was missed and why, and why a break was noncompliant or nonexistent,
7 because if it was by the employee's choice, no liability attaches to Defendant.

8 21. Third, Plaintiff alleged that the unpaid wage and meal / rest break claims trigger
9 various penalties, including inaccurate wage statements under Labor Code § 226 and 30-days of
10 pay as a waiting time penalty for each former employee under Labor Code § 203.

11 22. Fourth, Plaintiff alleged that Defendant failed to reimburse Class Members for
12 business-related expenses incurred on behalf of their employment with Defendant, such as
13 traveling between Defendant's warehouses on the same day without being reimbursed for
14 mileage or gas expenses.

15 23. Finally, Plaintiff alleged that Defendant failed to comply with Labor Code § 227.3
16 by paying out accrued vested vacation as less than the "final rate of pay".

17 24. Despite that each of the claims were disputed, the Parties concluded that further
18 litigation of the Action would be protracted and expensive, and that it is desirable that the Action
19 be fully and finally settled in order to limit further risk, expense and protracted litigation.

20 **CMO COMPLIANCE**

21 25. In accordance with CMO ¶ H, this section of my declaration will specifically
22 identify and address each CMO requirement, which was compiled with the assistance of Kristina
23 Bui Carlson, who was responsible for preparing the pre-mediation data and calculations, and
24 primarily assisted in the preparation of the *Kullar* analysis. As such, the following is based
25 largely on information and belief, as it was largely prepared with Ms. Carlson's assistance.

26 **CMO ¶ H(3)(a)(i)**

27 26. According to data provided by Defendant in advance of mediation, we estimate
28 that there are approximately 608 individuals that fall within the defined Class, along with

1 approximately 494 individuals that are Aggrieved Employees (i.e., Class Members during the
2 PAGA Period).

3 **CMO ¶ H(3)(a)(ii), CMO ¶ H(3)(a)(iii), and CMO ¶ H(9)(b)**

4 27. The following paragraphs provide the total and risk-adjusted values for each
5 claim, including on a class and PAGA basis, as required by the CMO.

6 **Unpaid Wage Claims**

7 28. Plaintiff's main claim was that Defendant failed to pay for all hours worked under
8 a number of theories. First, Plaintiff alleged that Kenco failed to pay all required minimum and
9 overtime wages due to a practice that required Class Members to complete pre-shift temperature
10 checks and screenings prior to clocking in. Second, Plaintiff argued that Defendant utilized a
11 rounding policy that was not neutral in application, thus violating California law.

12 29. At mediation, Defendant denied that it failed to compensate for all hours worked.

13 30. Plaintiff's counsel estimated the maximum value of these unpaid wages to be
14 \$536,315, which was a result of multiplying an estimate of 7.50 minutes per shift of unpaid time
15 with the applicable rate (hourly overtime plus liquated damages). But Kenco vehemently
16 opposed these unpaid wage claims on the merits and as to the propriety of class certification.
17 Due to the defenses and arguments raised, Plaintiff assigned a 30% risk for each respective
18 unpaid wage claim at the class certification stage and an additional 30% risk on the merits. In
19 sum, Plaintiff's counsel calculated the risk-adjusted value of the unpaid wage claims as
20 \$262,794.

21 31. Additionally, Plaintiff calculated the 75% risk-adjusted value of the PAGA
22 penalties to be \$595,175 (23,807 PAGA pay periods x \$100 = \$2,380,700 reduced by 75%).

23 **Meal and Rest Break Claims**

24 32. Plaintiff also alleged meal and rest break claims against Defendant. Given the
25 total number of shifts at issue (an estimate of 208,377), and when incorporating violation rates
26 from expert review of the timekeeping records and other evidence, Plaintiff's counsel estimated a
27 45.3%% violation rate for meal breaks and a 50% violation rate for rest breaks, leading to 94,395
28 alleged meal violations and 104,189 alleged rest break violations. This established a maximum

1 potential value for these claims of \$4,055,70 (198,583 violations multiplied by the average
2 hourly rate of \$20.42 as the applicable premium rate under § 226.7).

3 33. However, Kenco raised numerous arguments in response to this claim, including
4 that it maintained fully compliant written policies and specifically authorized the Class Members
5 to take meal and rest breaks, meaning that no one had a reason or cause to miss a break or take a
6 short/late break. Therefore, Defendant asserted that a fact-finder would have to determine for
7 each Class Member whether a break was missed and why, and why a break was noncompliant or
8 nonexistent, because if it was by the employee's choice, no liability attaches to Defendant.
9 These defenses are factored into Plaintiff's analysis in two ways. First, these issues raise
10 questions regarding whether the meal and rest break claims could be certified, and Plaintiff
11 placed a 30% risk at the class certification stage for meal periods and a 40% risk for rest breaks.
12 Second, these defenses also go toward the merits given the evidentiary question of proving the
13 number of meal and rest violations. As such, Plaintiff placed a 30% risk on the merits for meal
14 breaks, and an additional 30% risk on the merits for rest breaks, setting the risk-adjusted value
15 for the combined meal and rest break claims at \$1,838,057.

16 34. Considering the many risks and defenses to these claims, Plaintiff placed a 50%
17 class certification risk and 50% merits risk for a risk-adjusted value of \$360,852 for rest period
18 claims. Adjusting for risk at 50% for class certification and 50% for merits, Plaintiff assigned an
19 adjusted value of \$44,456 to the meal claims.

20 35. Additionally, based on the same risk factors in addition to potential risk
21 associated with stacking of PAGA penalties, Plaintiff assigned a 75% risk adjustment to both
22 meal and rest claims and assigned the risk-adjusted value of the related PAGA claims at
23 \$123,550 ((94,395 unique meal claims in 23,807 PAGA pay periods x \$100 = \$126,800) +
24 (104,189 alleged rest break in 23,807 PAGA pay periods x \$100 = \$4,761,400 total and with a
25 75% reduction for a revised total of \$1,190,350).

26 **Wage Statement and Waiting Time Claims**

27 36. Plaintiff alleged claims for waiting time penalties and wage statement violations.
28 But these claims were entirely derivative of the claims above, meaning that they only had merit

1 if the claims for unpaid wages or meal/rest breaks were successful. The maximum values for
2 these claims were as follows: (1) \$1,842,701 for waiting time penalties [320 former employees x
3 \$20.42 per hour x 9.4 hours per day x 30 days], and (2) \$2,370,450 for wage statement violations
4 [23,807 wage statements at the \$50/\$100 formula under § 226(e)].

5 37. But Kenco raised a variety of defenses to these derivative claims that impacted
6 the valuation. Namely, Kenco argued that the wage statements did not violate Labor Code § 226
7 and, even if there was a “technical” violation, Plaintiff would be unable to prove the required
8 “knowing and intentional” and “injury” elements. Based on these facts and defenses, Plaintiff
9 placed a 20% risk at class certification and estimated another 30% risk the merits, leading to a
10 risk-adjusted value of \$1,327,452 for the wage statement claims.

11 38. Then, as to the waiting time penalty claim, Plaintiff’s valuation had to account for
12 the fact that this claim was derivative of the unpaid wage and meal/rest break claims and, if those
13 claims failed at certification or on the merits, there would be no waiting time penalties owed, so
14 the same risks for those claims applied to this claim. Furthermore, even if the unpaid wage
15 and/or meal/rest claims succeeded at certification and on the merits, Plaintiff would have to
16 prove that the violations (if any existed) were “willful” under the meaning of Labor Code § 203.
17 And, here, Defendant argued there was no “willful” violation since they had compliant written
18 policies and any deviations therefrom were inadvertent and unintentional. As a result of this
19 analysis, Plaintiff’s counsel applied a 20% risk at class certification and a 20% risk on the merits,
20 leading to a risk-adjusted value of \$1,179,329.

21 39. Additionally, Plaintiff calculated the 75% risk-adjusted value of the PAGA
22 penalties to be \$595,175 (23,807 PAGA pay periods x \$100 = \$2,380,700 reduced by 75%).

23 **Failure to Reimburse Business Expense**

24 40. Plaintiff also alleged that Defendant violated Labor Code § 2802 when it failed to
25 reimburse Class Members when they incurred business-related expenses when discharging their
26 duties for their employer. Defendant vehemently denied this allegation. The maximum value of
27 \$200,000 PAGA penalties was estimated at (2,000 PAGA pay periods x \$100 penalty) with a
28 risk adjustment of 75% for a total risk adjusted value of \$50,000.

Failure to Pay Vested Vacation at the Final Rate Claims

41. Plaintiff also alleged that Defendant violated Labor Code § 227.3 each pay period when it failed to pay vested vacation at the final rate. Defendant argued that they did pay vested vacation at the final rate. The maximum value of the PAGA penalties for this claim was estimated at \$32,000 (320 formers during the PAGA period x \$100 penalty) with a risk adjustment of 75% for a total risk adjusted value of \$8,000.

Collective Totals of Maximum and Risk-Adjusted Class/PAGA Damages and Penalties

42. The total maximum value of the class damages is \$8,854,536. When factoring in the defenses and risks, Plaintiff estimates the risk-adjusted class recovery as follows:

• Unpaid Wage Claims	\$ 262,794
• Meal and Rest Break Claims	\$ 1,838,057
• Wage Statement Claims	\$ 1,327,452
• Waiting Time Penalty Claims	<u>\$ 1,179,329</u>
• Total Class Risk Adjusted Damages	\$ 4,607,632

43. The reasonableness of the settlement is apparent from the fact that the proposed settlement is 31.6% of the risk-adjusted class damages. For these reasons, the Parties submit that this settlement is fair and reasonable.

44. Similarly, Plaintiff calculated the maximum PAGA penalty for the 23,807 relevant pay periods at \$9,554,800. However, Plaintiff applied a 75% risk adjustment to each PAGA claim to account for the various defenses and potential judicial reduction for an adjusted value of \$2,446,700 as follows [CMO ¶ G(9)(iii) and (iv)]:

• Unpaid Wage Claims	\$ 595,175
• Meal and Rest Break Claims	\$ 1,190,350
• Wage Statement Claims	\$ 595,175
• Waiting Time Penalty Claims	\$ 8,000
• Business Expense Claims	\$ 50,000
• Vested Vacation Claims	<u>\$ 8,000</u>
• Total PAGA Risk Adjusted Penalties	\$ 2,446,700

1 **CMO ¶ H(3)(a)(v)**

2 45. Through the date of mediation, Defendant advises that 608 Class Members
3 collectively worked an estimated 44,000 workweeks. Based on this information, it is estimated
4 that: (1) the average payment will be \$1,282.90, (2) the value per work week will be \$17.73, (3)
5 the high payment will be approximately \$5,017.59 (based on an estimated 283 weeks in the
6 Class Period), and (4) the low payment will be approximately \$70.92 (based on an estimated 4
7 weeks worked).

8 **CMO ¶ H(3)(a)(vi)**

9 46. Please see paragraph 16, above, regarding the discovery and investigation
10 conducted to determine the size of the class and strength of claims.

11 **CMO ¶ H(3)(a)(vii)**

12 47. After making reasonable inquiry of members of other members of my firm (there
13 are no associated law firms), my team has informed me that there are no other pending cases that
14 asserts claims similar to those asserted in this action on behalf of a putative class of individuals
15 that appear to fall within the defined Class here.

16 **SUPPORT FOR ASSESSMENT OF PAGA PENALTIES**

17 48. The sections above provide most of the information required by CMO ¶ H(9)(b).
18 The following paragraphs provide the remainder.

19 49. The proposed Settlement allocates \$150,000 of the gross settlement amount to
20 PAGA claims, of which 75% (or \$112,500) will be paid to the California LWDA and 25% (or
21 \$37,500) will be allocated to the Aggrieved Employees as payment of the settlement. This
22 allocation is inherently reasonable given similar settlements.

23 50. There are also other facts that tend to suggest that the Court could utilize its
24 discretion to reduce any potential PAGA penalties awarded at trial. During negotiations,
25 Defendant raised arguments that the assessment of significant PAGA penalties would be “unjust,
26 arbitrary and oppressive, or confiscatory” in light of “the facts and circumstances of [this] case.”
27 See Labor Code § 2699(h). Under a potentially-similar “mistake of law” fact pattern, the *Cotter*
28 court approved a 97.5% reduction in PAGA penalties as “appropriate” based on the “unjust,

1 arbitrary and oppressive, or confiscatory” factors because (i) the employer did not “deliberately
2 evad[e] a clear obligation to provide legally required pay and benefits to employees,” (ii) the
3 employer did not “negligently fail to learn about its obligations under the wage and hour laws,”
4 and (iii) the employer’s obligations were “genuinely unclear” because “there is no straight
5 answer to the question.” *Cotter v. Lyft, Inc.* (N.D. Cal. 2016) 193 F.Supp.3d 1030, 1037

6 51. Under this same theory, Defendant would likely argue that significant PAGA
7 penalties would be unjust, arbitrary, oppressive, and confiscatory because it believed that its
8 practices are in compliance with all applicable requirements, and also believed that its system
9 correctly paid employees for all hours worked. As such, Defendant would likely argue they did
10 not “deliberately evade” any legal obligations. Furthermore, Defendant would likely argue that
11 it did not “fail to learn about its obligations” because it believed its practices are compliant, and
12 that it also created and implemented policies and practices to ensure compliance.

13 52. Also, while a PAGA claim for violation of Labor Code § 226 does not require a
14 showing of knowledge or willfulness (*Lopez v. Friant & Associates, LLC* (2017) 15 Cal.App.5th
15 773), Defendant would likely argue that its good faith belief in the legality of its practices shows
16 that it did not evade or fail to learn of its obligations. Additionally, Defendant would likely
17 argue that it would be “unjust” to impose significant penalties for the alleged violations because
18 the class members did not suffer any injury in relation to certain claims (such as wage statement
19 violations).

20 53. Finally, the parties only reached settlement and the agreed-upon PAGA penalties
21 after extensive informal discovery and arms-length negotiation between the parties and through
22 an experienced mediator. Notably, Defendant raised many defenses which, if accepted by the
23 Court, could result in a significant reduction of penalties, or the elimination of penalties
24 altogether through dispositive motions. As such, an assessment of penalties greater than those
25 agreed-upon would be unjust at this stage because this settlement reflects an informed,
26 fundamentally fair, and reasonable settlement of the PAGA claims herein based on the unique
27 facts, defenses, and risks in this case.

28 ///

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

2 54. The settlement was the product of extensive arm's length negotiations, facilitated
3 by an experienced mediator. Though cordial and professional, the settlement negotiations were
4 adversarial and non-collusive in nature. The settlement reached is the product of substantial
5 effort by the parties and their counsel. Although we believed that there was a possibility of
6 certifying the claims, we recognized the potential risk, expense, and complexity posed by
7 litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or
8 on the damages awarded, and/or on an appeal that can take several more years to litigate.

9 55. The settlement will result in a fair payment to each class member based on the
10 number of Weeks Worked during the Class Period. As set forth hereinabove, Plaintiff and his
11 counsel have diligently investigated the claims and defenses on behalf of the Class Members and
12 worked to achieve a resolution of the claims to maximize the recovery by avoiding further
13 expenditure of attorneys' fees and costs. After evaluating the significant risks attendant with
14 further litigation described above and weighing them against the benefits of a known
15 compromise and settlement as set forth in the Settlement Agreement, settlement on the terms
16 agreed to is believed to be in the best interest of Plaintiff and the Class, and is a fair and
17 reasonable resolution of the claims alleged.

18 56. Plaintiff's counsel brought to bear a great deal of experience in negotiating the
19 settlement of this case. As detailed herein, Plaintiff's counsel engaged in the necessary discovery
20 and investigation, making it possible to exercise informed judgment throughout the settlement
21 process, including significant document review (*e.g.*, documents pertaining to Defendant's
22 policies and procedures, personnel documents, among others), and conducted an extensive
23 analysis of the detailed class-wide data provided by Defendant.

24 57. Based on my experience in other cases, including wage and hour matters, I
25 believe I am qualified to evaluate the class claims and viability of defenses in this class action.
26 In this case, the recovery for each class member is reasonable, fair, and adequate, and a
27 settlement at this time is in the best interests of the class. The settlement provides each class
28 member with compensation for the alleged violations when viewed in relation to the costs and

1 risks inherent in obtaining class certification and proceeding to trial.

2 58. Plaintiff's counsel, as well as Defense counsel, fully endorse the terms and
3 conditions of the settlement as set forth in the abovementioned Settlement Agreement.

4 59. Of course, the settlement amount represents a compromise figure, taking into
5 account the various risks surrounding class certification and the merits of Defendant's asserted
6 defense. Nevertheless, the settlement provides for fair and adequate payments to the class
7 members, with no reversion to Defendant.

8 **PLAINTIFF'S REQUESTED ENHANCEMENT PAYMENT**

9 60. Plaintiff seeks an enhancement payment of \$5,000 for his service to the Class,
10 which I believe is fair and warranted. Mr. Dominguez came forward in an effort to effectuate a
11 policy and practice change that benefitted all other Class Members, and to recover unpaid wages.
12 They each assumed significant risk in bringing this litigation—namely, had he lost, he would
13 have been ordered to pay Defendant's costs.

14 61. Plaintiff provided invaluable assistance to my office and the Class in this case,
15 including providing factual background for the Class Complaint; reviewing the litigation
16 documents; providing information and documents about Defendant's policies and practices;
17 participating in phone calls to discuss litigation and settlement strategy; making himself available
18 throughout the litigation to assist with analyzing the claims and defenses; helping Class Counsel
19 prepare for the mediation; making himself available for a full-day mediation, and reviewing the
20 settlement documents. Plaintiff agreed to participate in this case with no guarantee of personal
21 benefit.

22 62. The Class Representative also assumed significant risk in bringing this
23 litigation—namely, had he lost, he could have been ordered to pay Defendant's costs. Moreover,
24 Plaintiff elected to pursue the class action claims on behalf of other employees. As part of the
25 negotiations, the parties ultimately reached a settlement of the class claims but the requested
26 service award is also reasonable and appropriate given that Plaintiff agreed to put the interests of
27 the class ahead of his own interests and performed work on behalf of the class.

28 ///

1 63. Moreover, Plaintiff elected to pursue the class action claims on behalf of other
2 employees while delaying his separate individual claim of wrongful termination and
3 discrimination. As part of the negotiations, the parties ultimately reached a settlement of the
4 class claims and Plaintiff's separate individual claims, but the requested service award is also
5 reasonable and appropriate given that Plaintiff agreed to put the interests of the class ahead of his
6 interests and performed work on behalf of the class while entering into a general release as part
7 of these settlements (whereas the Class will only release the claims alleged).

8 64. In compliance to the CMO ¶ H(3)(a)(viii), the following paragraph includes the
9 information requested: (A) Plaintiff alleged claims of wrongful termination and discrimination
10 against Defendant; (B) Plaintiff's counsel estimated the reasonable value of Plaintiff's individual
11 claims as a six-figure case as Plaintiff endured approximately a month of lost wages, ongoing
12 wage loss due to the fact his current job paid \$2 to \$4 less per hour, and the emotional distressed
13 Plaintiff was forced to endure. Although difficult to quantify the pain and suffering damages, a
14 fact-finder would likely have awarded Plaintiff a six-figure judgment at trial, taking into
15 consideration these facts; and (C) the total amount of Plaintiff's individual settlement is low five
16 figures, multiples lower than the value had Plaintiff succeeded at trial.

17 **ADEQUACY OF COUNSEL AND THE PROVISIONAL REASONABLENESS OF THE**
18 **REQUESTED FEES AND COSTS**

19 65. As set forth above, I have handled over 250 class and representative actions, have
20 been appointed as class counsel and have successfully resolved over half of those cases, and
21 many others remain pending and will successfully resolve in the future.

22 66. When this case was taken on a contingency fee basis, with my firm agreeing to
23 assume responsibility for all litigation costs, the ultimate result was far from certain. In the
24 course of this litigation, my firm and my co-counsel paid all costs including filing fees, court
25 costs, research fees, and mediation costs. There was never a guarantee that we would recoup
26 those expenditures.

27 67. It is my experience that attorney fee awards of one-third of a common fund
28 settlement is the standard in California. In this case, Plaintiff's counsel agreed to seek one-third

1 of the Settlement Amount for attorneys' fees. Defendant does not oppose this fee request. The
2 fee is further warranted because it is within the range of reasonableness typically awarded in
3 class actions. The litigation costs are reasonably capped at \$25,000 and will be based on the
4 actual amount of costs incurred at the time of final approval.

5 **SETTLEMENT ADMINISTRATOR**

6 68. The parties request that the Court appoint Phoenix Settlement Administrators to
7 serve as the Settlement Administrator. In accordance with **CMO H(3)(d)(i)**, we requested bids
8 from 5 different settlement administrators, which are summarized as follows: 1) ILYM -
9 \$11,990; 2) Phoenix - \$10,000; 3) Rust - \$12,882; 4) CPT - \$16,300; 5) AB Data - \$20,000.
10 Based on these bids, the Parties mutually agreed to retain Phoenix as the Settlement
11 Administrator based on its low bid. Phoenix provided an all-in (fixed) fee of to administer the
12 settlement, as permitted by the CMO. *See* Declaration of Michael Moore of Phoenix ¶ 9, filed
13 concurrently herewith.

14 **SUBMISSION TO THE LWDA**

15 69. Plaintiff has concurrently submitted the settlement to the LWDA in accordance
16 with Labor Code § 2699(1)(2). The proof of submission is attached hereto as **Exhibit G**.

17 **EXHIBITS AND CONCLUSION**

18 70. A true and correct copy of the Settlement Agreement is attached as **Exhibit A**.

19 71. The proposed Class Notice is attached as **Exhibit B**.

20 72. The proposed Request for Exclusion Form is attached as **Exhibit C**.

21 73. The proposed Objection Form is attached as **Exhibit D**.

22 74. The proposed Dispute Form is attached as **Exhibit E**.

23 75. A true and correct copy of the notice letter we submitted to the LWDA is attached
24 as **Exhibit F**.

25 76. The LWDA's confirmation of receipt of this Motion and Declarations is attached
26 hereto as **Exhibit G**.

27 77. Counsel has carefully reviewed both the terms and the terminology of the order
28 and the accompanying forms (notice, objection form, exclusion form) to confirm that the various

1 documents are internally consistent, consistent with each other, and consistent with the
2 settlement agreement.

3 78. For the foregoing reasons, it is respectfully requested that the Court grant
4 preliminary approval of the settlement as being fair, reasonable, and in the best interests of the
5 class, as well as preliminarily approve the requested attorneys' fees, costs, and enhancement
6 payment to the Class Representative.

7 I declare under penalty of perjury under the laws of the State of California that the
8 foregoing is true and correct. Executed on March 30, 2023 at Riverside, California.

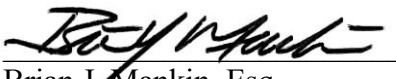
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10 By: 
11 Brian J. Mankin, Esq.
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EXHIBIT “A”

Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
Kristina Bui Carlson, Esq. [CSB No. 294924]
kristina@lmlfirm.com
LAUBY, MANKIN & LAUBY LLP
5198 Arlington Avenue, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

Attorneys for Plaintiff, on a representative basis and on behalf of all others similarly situated

Mark S. Posard, Esq.
mposard@grsm.com
Jennifer M. Holly, Esq.
jholly@grsm.com
John H. Sager, Esq.
jsager@grsm.com
GORDON REES SCULLY MANSUKHANI
3 Parkcenter Drive, Suite 200
Sacramento, CA 95825

Attorneys for Defendant Kenco Logistic Services, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

DANIEL DOMINGUEZ, on behalf of all
Aggrieved Employees and the State of
California;

Plaintiff,

vs.

KENCO LOGISTIC SERVICES, LLC, a
Delaware Limited Liability Company; and
DOES 1 through 20, inclusive;

Defendants.

Case No.: CVRI2105393
*[Assigned to Hon. Judge Craig Riemer, Dept
1, for all purposes]*

**CLASS ACTION AND PAGA
SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

This Class Action Settlement Agreement and Release of Claims is entered into by and
between Plaintiff Daniel Dominguez, individually and on behalf of all others similarly situated,
and on behalf of the State of California, and Defendant Kenco Logistic Services, LLC and is

approved by their respective counsel of record, subject to the terms and conditions hereof and the Court's approval.

A. Definitions

1. "Action" or "Lawsuit" means and refers to the case entitled *Dominguez v. Kenco Logistic Services, LLC, et al.*, Riverside County Superior Court, Case No. CVRI2105393

2. "Aggrieved Employee(s)" means all current and former non-exempt (hourly paid) employees employed by Defendant in California at any time during the PAGA Period.

3. "Agreement" or "Settlement Agreement" or "Settlement" shall mean this Class Action and PAGA Settlement Agreement and Release of Claims.

4. "Class" is defined all current and former non-exempt (hourly paid) employees employed by Defendant in California at any time during the Class Period.

5. "Class Member(s)" refers to individual members of the Class.

6. "Class Counsel" refers to Brian Mankin and Kristina Bui Carlson of Lauby, Mankin & Lauby LLP.

7. "Class Data" means a complete list that Defendant will diligently and in good faith compile from their records and provide to the Settlement Administrator on one spreadsheet which shall include, for each Class Member, the individual's full name; last known address; Social Security Number; total Weeks Worked during the PAGA Period and the Class Period.

8. "Class Period" is deemed to be any time during the period of November 19, 2017, through April 24, 2023.

9. "Class Representative" or "Plaintiff" means and refers to Plaintiff Daniel Dominguez.

10. "Complaint" refers to the PAGA representative action complaint filed in the Riverside Superior Court on November 19, 2021, as well as the operative first amended complaint to incorporate related class causes of action that was filed on May 9, 2022.

11. "Court" (or "Judge") means the California Superior Court, County of Riverside.

12. "Defendant" means and refers to Kenco Logistic Services, LLC.

13. "Defendant's Counsel" or "Defense Counsel" means and refers to Gordon Rees

1 Scully Mansukhani, LLP.

2 14. “Effective Date” means the latest of the following dates: (i) if no Class Member
3 timely and properly intervenes, or files a motion to vacate the judgment approving the Settlement
4 Agreement under Code of Civil Procedure § 663, then the date of the Court’s Notice of Entry of
5 Order regarding Final Approval of the Settlement; (ii) if a Class Member intervenes, or files a
6 motion to vacate the judgment approving the Settlement Agreement, then sixty-one (61) calendar
7 days following the date the Court enters an order granting Final Approval, assuming no appeal is
8 filed; or (iii) if a timely appeal is filed, the date of final resolution of that appeal (including any
9 requests for rehearing and/or petitions for *certiorari*), resulting in final judicial approval of the
10 Settlement.

11 15. “Escalator Clause:” Defendant represents that there are approximately 608 Class
12 Members, who collectively worked a total of approximately 44,000 Workweeks during the Class
13 Period. If the total count of 44,000 Workweeks (as contained in the Class Data) increases by
14 more than 10% of this number (*i.e.*, above 48,400 Workweeks), then the Settlement Amount
15 shall increase by \$33.06 for each Workweek above 48,400.

16 16. “Final Approval” refers to the order of the Court granting final approval of this
17 Settlement Agreement and entering a judgment approving this Agreement on substantially the
18 terms provided herein or as may be modified by subsequent agreement of the Parties.

19 17. “Individual Class Payment” refers to each Participating Class Members share of
20 the Net Settlement Amount, as further discussed in Paragraph 49(c) below.

21 18. “Individual PAGA Payment” refers to each Aggrieved Employees share of the
22 PAGA Penalties, as further discussed in Paragraph 49(c) below.

23 19. “Settlement Amount” is \$1,455,000.00, subject to the Escalator Clause and
24 exclusive of Defendant’s obligation to fund its share of payroll taxes, as further discussed in
25 Paragraph 49(c) below.

26 20. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 49(b)
27 below.

28 21. “Notice” means the notice of proposed class settlement that will be sent to the

1 Class Members and which will advise each Class Member of the settlement and his or her
2 estimated “Individual Settlement Amount” and will further advise of the setting of a Final
3 Approval Hearing.

4 22. “Notice Packet” means the Notice, Request for Exclusion Form, the Objection
5 Form and the Dispute Form to be sent to all Class Members.

6 23. “Response Deadline” is 45 calendar days from the date the Notice is mailed to the
7 Class Members.

8 24. “Objecting Class Member” means a Class Member, other than Plaintiff, who
9 submits a valid and timely objection to the terms of this Agreement, pursuant to Paragraph 67(c)
10 below.

11 25. “PAGA Penalties” means the amount that the Parties have agreed to pay to the
12 Labor and Workforce Development Agency (“LWDA”) in connection with the California Labor
13 Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”), as well
14 as the individual PAGA payment allocated to each Aggrieved Employee.

15 26. “PAGA Period” is deemed to be any time during the period of November 19,
16 2020, through April 24, 2023.

17 27. “PAGA Released Claims” means any and all PAGA claims that Plaintiff alleged
18 against the Released Parties, on behalf of themselves and the State of California, based on the
19 facts stated in the operative Complaint in the Action and in the LWDA notice letter(s), including
20 all PAGA claims seeking civil penalties that premised upon (a) failure to pay minimum wages,
21 (b) failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to provide rest
22 breaks, (e) failure to pay vested vacation upon separation of employment, (f) failure to reimburse
23 business expenses, (g) failure to failure to timely pay wages each pay period and upon separation
24 of employment, and (h) failure to provide accurate itemized wage statements. The time period
25 governing the PAGA Released Claims shall be any time during the PAGA Period.

26 28. “Participating Class Member” means any and all Class Members who are deemed
27 to participate and receive an Individual Settlement Payment and do not opt-out by submitting
28 timely valid Requests for Exclusion.

29. “Parties” or “Settling Parties” mean Plaintiff and Defendant, collectively.

30. “Preliminary Approval Date” means the date the Court approves the Settlement Agreement and enters the Preliminary Approval Order.

31. “Preliminary Approval Order” means the judicial Order to be entered by the Court, upon the application or motion of the Plaintiff, preliminarily approving this Settlement and providing for the issuance of the Notice Packet to the Class, an opportunity to opt out of the Settlement, an opportunity to submit timely objections to the Settlement, and setting a final approval hearing on the fairness of the terms of Settlement, including approval of attorneys’ fees and costs. Provided that the motion is consistent with the terms herein, Defendant will not object to Plaintiff’s motion for preliminary approval but will be provided with an opportunity to review and comment upon the motion before it is filed.

32. “QSF” means the Qualified Settlement Fund set up by the Settlement Administrator for the benefit of the Participating Class Members and Aggrieved Employees, and from which the settlement payments shall be made.

33. “Released Class Claims” or “Class Claims” by the Participating Class Members upon Final Approval of the Settlement will include all claims stated in the operative Complaint and those based solely upon the facts in the Complaint, including: (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure to pay vested vacation upon separation of employment, (f) failure to reimburse business expenses, (g) failure to failure to timely pay wages each pay period and upon separation of employment, (h) failure to provide accurate itemized wage statements, (i) unfair and unlawful competition, and (j) all other claims for statutory penalties based on the facts or claims alleged in the operative complaint.

34. “Released Parties” means Defendant, and all of its past and present officers, directors, and employees.

35. “Release Period” shall be the time period governing the Released Class Claims, which shall be the same as the Class Period.

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36. “Release” shall mean the release and discharge of the Released Class Claims by Plaintiff and all Participating Class Members and their assignees.

37. “Request for Exclusion” shall have the meaning ascribed to it in Paragraph 70(a) below.

38. “Service Payment” or “Service Award” means the amount approved by the Court to be paid to Class Representative Daniel Dominguez in addition to his Individual Settlement Payment as a Participating Class Member and individual PAGA payment as an Aggrieved Employee.

39. “Settlement Administrator” means and refers to Phoenix Class Action Administration Solutions, the third-party class action settlement administrator agreed to by the Parties, that will provide the Notice to the Class Members and distribute the settlement amounts as described in this Agreement.

40. “Settlement Administration Costs” means the costs payable from the Settlement Amount to the Settlement Administrator for administering this Settlement, including, but not limited to, printing, distributing, and tracking documents for this Settlement, tax reporting, and deposit of the employee and employer share of payroll taxes, unclaimed property due diligence, reporting and remittance obligations, distributing the Settlement Amount, and providing necessary reports and declarations, as requested by the Parties. The Settlement Administration Costs shall be paid from the Settlement Amount, and shall not exceed the amount approved by the Court, regardless of any additional costs that the Settlement Administrator may request or feel is necessary to administer the Settlement.

41. “Work Weeks” or “Weeks Worked” in the context of a Class Members means any and all work weeks during the Class Period during which the Class Member worked at least one day for Defendant. Likewise, in the context of Aggrieved Employees, it means any and all weeks worked during the PAGA Period during which the Aggrieved Employee worked at least one day for Defendant.

B. General Terms

42. On November 19, 2021, Plaintiff filed a representative PAGA action in the

1 Riverside Superior Court. On or about May 9, 2022, Plaintiff filed the operative First Amended
2 Complaint that added related class claims to the action.

3 43. Defendant denies Plaintiff's claims and allegations and contends that the Action is
4 not suitable for class certification.

5 44. The Class Representatives believe they can proceed with the representative and
6 class claims, that the Action is meritorious, and that class certification is appropriate.

7 45. The Parties have conducted a thorough investigation into the facts of the Action.
8 This includes conducting an extensive exchange of informal discovery, including a sampling of
9 payroll and timekeeping records for Class Members. Class Counsel is both knowledgeable about
10 and has done extensive research with respect to the applicable law and potential defenses to the
11 claims of the Class. Class Counsel has diligently pursued an investigation of the Class
12 Members' claims against Defendant. Based on the foregoing data and on their own independent
13 investigation and evaluation, Class Counsel is of the opinion that the settlement with Defendant
14 for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable,
15 and adequate and is in the best interest of the Class Members in light of all known facts and
16 circumstances, including the risk of significant delay and uncertainty associated with litigation,
17 various defenses asserted by Defendant, and numerous potential appellate issues.

18 46. On January 18, 2023, Plaintiff and Defendant participated in a full-day mediation
19 with Jeffrey Krivis, Esq., a well-respected wage-and-hour mediator. At the conclusion of
20 mediation and extensive arms-length negotiations, the Parties reached a global settlement and
21 entered into a Memorandum of Understanding.

22 47. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts
23 to be performed or judgment to be entered pursuant to the terms of the Settlement and
24 Agreement, shall be construed as an admission by Defendant of any wrongdoing or violation of
25 any statute or law or liability on the claims or allegations in the Action.

26 48. Stipulation for Class Certification. For settlement purposes only, Defendant will
27 stipulate that the Class Members described herein who do not Request Exclusion from the Class
28 may be conditionally certified as a Class. This stipulation to certification is in no way an

admission that class action certification is proper and shall not be admissible in this action except for the sole purposes of enforcing this Agreement. Should, for whatever reason, the Court fail to issue Final Approval, the Parties' stipulation to class certification as part of the Settlement shall become null and void ab initio and shall have no bearing on, and shall not be admissible in this Action in connection with, the issue of whether certification would be appropriate in a non-settlement context. Defendant expressly reserves its rights and declares that it would continue to oppose class certification and the substantive merits of the case should the Court fail to issue Final Approval. Plaintiff expressly reserves their rights and declares that they will continue to pursue class certification and a trial should the Court fail to issue Final Approval.

C. Terms of Settlement

49. The financial terms of the Settlement are as follows:

(a) Settlement Amount: The Parties agree to settle this Action for the Settlement Amount, subject to the Escalator Clause and Defendant's obligation to separately pay its share of payroll taxes on the wage portion of the Individual Class Payments, which is the maximum amount that will be paid by Defendant and includes Individual Class Payments, Class Counsel's Attorneys' Fees and Costs Award, the Service Payment to the Class Representative, Settlement Administration Costs, and PAGA Penalties.

(b) Net Settlement Amount: The "Net Settlement Amount" is defined as the Settlement Amount less the Attorneys' Fees and Costs Award, the Service Payment to the Class Representatives as awarded by the Court, the Settlement Administration Costs, and PAGA Penalties. If the Court reduces the Attorneys' Fees and Costs Award, Service Award, or Settlement Administrator Costs, or either increases or decreases the amount allocated to the PAGA Penalties, the difference shall be placed in the Net Settlement Amount and allocated to the Class.

(c) The Individual Class Payment for each Class Member will be calculated by the Settlement Administrator using the Class Data provided by Defendant as follows. Compensable workweeks will be all Weeks Worked by the Class Members during the Class Period. The dollars per compensable work week will be calculated by dividing the total Weeks

1 Worked by Class Members into the Net Settlement Amount to determine a per work week value
2 (“Workweek Value”). The Workweek Value will be multiplied by the number of Weeks
3 Worked by a Participating Class Member during the Class Period to determine the distribution
4 for a Participating Class Member. If there are any timely submitted Requests for Exclusion, the
5 Settlement Administrator shall proportionately increase the Individual Class Payments for each
6 Participating Class Member so that the amount actually distributed to Participating Class
7 Members equals 100% of the Net Settlement Amount.

8 (d) Allocation of Individual Class Payments: The Individual Class Payments
9 to Participating Class Members will be allocated as follows: 15% will be allocated as wages
10 subject to withholding of all applicable local, state and federal taxes; and 85% will be allocated
11 for interest and statutory penalties (pursuant to, e.g., California Labor Code sections 203, 210,
12 226) from which no taxes will be withheld. The Settlement Administrator will issue to each
13 Participating Class Member an Internal Revenue Service Form W-2 and comparable state forms
14 with respect to the wage allocation and a Form 1099 with respect to the penalties and interest
15 allocations.

16 (e) Service Payment to Class Representative: The amount, if any, awarded to
17 the Class Representative as a Service Payment will be set by the Court in its discretion, not to
18 exceed \$5,000, in exchange for the service that Plaintiff performed on behalf of the Class.
19 Defendant agrees not to oppose this request. The Service Payment to Plaintiff will be paid out of
20 the Settlement Amount. The Class Representatives will be issued an IRS Form 1099 in
21 connection with this payment. Plaintiff shall be solely and legally responsible to pay any and all
22 applicable taxes on this payment. The Parties agree that any amount awarded as the Service
23 Payment to Plaintiff less than the requested amount shall not be a basis for Class Counsel to void
24 this Settlement Agreement. Should the Court approve a lesser amount for the Service Payment,
25 the difference shall be added to the Net Settlement Amount to be distributed to the Participating
26 Class Members.

27 (f) Attorneys’ Fees and Costs Award: Defendant agrees to not oppose a
28 request by Class Counsel to the Court for an award of attorneys’ fees of one-third of the

1 Settlement Amount (\$485,000), plus reasonable litigation costs not to exceed \$25,000
2 (“Attorney’s Fees and Cost Award”). Defendant agrees not to oppose any contention by Class
3 Counsel that attorneys’ fees should be based on the common fund theory. The Attorney’s Fee
4 and Cost Award shall be paid from the Settlement Amount, and, except for this award,
5 Defendant shall have no further obligation to pay any attorneys’ fees, costs or expenses to Class
6 Counsel. Should the Court approve a lesser amount than what is sought by Class Counsel, the
7 difference shall be added to the Net Settlement Amount to be distributed to the Participating
8 Class Members. Any Court order awarding less than the amount sought by Class Counsel shall
9 not be grounds to rescind the Settlement Agreement or otherwise void the Settlement. The
10 Settlement Administrator shall issue to Class Counsel an IRS Form 1099 reflecting the amount
11 of attorneys’ fees and costs awarded by the Court.

12 (g) Settlement Administration Costs: The fees and other charges of the
13 Settlement Administrator will be paid from the Settlement Amount, not to exceed \$10,000,
14 unless (1) the Escalator Clause is triggered (whereby any reasonable increase in Settlement
15 Administration Costs shall be paid from the increased Settlement Amount, subject to Court
16 approval), or (2) as otherwise approved by all Parties and the Court.

17 (h) PAGA Penalties: The Parties agree that \$150,000 is allocated to PAGA
18 Penalties, and is to be paid from the Settlement Amount, subject to Court approval. Of this
19 amount, \$112,500 (75%) shall be paid to the LWDA in satisfaction of civil penalties under the
20 Private Attorney General Act of 2004 (“PAGA”) and \$37,500 (25%) will form the Individual
21 PAGA Payments to the Aggrieved Employees, which shall be calculated and allocated pro-rata
22 on a Work Week basis, which will be treated entirely as civil penalties and shall be reported as
23 required on an IRS Form 1099. Class Counsel shall give proper notice to the LWDA of the
24 Settlement.

25 (i) Tax Liability: Class Counsel and Defendant make no representations as to
26 the tax treatment or legal effect of settlement amounts called for hereunder, and Plaintiff and the
27 Class Members are not relying on any statement or representation by Class Counsel or Defendant
28 in this regard. Plaintiff, Participating Class Members, and Aggrieved Employees understand and

1 agree that they will be solely responsible for the payment of any taxes and penalties assessed on
2 their respective Individual Class Payments and Individual PAGA Payments, described herein.
3 Forms 1099 will be distributed in the manner required by the Internal Revenue Code of 1986 (the
4 “Code”) and consistent with this Agreement. If the Code, the regulations promulgated
5 thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes
6 set forth in this Section may be modified in a manner to bring Defendant into compliance with
7 any such changes. Plaintiff, Participating Class Members, and Aggrieved Employees understand
8 and agree that they will be solely responsible for the payment of any taxes and penalties assessed
9 on their respective payments described herein.

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

1 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR
2 ADVISER’S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS
3 LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF
4 THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING
5 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

6 (k) “Non-Reversionary” Settlement. This is a “non-reversionary” settlement.
7 Under no circumstances will any portion of the Settlement Amount revert to Defendant.
8 Participating Class Members and Aggrieved Employees will not have to make a claim in order to
9 receive an Individual Class Payment or Individual PAGA Payment. Distributions, in the form of
10 Individual Class Payment or Individual PAGA Payments will be made directly to each
11 Participating Class Member and Aggrieved Employee. The Settlement Administrator shall be
12 responsible for accurately and timely reporting and remittance obligations with respect to
13 unclaimed funds as a result of a Participating Class Member and/or Aggrieved Employee not
14 cashing any checks delivered pursuant to the Settlement by the check cashing deadline, as set
15 forth herein.

16 (l) Class Counsel and Plaintiff believe that the Settlement is fair and
17 reasonable and will so represent same to the Court.

18 **D. Release by the Participating Class Members**

19 50. Upon entry of the Final Approval Order and Defendant funding of the Settlement
20 Amount, and except as to such rights or claims as may be created by this Agreement, Plaintiff
21 and the Participating Class Members will forever completely release and discharge the Released
22 Parties from the Released Class Claims for the Release Period.

23 51. Each Participating Class Member will be deemed to have made the foregoing
24 Release as if by manually signing it.

25 52. Class Representatives, on behalf of themselves and the Class, acknowledge and
26 agree that the claims for unpaid wages and untimely payment of wages in the Action are
27 disputed, and that the payments set forth herein constitute payment of all sums allegedly due to
28 them. Class Representatives, on behalf of themselves and the Class, acknowledge and agree that

1 California Labor Code Section 206.5 is not applicable to the Parties or Settlement. Labor Code §
2 206.5 provides in pertinent part as follows: “An employer shall not require the execution of any
3 release of any claim or right on account of wages due, or to become due, or made as an advance
4 on wages to be earned, unless payment of those wages has been made.”

5 **E. Release of PAGA Claims**

6 53. Upon entry of the Final Approval Order and Defendant’s funding of the
7 Settlement Amount, Plaintiff – in their individual capacity and on behalf of the State of
8 California and LWDA – shall completely release and discharge the Released Parties from the
9 PAGA Released Claims for the PAGA Period.

10 54. Regardless of submitting a valid Request for Exclusion, neither Plaintiff nor any
11 Aggrieved Employee shall have the right to opt-out or otherwise exclude themselves from
12 releasing the PAGA Released Claims.

13 55. It is the intent of the Parties that the Final Approval Order shall have full
14 equitable and collateral estoppel and res judicata effect to the fullest extent permitted by law.

15 **F. Release by Plaintiff and Class Representative**

16 56. Class Representative does hereby, for himself and his spouses, heirs, successors,
17 beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians,
18 personal representatives, and assigns forever and completely release and discharge the Released
19 Parties from any and all charges, complaints, claims, liabilities, obligations, promises,
20 agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs,
21 losses, debts, and expenses (including back wages, statutory penalties, civil penalties, liquidated
22 damages, exemplary damages, interest, attorneys’ fees, and costs) of any nature whatsoever,
23 from the beginning of time through the execution of this Stipulation, whether known or
24 unknown, suspected or unsuspected, including but not limited to all claims arising out of, based
25 upon, or relating to Class Representative’s employment with Defendant or the remuneration for
26 or termination of such employment (the “Class Representative’s Claims”).

27 57. Without limiting the generality of the foregoing, this general release by Plaintiff
28 includes all federal, state and local statutory claims, federal and state common law claims

(including but not limited to those for contract, tort and equity), including without limitation any claims for breach of any implied or express contract or covenant; claims for promissory estoppel; claims of entitlement to any pay; claims of wrongful denial of insurance and employee benefits (except workers' compensation benefits); claims for failure to hire, public policy violations, defamation, invasion of privacy, fraud, misrepresentation, emotional distress, assault/battery, or other common law or tort matters; claims of harassment, retaliation or discrimination based on age, race, color, religion, sex, national origin, ancestry, physical or mental disability, protected activity, medical condition, marital status, sexual preference, union activity, or veteran status; claims under the Americans with Disabilities Act, Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964 (as amended), the Civil Rights Act of 1991; 42 USC sec. 1981, 42 USC sec. 1983, the Older Workers Benefit Protection Act, the Family and Medical Leave Act; claims for unfair competition; claims based on legal restrictions on Defendants' right to terminate, not to hire or promote employees, or to change an employee's compensation; and claims based on any federal, state or other governmental statute, regulation or ordinance, all statutory, constitutional, contractual or common law claims for wages, damages, unpaid costs or expenses, penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief, or any other claims arising under the Fair Labor Standards Act, the Employment Retirement Security Income Act of 1974, the California Constitution, the California Fair Employment and Housing Act, the California Unfair Competition Act (California Business and Professions Code section 17200 et seq.), the California Labor Code, or Industrial Welfare Commission Wage Orders, or arising out of or based upon the following categories of allegations regardless of the forum in which they may be brought, to the fullest extent such claims are releasable by law: (i) all claims for unpaid overtime; (ii) all claims for unpaid wages; (iii) all claims for meal break violations; (iv) all claims for rest period violations; (v) all claims for paid sick leave violations; (vi) all claims for the failure to timely pay wages upon termination; (vii) all claims for the failure to timely pay wages during employment; (viii) all claims for wage statement violations; (ix) all claims for reporting time pay; and (x) all other penalties recoverable for such claims under PAGA.

1 58. Plaintiff agrees that there is a risk that any injury that they may have suffered by
2 reason of the Released Parties' relationship with them might not now be known, and there is a
3 further risk that said injuries, whether known or unknown at the date of this Settlement
4 Agreement, might possibly become progressively worse, and that as a result thereof further
5 damages may be sustained. Nevertheless, Plaintiff agrees to forever and fully release and
6 discharge the Released Parties, and understands that by the execution of this Settlement
7 Agreement no further claims for any such injuries that existed at the time of the execution of this
8 Settlement Agreement may ever be asserted by Plaintiff with respect to claims arising in the time
9 period from the beginning of time to the execution of this Settlement Agreement.

10 59. Plaintiff expressly waives and relinquishes all rights and benefits afforded by
11 Section 1542 of the Civil Code of the State of California and does so understanding and
12 acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code
13 of the State of California states:

14
15 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
16 THAT THE CREDITOR OR RELEASING PARTY DOES NOT
17 KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
18 THE TIME OF EXECUTING THE RELEASE AND THAT, IF
19 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
20 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
21 OR RELEASED PARTY.

22 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
23 full and complete release and discharge of all parties, Class Representative expressly
24 acknowledges that this Settlement Agreement is intended to include in its effect, without
25 limitation, all claims that Class Representative knew of, as well as all claims that he does not
26 know or suspect to exist in her favor against the Released Parties, or any of them, for the time
27 period from the beginning of time to the execution of this Settlement Agreement, and that this
28 Settlement Agreement contemplates the extinguishment of any such Class Representative's
claims. Notwithstanding the above, the general release by Class Representative shall not extend
to claims for workers' compensation benefits, claims for unemployment benefits, or other claims

that may not be released by law.

G. Interim Stay of Proceedings

60. Pending completion of all of the prerequisites necessary to effectuate this Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the Action except such as are necessary to effectuate the Settlement.

H. Notice Process

61. Appointment of Settlement Administrator. The Parties have agreed to the appointment of the Settlement Administrator to perform the duties of a settlement administrator, including mailing the Notice Packet, using standard devices to obtain forwarding addresses, independently reviewing and verifying documentation associated with any claims or opt-out requests, resolving any disputes regarding the calculation or application of the formula for determining the Individual Settlement Amounts, drafting and mailing the settlement checks to Participating Class Members and Aggrieved Employees, issuing all necessary tax forms, and performing such other tasks as set forth herein or as the Parties mutually agree or that the Court orders.

62. Disputes Regarding Settlement Administration. Any and all disputes relating to administration of the Settlement by the Settlement Administrator (except for disputes regarding Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Agreement, until Plaintiff and Defendant notify the Court that all payments and obligations contemplated by this Agreement have been fully carried out. Prior to presenting any issue to the Court, counsel for the Parties will confer in good faith to resolve the dispute without the necessity of Court intervention. The Settlement Administrator shall also be responsible for issuing to Plaintiff, Participating Class Members, and Aggrieved Employees, and Class Counsel any Tax Forms as may be required by law for all amounts paid pursuant to this Agreement.

63. Class Data. Within fourteen (14) days after entry of the Preliminary Approval Order, Defendant shall provide the Class Data to the Settlement Administrator. The Settlement Administrator will run a check of the Class Members' addresses against those on file with the

1 U.S. Postal Service's National Change of Address List. The Class Data provided to the
2 Settlement Administrator will remain confidential and will not be used or disclosed to anyone,
3 except as required by applicable tax authorities, pursuant to Defendant's express written consent,
4 or by order of the Court. Although Class Counsel will not be provided with the list of Class Data,
5 nothing herein shall prevent Class Counsel from communicating with Class Members regarding
6 the Action and Settlement.

7 64. Total Workweeks. At least 5 days prior to mailing the Notice Packet, the
8 Settlement Administrator shall provide a spreadsheet to Class Counsel and Defense Counsel
9 containing a preliminary calculation of all payments to be paid from the Settlement Amount,
10 including the estimated Individual Class Payments to each Class Member and Individual PAGA
11 Payments to each Aggrieved Employee (a person's name shall be redacted and a control number
12 used in place of the name). In the event that the total Workweeks worked by all Class Members
13 triggers the Escalator Clause, the Settlement Administrator shall notify the Parties of the
14 increased Settlement Amount, and related increased payments from the Settlement Amount,
15 including increased Attorneys Fees and Costs and any increased Settlement Administration
16 Costs, all of which shall be subject to Court approval.

17 65. Notice Packet. The Notice Packet, as approved by the Court, shall be sent by the
18 Settlement Administrator to the Class Members, by first class mail, in English, within ten (10)
19 calendar days following the Settlement Administrator's receipt of the Class Data. For all Class
20 Members, the Notice Packet will include the Notice, a Request for Exclusion Form, an Objection
21 Form and a Dispute Form. The Settlement Administrator shall use standard devices, including a
22 skip trace, to obtain forwarding addresses of Class Members if any envelopes are returned.

23 66. Returned Notice Packets. The Settlement Administrator will take steps to ensure
24 that the Notice Packet is received by all Class Members, including utilization of the National
25 Change of Address Database maintained by the United States Postal Service to review the
26 accuracy of and, if possible, update a mailing address. Notices will be re-mailed to any Class
27 Member for whom an updated address is located within ten (10) calendar days following both
28 the Settlement Administrator learning of the failed mailing and its receipt of the updated address.

1 The Notice Packet shall be identical to the original Notice Packet, except that it shall notify the
2 Class Member that the exclusion (opt-out) request or objection must be returned by the later of
3 the Response Deadline or fifteen (15) days after the remailing of the Notice Packet.

4 67. Presumption Regarding Receipt of Notice Packet. It will be conclusively
5 presumed that if an envelope has not been returned to Settlement Administrator by the Response
6 Deadline that the Class Member received the Notice Packet.

7 68. Disputes Regarding Class Data. Class Members are deemed to participate in the
8 Settlement unless they opt-out, and Aggrieved Employees may not opt out of the PAGA
9 Released Claims. The Notice will inform Class Members of his/her estimated Individual Class
10 Payment and Individual PAGA Payment, as well as the number of weeks he/she worked during
11 the Class Period and the PAGA Period. Class Members may dispute their Weeks Worked if they
12 disagree they worked more weeks in the Class Period and/or PAGA Period in California than
13 Defendant's records show by timely submitting evidence to the Settlement Administrator.
14 Defendant's records will be presumed determinative absent reliable evidence to rebut
15 Defendant's records, but the Settlement Administrator will evaluate the evidence submitted by
16 the Class Member and provide the evidence submitted to Class Counsel and Defense Counsel
17 who agree to meet and confer in good faith about the evidence to determine the Class Member's
18 actual number of Work Weeks and estimated Individual Settlement Amount. If Class Counsel
19 and Defense Counsel are unable to agree, they agree to submit the dispute to the Court to render
20 a final decision. Class Members and Aggrieved Employees will have until the Response
21 Deadline to dispute Weeks Worked, object or opt out, unless extended by the Court.

22 69. Declaration of Due Diligence. The Settlement Administrator shall provide
23 counsel for the Parties, at least twenty-five (25) days prior to the final approval hearing, a
24 declaration of due diligence and proof of mailing with regard to the mailing of the Notice Packet.

25 70. Class Members' Rights. Each Class Member will be fully advised of the
26 Settlement, the ability to object to the settlement, and the ability to opt-out or request exclusion
27 from the Class Claims portion of the Settlement. The Notice Packet will inform the Class
28 Members of the Court-established deadlines for filing objections or requesting exclusion from

the Settlement in accordance with the following guidelines:

(a) Requests for Exclusion from Class. Any Class Member, other than Plaintiff, may request to be excluded from the Class by completing the Request for Exclusion Form provided within the Notice Packet. The Request for Exclusion Form must be mailed to the Settlement Administrator and postmarked on or before the Response Deadline in order to be timely, unless the Parties otherwise agree in writing. Any such Request must be made in accordance with the terms set forth in the Notice Packet. The Settlement Administrator shall attach each Request for Exclusion to its declaration of due diligence and file with the Court prior to the Final Approval Hearing. Any Class Member who timely requests exclusion in compliance with these requirements: (i) will not have any rights under this Agreement, including the right to object, appeal or comment on the Settlement; (ii) will not be entitled to receive any payments under this Agreement; and (iii) will not be bound by this Agreement, or the Judgment. Any Class Member who is an Aggrieved Employee who requests timely exclusion will still be subject to the PAGA Released Claims to the fullest extent permitted by law and receive an Individual PAGA Payment. All Parties and their counsel, including Defendant's respective members, member managers, owners, officers, and directors, shall not encourage or solicit opt-outs or objections, directly or indirectly, through any means.

(b) Binding Effect on Participating Class Members. All Participating Class Members will: (i) be bound by the terms and conditions of this Agreement, the Judgment, and the releases set forth herein; and (ii) except as otherwise provided herein, will be deemed to have waived all objections and oppositions to the fairness, reasonableness, and adequacy of the Settlement.

(c) Objections to Settlement. Any Class Member, other than Plaintiff, who does not submit a valid and timely Request for Exclusion may object to the terms of this Agreement by completing the Objection Form provided within the Notice Packet. Any Class Member that intends to object must mail the Objection Form to the Settlement Administrator. The Objection Form must be postmarked on or before the Response Deadline in order to be timely, unless the Parties otherwise agree in writing. Additionally, any objection must be made

1 in accordance with the terms set forth in the Notice Packet. The Settlement Administrator shall
2 provide any objections to Class Counsel and Defense Counsel within three (3) days of receipt,
3 and the Settlement Administrator shall attach the same to its declaration of due diligence and file
4 with the Court prior to the Final Approval Hearing. Any Participating Class Member who files
5 an objection remains eligible to receive monetary compensation from the Settlement. Plaintiff
6 and Defendant shall not be responsible for any fees, costs, or expenses incurred by any Class
7 Member and/or his or her counsel related to any objections to the Settlement. Submitting an
8 objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is
9 preserved by becoming a party of record by timely and properly intervening or filing a motion to
10 vacate the judgment under Code of Civil Procedure § 663.

11 (d) Failure to Object. Any Class Member who does not timely and properly
12 become a party of record by intervening or filing a motion to vacate the judgment waives any
13 and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding
14 and appellate proceeding, such as a motion to vacate judgment, motion for new trial, a motion
15 under California Code of Civil Procedure section 473, and extraordinary writs.

16 (e) Responses to Objections. Counsel for the Parties may file a response to
17 any objections submitted by Objecting Class Members at least five (5) court days before the date
18 of the Final Approval Hearing.

19 (f) Class Members will have until the Response Deadline to object or submit
20 a Request for Exclusion to the Settlement Administrator by U.S. Mail. The Settlement
21 Administrator shall disclose jointly to Class Counsel and Defense Counsel what objections or
22 Requests for Exclusion were timely submitted on a weekly basis, and upon the request of Class
23 Counsel or Defense Counsel.

24 71. Funding of the Settlement Amount. Defendant shall deposit the Settlement
25 Amount with the Settlement Administrator within thirty (30) days after the Effective Date.

26 72. Distribution of Funds. No later than ten (10) calendar days after the deposit of the
27 Settlement Amount by Defendant, the Settlement Administrator shall mail the Individual Class
28 Payments to the Participating Class Members, the Individual PAGA Payments to the Aggrieved

Employees, the payment to Class Counsel for the Attorneys' Fees and Costs Award, any Service Payment to the Class Representatives, the payment to the LWDA for PAGA Penalties, mail to the Aggrieved Employees their portion of the PAGA Penalties, and will pay itself the Settlement Administration Costs.

73. Deadline for Cashing Settlement Checks. Participating Class Members and Aggrieved Employees shall have 180 calendar days after mailing by the Settlement Administrator to cash their settlement checks. The release will be binding upon all Participating Class Members who do not cash their checks within the 180-day period. In the event that any settlement check is returned to the Settlement Administrator within 180 days of mailing, the Settlement Administrator will, within five (5) business days of receipt of the returned settlement check, perform a skip trace to locate the individual, and notify Defense Counsel and Class Counsel of the results. If a new address is located by these means, the Administrator will have ten (10) business days to re-issue the check. Neither Defendant, Defense Counsel, Class Counsel, Plaintiff, nor the Settlement Administrator will have any liability for lost or stolen settlement checks, forged signatures on settlement checks, or unauthorized negotiation of settlement checks. Without limiting the foregoing, in the event a Participating Class Member and/or Aggrieved Employee notifies the Settlement Administrator that he or she believes that a settlement check has been lost or stolen, the Settlement Administrator shall immediately stop payment on such check. If the check in question has not been negotiated prior to the stop payment order, the Settlement Administrator will issue a replacement check.

a. If any Participating Class Member's check is not cashed within the time periods noted above, the check will be void and a stop-payment will be issued, and the Settlement Administrator shall issue the unclaimed funds to the California State Controller's Office in the name of the Class Member.

b. If any Aggrieved Employee's check is not cashed within the time periods noted above, the check will be void and a stop-payment will be issued, and the Settlement Administrator shall issue the unclaimed funds to the California State Controller's Office in the name of the Aggrieved Employee.

1 **I. Duties of the Parties Prior to the Court's Approval**

2 74. Promptly after execution of this Agreement, Plaintiff will move the Court for
3 Preliminary Approval of this Settlement and entry of the Preliminary Approval Order
4 accomplishing the following:

5 (a) Scheduling the Final Approval Hearing on the issue of whether this
6 Settlement should be finally approved as fair, reasonable and adequate as to the Class Members
7 and a hearing on fees, costs and the Service Payments;

8 (b) Approving as to form and content the proposed Notice Packet;

9 (c) Directing the mailing of the Notice Packet by first class mail to the Class
10 Members;

11 (d) Preliminarily approving this Settlement;

12 (e) Preliminarily certifying the class for purposes of this Settlement; and

13 (f) Advising the LWDA of the proposed Settlement.

14 **J. Duties of the Parties Following Court's Final Approval**

15 75. In connection with the Final Approval Hearing provided for in this Agreement,
16 Class Counsel shall submit a proposed Final Approval Order:

17 (a) Approving the Settlement, adjudging the terms thereof to be fair,
18 reasonable and adequate, and directing consummation of its terms and provisions;

19 (b) Approving Class Counsel's application for an award of attorneys' fees and
20 reimbursement of litigation costs and expenses, the Service Payment to the Class
21 Representatives, and the payment to the Settlement Administrator for costs of administering the
22 settlement; and

23 (c) Entering judgment approving settlement.

24 **K. Voiding the Agreement**

25 76. If the Court fails or refuses to issue the Final Approval Order or fails to approve
26 any material condition of this Agreement which effects a fundamental change of the Settlement,
27 the entire Agreement shall be rendered voidable and unenforceable as to all Parties herein at the
28 option of either Party.

1 77. If the Settlement is voided or fails for any reason, Plaintiff and Defendant will
2 have no further obligations under the Settlement, including any obligation by Defendant to pay
3 the Settlement Amount, or any amounts that otherwise would have been owed under this
4 Settlement.

5 78. If the Settlement is voided or fails for any reason, any costs incurred by the
6 Settlement Administrator shall be borne equally by Defendant and Plaintiff, unless otherwise
7 specified in this Agreement.

8 **L. Other Terms**

9 79. Waiver. The waiver by one Party of any breach of this Agreement by another
10 Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

11 80. Parties' Authority. The signatories hereto represent that they are fully authorized
12 to enter into this Agreement and bind the Parties hereto to the terms and conditions hereof.

13 81. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
14 accomplish the terms of this Agreement, including but not limited to, execution of such
15 documents and to take such other action as may reasonably be necessary to implement the terms
16 of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts
17 contemplated by this Agreement and any other efforts that may become necessary by order of the
18 Court, or otherwise, to effectuate this Agreement and the terms set forth herein. As soon as
19 practicable after execution of this Agreement, Class Counsel shall, with the assistance and
20 cooperation of Defendant and Defense Counsel, take all necessary steps to secure the Court's
21 preliminary and final approval of the settlement, and the final entry of judgment.

22 82. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
23 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,
24 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
25 cause of action or rights released and discharged by this Agreement.

26 83. No Admission. Defendant denies any and all liability to Plaintiff and/or any Class
27 Member and/or Aggrieved Employee in this Action, as to any and all causes of action that were
28 asserted or that might have been asserted in this Action. Nonetheless, Defendant wishes to settle

1 and compromise the matters at issue in the Complaint to avoid further substantial expense and
2 the inconvenience and distraction of protracted and burdensome litigation. Defendant has taken
3 into account the uncertainty and risks inherent in litigation, and without conceding any infirmity
4 in the defenses that it has asserted or could assert against Plaintiff, have determined that it is
5 desirable and beneficial that Plaintiff's claims be settled in the manner and upon the terms and
6 conditions set forth in this Agreement.

7 84. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
8 Order, nothing contained herein, nor the consummation of this Agreement, is to be construed or
9 deemed an admission of liability, culpability, negligence, or wrongdoing on the part of
10 Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this
11 Agreement with the intention of avoiding further disputes and litigation with the attendant
12 inconvenience and expenses. This Agreement is a settlement document, and it, along with all
13 related documents such as the notices, and motions for preliminary and final approval, shall,
14 pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be
15 inadmissible in evidence in any proceeding, except an action or proceeding to approve the
16 settlement, and/or interpret or enforce this Agreement. The stipulation for class certification as
17 part of this Agreement is for settlement purposes only and if, for any reason the settlement is not
18 approved, the stipulation will be of no force or effect.

19 85. No Publicity. The Parties will not publicize the Settlement or disclose it to third
20 parties prior to the Court granting Preliminary Approval, except as required or necessary to
21 effectuate its terms and comply with law. After the Final Approval Date, Class Counsel and
22 Class Representatives agree that they will not discuss the Settlement with the media, any
23 settlement and verdict reporting service, any social media postings or other Internet postings.
24 Nothing herein shall be construed to prevent Class Counsel from the public filing of motions or
25 other case materials in the Action related to seeking and obtaining Court approval of this
26 Settlement and the related awards of attorneys' fees and costs, or to communications with Class
27 Members or their representatives about this Settlement, including through the posting of Court-
28 filed documents on Class Counsel's websites for access solely by the Class Members, or to

1 prevent the Parties or their representatives from communicating with financial or legal advisors
2 regarding the Settlement. In response to any media inquiry, Class Counsel may state only that
3 the Action has been settled on terms mutually agreeable to the Parties.

4 86. Notices. Unless otherwise specifically provided herein, all notices, demands or
5 other communications given hereunder shall be in writing and shall be deemed to have been duly
6 given as of the third business day after mailing by United States registered or certified mail,
7 return receipt requested, addressed:

8 *To the Class:*

9 Brian J. Mankin
10 *brian@lmlfirm.com*
11 Lauby, Mankin & Lauby LLP
12 5198 Arlington Ave, PMB 513
13 Riverside, CA 92504
14 Tel: (951) 320-1444 | Fax: (951) 320-1445

15 *To Defendant:*

16 Mark S. Posard, Esq.
17 *mposard@grsm.com*
18 Gordon Rees Scully Mansukhani, LLP
19 3 Parkcenter Drive, Suite 200
20 Sacramento, CA 95825
21 Tel: (916) 565-2900 | Fax: (916) 920-4402

22 87. Construction. The Parties hereto agree that the terms and conditions of this
23 Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and
24 that this Agreement shall not be construed in favor of or against any Party by reason of the extent
25 to which any Party or his or its counsel participated in the drafting of this Agreement. Plaintiff
26 and Defendant expressly waive the common-law and statutory rule of construction that
27 ambiguities should be construed against the drafter of an agreement and further agree, covenant,
28 and represent that the language in all parts of this Agreement shall be in all cases construed as a
whole, according to its fair meaning.

88. Captions and Interpretations. Paragraph titles or captions contained herein are
inserted as a matter of convenience and for reference, and in no way define, limit, extend, or

1 describe the scope of this Agreement or any provision hereof. Each term of this Agreement is
2 contractual and not merely a recital.

3 89. Modification. This Agreement may not be changed, altered, or modified, except
4 in writing and signed by the Parties hereto, and approved by the Court. This Settlement
5 Agreement may not be discharged except by performance in accordance with its terms or by a
6 writing signed by all of the Parties hereto.

7 90. Dispute Resolution. Prior to instituting legal action to enforce the provisions of
8 this Agreement or to declare rights and/or obligations under this Agreement, a Party shall
9 provide written notice to the other Party and allow an opportunity to cure the alleged
10 deficiencies, and Plaintiff and Defendant may agree to seek the help of the Mediator to resolve
11 any dispute they are unable to resolve informally. During this period, the Parties shall bear their
12 own attorneys' fees and costs. This provision shall not apply to any legal action or other
13 proceeding instituted by any person or entity other than Plaintiff or Defendant.

14 91. Choice of Law. This Settlement Agreement shall be governed by and construed,
15 enforced and administered in accordance with the laws of the State of California, without regard
16 to its conflicts-of-law rules.

17 92. Integration Clause. This Settlement Agreement contains the entire agreement
18 between the Parties relating to the settlement and transaction contemplated hereby, and all prior
19 or contemporaneous agreements, understandings, representations, and statements, whether oral
20 or written and whether by a Party or such Party's legal counsel, are merged herein. No rights
21 hereunder may be waived except in writing.

22 93. Binding On Assigns. This Agreement shall be binding upon and inure to the
23 benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
24 successors and assigns.

25 94. Signatures of All Class Members Unnecessary to be Binding. It is agreed that,
26 because the members of the Class are numerous, it is impossible or impractical to have each
27 Class Member execute this Agreement. The Notice Packet will advise all Class Members of the
28

1 binding nature of the release provided herein and such shall have the same force and effect as if
2 this Agreement were executed by each Class Member.

3 95. Counterparts. This Agreement may be executed in counterparts, and when each
4 Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an
5 original, and, when taken together with other signed counterparts, shall constitute one fully
6 signed Agreement, which shall be binding upon and effective as to all Parties. Electronic
7 signatures shall have the same force and effect as an original.

8
9 Dated: March 29, 2023

PLAINTIFF AND CLASS REPRESENTATIVE,
individually and on behalf of other aggrieved employees:

10 
11 Daniel Dominguez (Mar 29, 2023 16:22 PDT)

12 Daniel Dominguez

13
14 Dated: March ___, 2023

DEFENDANT KENCO LOGISTICS

15
16
17 By: Scott Mayfield, Chief Administration Officer

18 **APPROVED AS TO FORM:**

19 Dated: March 29, 2023

CLASS COUNSEL
LAUBY, MANKIN & LAUBY LLP

20 
21 Brian J. Mankin
22 Attorneys for Plaintiff

23
24 Dated: March ___, 2023

DEFENSE COUNSEL:
GORDON REES SCULLY MANSUKHANI, LLP

25
26
27 Mark S. Posard, Esq.
Attorneys for Defendant

28 **[END OF DOCUMENT]**

1 binding nature of the release provided herein and such shall have the same force and effect as if
2 this Agreement were executed by each Class Member.

3 95. Counterparts. This Agreement may be executed in counterparts, and when each
4 Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an
5 original, and, when taken together with other signed counterparts, shall constitute one fully
6 signed Agreement, which shall be binding upon and effective as to all Parties. Electronic
7 signatures shall have the same force and effect as an original.

8
9 Dated: March __, 2023

PLAINTIFF AND CLASS REPRESENTATIVE,
individually and on behalf of other aggrieved employees:

10
11
12 _____
Daniel Dominguez

13
14 Dated: March 27, 2023

DEFENDANT KENCO-LOGISTICS

15
16 
17 _____
By: Scott Mayfield, Chief Administration Officer

18 **APPROVED AS TO FORM:**

19 Dated: March __, 2023

CLASS COUNSEL
LAUBY, MANKIN & LAUBY LLP

20
21 _____
22 Brian J. Mankin
23 Attorneys for Plaintiff

24 Dated: March 27, 2023

DEFENSE COUNSEL:
GORDON REES SCULLY MANSUKHANI, LLP

25
26 
27 _____
28 Mark S. Posard, Esq.
Attorneys for Defendant

[END OF DOCUMENT]

EXHIBIT “B”

COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT

Dominguez v. Kenco Logistic Services, LLC, et al.
(Riverside Superior Court, Case No. CVRI2105393)

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

You may be eligible to receive money from an employee class action lawsuit (“Action”) against Kenco Logistic Services, LLC, (“Defendant” or “Kenco”) for alleged wage and hour violations. The Action was filed by Daniel Dominguez, a former Kenco employee (“Plaintiff” or “Class Representative”) and seeks payment of (1) unpaid wages, statutory damages and penalties, interest and attorneys’ fees on behalf of a class of non-exempt (i.e., hourly paid) employees employed by Defendant in California (“Class Members”) during the Class Period (November 19, 2017, through April 24, 2023); and (2) penalties under the California Private Attorney General Act (“PAGA”) for all non-exempt (i.e., hourly paid) employees employed by Defendant in California during the PAGA Period (November 19, 2020 to April 24, 2023) (“Aggrieved Employees”).

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

[CLASS MEMBER NAME] **[ID/CONTROL NUMBER]**

Two Parts	Weeks Worked During Class Period (Class Member); Weeks Worked During PAGA Period (Aggrieved Employee)	Your Estimated Share
Class Member	INSERT (During Class Period)	\$INSERT (Individual Class Payment)
Aggrieved Employee	INSERT (During PAGA Period)	\$INSERT (Individual PAGA Payment)

Based on Defendant’s records, and the Parties’ current assumptions, your Individual Class Payment (less withholding) and your Individual PAGA Payment are shown in the chart above, along with the Workweeks you are credited with working during the Class Period and PAGA Period, respectively, according to Defendant’s records. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendant’s records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.)

If you believe that you worked more weeks during either period than Defendant’s records show in the chart above, you can submit a challenge by **DATE**, 2023 (“**Response Deadline**”). See **Section 4** of this Notice.

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

If you worked for Defendant during the Class Period and/or the PAGA Period, you have a few options as shown in the Chart below:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE A SETTLEMENT PAYMENT	If you want to receive your full settlement payment, then no further action is required on your part. You will automatically receive a settlement payment if the Settlement receives final approval by the Court. You will be bound by the terms of the Settlement Agreement and will give up your right to sue on the Released Class Claims described in Section 3 .
EXCLUDE YOURSELF	If you do not wish to participate in the settlement of the Class Claims, you may “opt-out” of the settlement of the Class Claims. If you choose to opt-out, you must submit a Request for Exclusion Form by [REDACTED], 2023 (see Section 6 for more details on how to opt-out). If you opt-out, you will no longer be a Class Member, and you will (1) <u>not</u> receive an Individual Class Payment, but you will preserve your right to pursue the Released Class Claims described below subject to applicable statutes of limitations, and (2) be barred from filing an objection to the settlement. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendant must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue PAGA Released Claims. See Section 6 of this Notice.
OBJECT	If you decide to object to the settlement with respect to the Class Claims because you find it unfair or unreasonable, you must submit an Objection Form stating why you object to the settlement by [REDACTED], 2023 (see Section 7 for more details on how to object).
DISPUTE THE NUMBER OF WEEKS WORKED	If you believe the number of workweeks that you were credited with working in the chart above is incorrect, you may submit the enclosed Dispute Form with any supporting evidence to the Settlement Administrator (see Section 4 for more details on how to submit a Dispute Form). Defendant’s records will be presumed correct, but you may provide evidence to the Settlement Administrator showing how many Work Weeks you believe you should be credited.

YOU MAY ATTEND THE FINAL APPROVAL HEARING, BUT IT’S NOT REQUIRED	
DATE: [REDACTED], 2023 TIME: 8:30 A.M.	At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former Kenco employee. The Action accuses Defendant of violating California labor laws by failing to pay overtime wages, minimum wages, meal and rest period premiums, and wages due upon termination, failing to provide meal periods and rest breaks, failure to pay vested vacation upon separation of employment, failure to reimburse business expenses, and failure to provide accurate itemized wage statements. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”).

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

Plaintiff is represented by attorneys in the Action (“Class Counsel”). See Section 9 below for their contact information.

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

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

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

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

1. Defendant Will Pay \$1,455,000 as the Gross Settlement Amount (Gross Settlement). Defendant has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel's attorney's fees and expenses, the Administrator's Costs, and PAGA Penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, Defendant will fund the Gross Settlement not more than 30 days after the Judgment entered by the Court becomes final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - A. Up to one-third of the Gross Settlement Amount (\$485,000) to Class Counsel for attorneys' fees and up to \$25,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
 - B. Up to \$5,000 to the Class Representative as a Service Payment for filing the Action, working with Class Counsel and representing the Class. The Class Representative's Service Payment will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.
 - C. Up to \$10,000 to the Settlement Administrator for services administering the Settlement.
 - D. Up to \$150,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their share of Weeks Worked during the PAGA Period.

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

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the remainder (the “Net Settlement”) by making Individual Class Payments to Participating Class Members based on their Weeks Worked during the Class Period.
4. Taxes Owed on Payments to Class Members. Plaintiff and Defendant are asking the Court to approve an allocation of 15% of each Individual Class Payment to taxable wages (“Wage Portion”) and 85% to penalties and interest (“Non-Wage Portion”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendant will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

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

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

If the monies represented by your check is sent to the Controller’s Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you opt-out of the Settlement, not later than the Response Deadline. The easiest way to opt-out by completing, signing, and mailing the accompanying Request for Exclusion Form to the Settlement Administrator, postmarked on or before **INSERT DATE**. Any person who submits a timely Request for Exclusion from the Class Claims (1) will not have any rights under this Settlement, including the right to object, appeal or comment on the Settlement; (2) will not be entitled to receive an Individual Class Payment; (3) will preserve the right to pursue the Released Class Claims, and (4) will not be bound by this Settlement, or the Judgment.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement remain eligible for Individual PAGA Payments.

7. The Proposed Settlement Will be Void If the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and Defendant have agreed that, in either case, the Settlement will be void: Defendant will not pay any money and Class Members will not release any claims against Defendant.
8. Settlement Administrator. The Court has appointed a neutral company, Phoenix Settlement Administrators (the “Settlement Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Administrator will also decide any Disputes over weeks worked, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.
9. Participating Class Members’ Release. After the Judgment is final and Defendant has fully funded the Gross Settlement and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly

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

10. Release of Released PAGA Claims. After the Court’s judgment is final, and Defendant has paid the Gross Settlement (and separately paid the employer-side payroll taxes), Plaintiff on behalf of himself, the State of California and the LWDA shall release the Released Parties from all PAGA claims that Plaintiff alleged against the Released Parties, on behalf of himself and the State of California, based on the facts stated in the operative Complaint in the Action and in the LWDA notice letter, including all PAGA claims seeking civil penalties that premised upon (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure to pay vested vacation upon separation of employment, (f) failure to reimburse business expenses, (g) failure to failure to timely pay wages each pay period and upon separation of employment, and (h) failure to provide accurate itemized wage statements, and (g) all other claims for civil penalties recoverable under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.* based on the facts or claims alleged in the operative complaint (“Released PAGA Claims.”) The time period governing the Released PAGA Claims shall be any time during the PAGA Period.

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Weeks Worked by all Participating Class Members during the Class Period, and (b) multiplying the result by the number of Weeks Worked by each individual Participating Class Member during the Class Period.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$37,500 by the total number of Weeks Worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by the number of Weeks Worked by each individual Aggrieved Employee during the PAGA Period.
3. Disputing Weeks Worked. The number of weeks you worked during the Class Period and PAGA Period, as recorded in Defendant's records, are stated in the first page of this Notice. You have until **DATE** ("Response Deadline") to dispute the number of Workweeks credited to you by mailing the enclosed Dispute Form to the Settlement Administrator on or before **[INSERT DATE 45 Days After Mailing]**. Section 9 of this Notice has the Administrator's contact information.

You need to support your dispute by sending copies of pay stubs or other records. The Administrator will accept Defendant's calculation of weeks worked based on Defendant's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek challenges based on your submission and on input from Class Counsel and Defendant's Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

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

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

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

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

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. A Participating Class Member who disagrees with any aspect of the Settlement may wish to object. **The deadline for sending written objections to the Administrator is [DATE], 2023 (the "Response Deadline").** If you wish to object to the proposed Settlement, you or your own attorney must submit a written objection, on the enclosed Objection Form and include any and all evidence and supporting papers. The Objection Form and any accompanying evidence and papers must be sent to the Settlement Administrator at the address listed in Section 9 and on the Objection Form, **postmarked** on or before **[INSERT DATE]**. If you do not comply with these procedures and the deadline for objections, the Court may not consider your objection at the Final Approval Hearing, and you may lose the right to contest the approval of the Settlement. You are still eligible to receive a settlement payment should the settlement become Final even if you object to the settlement. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment before entry of judgment.

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

8. WHEN IS THE FINAL APPROVAL HEARING?

On [DATE], 2023, the Court will hold a public hearing in Department 1 of the Superior Court for the State of California, County of Riverside, 4050 Main St, Riverside, CA 92501, for the purposes of determining whether the

proposed Settlement is fair, adequate and reasonable and should be approved, whether to approve Class Counsel's applications for attorneys' fees and costs, whether to approve the payments to the LWDA, and whether to approve Plaintiff's request for the service award. This hearing may be continued or rescheduled by the Court. Objectors to the proposed settlement will be provided notice in the event that the Final Approval Hearing is continued to a later date. Class Members who support the proposed Settlement do not need to appear at the hearing and do not need to take any other action to indicate their approval. Class Members who object to the proposed Settlement are not required to attend the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

If you have questions about this Notice, the enclosed Request for Exclusion Form and Objection Form, or the Settlement, or if you did not receive this Notice in the mail and you believe that you are or may be a member of the Class, you should contact the Settlement Administrator for more information or to request that a copy of this Notice and request for Exclusion Form and Objection Form be sent to you in the mail. If you wish to communicate directly with Class Counsel, you may contact them – contact information noted below in Section 9. You may also seek advice and guidance from your own private attorney at your own expense, if you so desire.

This Notice is only a summary. For more detailed information, you may review the Settlement Agreement, containing the complete terms of the proposed Settlement, which is on file with the Court and attached to the **Declaration of Brian J. Mankin in Support of Motion for Preliminary Approval of Class Action Settlement** filed on **DATE**, 2023 and available to be inspected at any time during regular business hours at the Clerk's Office, Superior Court for the State of California, County of Riverside, 4050 Main St, Riverside, CA 92501. You may also review the pleadings, records, and other papers on file in this lawsuit at the Clerk's Office or online at <https://epublic-access.riverside.courts.ca.gov/public-portal/>. To access the case file, click on "Case Number Search," then create a free online account, then type in the case number (CVRI2105858) where requested, and click "Search." You may also email Class Counsel and request a copy of the Settlement Agreement.

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

The contact information for Class Counsel and the Settlement Administrator are below:

Class Counsel:

Brian Mankin, Esq.
brian@LMLfirm.com
Kristina Bui Carlson, Esq.
kristina@LMLfirm.com
Lauby Mankin Lauby LLP
5198 Arlington Ave, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444

Settlement Administrator:

Name
Mailing Address
Telephone Number

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Settlement Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the Unclaimed Property Fund for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

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

EXHIBIT “C”

REQUEST FOR EXCLUSION FORM

Dominguez v. Kenco Logistic Services, LLC, et al.
(Riverside Superior Court, Case No. CVRI2105393)

[NAME]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

DO YOU WANT TO PARTICIPATE IN THE SETTLEMENT AND RECEIVE A SETTLEMENT CHECK? (check the box that applies)

☐

YES: STOP HERE -- DO NOT RETURN THIS FORM. NO FURTHER ACTION IS NEEDED TO PARTICIPATE IN THE SETTLEMENT.

☐

NO: SIGN, DATE AND RETURN THIS FORM TO EXCLUDE YOURSELF FROM THE SETTLEMENT.

By signing below, I am excluding myself from the Settlement:

I do NOT want to participate in the settlement in *Dominguez v. Kenco Logistic Services, LLC* (Riverside Superior Court Case No. CVRI2105393). I understand by excluding myself from the settlement that I will not receive any money from the settlement other than an Individual PAGA Payment if I qualify as an Aggrieved Employee (see first page of the Court Approved Notice of Class Action Settlement).

Signed on _____, 2023

[NAME]

MAIL TO THE SETTLEMENT ADMINISTRATOR, BY U.S. MAIL, POSTMARKED NO LATER THAN [INSERT DEADLINE]:

Settlement Administrator:

Name

Mailing Address

Telephone Number

EXHIBIT “D”

OBJECTION FORM

Dominguez v. Kenco Logistic Services, LLC, et al.
(Riverside Superior Court, Case No. CVRI2105393)

Please verify and/or complete any missing identifying information:

[NAME]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

DO YOU OBJECT TO THE SETTLEMENT? (check the box that applies)

☐

NO: STOP HERE -- DO NOT RETURN THIS FORM

☐

YES: COMPLETE THE REVERSE SIDE AND RETURN THIS FORM

The Court will consider your objection at the Final Approval Hearing if you submit a timely and valid written statement of objection. Any objection should describe the nature of and basis for the objection, and any other information that you would like the Court to consider.

I OBJECT to the Settlement in the case of *Dominguez v. Kenco Logistic Services, LLC* on the following grounds (if additional space is necessary, please include additional sheets of paper):

Signed on _____, 2023

[NAME]

MAIL TO THE SETTLEMENT ADMINISTRATOR, BY U.S. MAIL, POSTMARKED NO LATER THAN [INSERT OBJECTION DEADLINE]:

<u>Settlement Administrator:</u>
Name Mailing Address Telephone Number

EXHIBIT “E”

DISPUTE FORM

Dominguez v. Kenco Logistic Services, LLC, et al.
(Riverside Superior Court, Case No. CVRI2105393)

Please verify and/or complete any missing identifying information:

[NAME]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

According to Kenco Logistics' records, the chart below sets forth the number of weeks that you worked at Kenco Logistics as a non-exempt (i.e., hourly paid) employee in California:

	Weeks Worked	Date Range
Class Member	INSERT	11/19/17 through 4/24/23 (Class Period)
Aggrieved Employee	INSERT	11/19/20 through 4/24/23 (PAGA Period)

DO YOU DISAGREE WITH WEEKS WORKED SHOWN ABOVE AND WANT THE PARTIES AND ADMINISTRATOR TO INVESTIGATE FURTHER?

☐

NO: STOP HERE -- DO NOT RETURN THIS FORM.

☐

YES: COMPLETE THE REVERSE SIDE AND RETURN THIS FORM.

Please state why you believe that you should be credited with more Weeks Worked than shown in the chart and attach copies (not originals) of supporting documentation. The Parties and Settlement Administrator will consider your challenge and make a determination if you are entitled to additional Weeks Worked:

Signed on _____, 2023

[NAME]

MAIL TO THE SETTLEMENT ADMINISTRATOR, BY U.S. MAIL, POSTMARKED NO LATER THAN [INSERT DEADLINE]:

Settlement Administrator:

Name
Mailing Address
Telephone Number

EXHIBIT “F”



September 14, 2021

Submitted Via Online Filing to the LWDA

California LWDA
Attn: PAGA Administrator
455 Golden Gate Ave., 9th Fl.
San Francisco, CA 94102

Sent Via U.S. Mail and Certified Mail

Kenco Logistics Services, LLC
2001 Riverside Drive
Chattanooga, TN 37406

**Re: PAGA Civil Penalty Claim
*Daniel Dominguez v. Kenco Logistics Services, LLC***

To the Labor and Workforce Development Agency and Kenco Logistics Services, LLC:

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, this letter shall serve as notification of the PAGA civil penalty claim of aggrieved employee Daniel Dominguez (“Claimant”), on behalf of the State of California and all Aggrieved Employees, against his former employer(s), Kenco Logistics Services, LLC and/or any affiliated entities, as well as its owners (the “Company”), for violations of Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802, among possibly other sections inadvertently omitted, and/or sections of the applicable Industrial Welfare Commission Wage Order(s).

FACTUAL BACKGROUND

Claimant was employed by the Company from approximately April through August 2021. Claimant alleges that, at all relevant times, he and all other non-exempt employees employed by the Company in California (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and corresponding wage and hour violations that Claimant was subjected during his employment.

For instance, at all relevant times, Claimant and the Aggrieved Employees were not provided proper minimum and overtime wages due to the Company’s failure to accurately record and compensate for all hours worked. As one such example, the Company required Claimant and the Aggrieved Employees to undergo mandatory temperature checks and screenings prior to clocking in for payroll purposes. However, because this time was spent under the Company’s control but before being allowed to clock in, it was uncompensated in violation of California law and led to minimum and overtime wage violations. See *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law “do[es] not allow employers to require employees to routinely work for minutes off the clock without compensation”); See also *Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038 (tasks are compensable when employee is under company’s control and where the tasks served the employer’s interests).

Also, at all relevant times, Claimant was compensated on an hourly basis plus additional compensation in the form of shift differentials and/or nondiscretionary bonuses. However, on the occasions

when Claimant worked in excess of 8 and/or 12 hours per day and/or 40 hours per week and received additional earned compensation during the pay period, the Company failed to properly include these amounts in the calculations for Claimant's regular rate of pay. Therefore, the Company failed to pay proper overtime wages for the hours worked in excess of 8 and/or 12 per day and/or 40 per week.

Claimant was also not provided 30-minute off-duty meal periods, as mandated by California law, during employment with the Company. As a result of the Company's policies and practices, as well as the hectic and demanding workload, Claimant was subjected to meal period violations when he was: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal period while under the control of the Company, (3) forced to take a shortened meal period, (4) forced to take a meal period after the 5th hour of work, and (5) not provided a mandated second meal period for shifts in excess of 10 hours.

The Company also failed to provide Claimant with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. The Company did not schedule Claimant's rest breaks, Claimant was unable to leave the premises for breaks, and Claimant was often not authorized and/or permitted to take mandated rest breaks due to the lack of adequate staffing and coverage and being overwhelmed by the hectic workload. Furthermore, on occasions when Claimant worked in excess of 10 hours in a shift, the Company failed to authorize and/or permit a third mandated rest break. Additionally, the Company failed to maintain any mechanism for the payment of rest period premium payments as required by Labor Code § 226.7.

Additionally, on the occasions when Claimant and the Aggrieved Employees were denied compliant meal periods and/or rest breaks, the Company failed to pay the "premium" under Labor Code § 226.7. And, on the occasions when the Company did pay a premium for such violations, it only paid at the employee's base rate rather than at the employee's "regular rate," as mandated by California law. See *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858 (the California Supreme Court unanimously held that the meal period and rest break premiums must be calculated in the same fashion as overtime pay and, therefore, must factor in shift differential pay and other forms of nondiscretionary compensation).

Moreover, at all relevant times, the Company utilized a policy and practice through which Claimant and the Aggrieved Employees accrued vacation and/or PTO hours (collectively, "vacation hours"). However, on the occasions when the Aggrieved Employees had accrued but unused vacation hours upon separation of employment, the Company failed to pay the departing employees all vacation hours and, further, failed to pay for these earned wages at the "final rate" as required by Labor Code § 227.3. As a result, Claimant and the Company did not receive compensation for all accrued but unused vacation hours – in violation of Labor Code § 227.3.

The Company required Claimant and the Aggrieved Employees to incur necessary business-related expenses and costs without reimbursement. For example, Claimant and the Aggrieved Employees were often required to travel between two of the Company's warehouses on the same day, and incur mileage and gas expenses doing so, yet the Company did not reimburse the Aggrieved Employees for such expenses.

The Company also failed to comply with the mandates of Labor Code §§ 204 and 210 regarding the timing of the payment of wages to its employees each period, including minimum and overtime wages, as well as meal and rest period premiums. Also, the Company failed to comply with the mandates of Labor Code §§ 201–203 regarding timing of payment of final wages and failed to pay all wages due and owing upon separation of employment including minimum wages, overtime, vacation wages, and all mandated sick



time since the company only paid sick time at the base rate than the statutorily mandated rate “calculated in the same manner as the regular rate of pay.” Finally, during his employment with the Company, Claimant received inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a).

In an additional separate, but not necessarily mutually exclusive, alternative theory of liability, the Company’s owners are liable for PAGA civil penalties under Labor Code § 558 as “other person(s)” who caused the violations regarding minimum wage among other claims. *See Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820 (“if there is evidence and a finding that a party other than the employer ‘violates, or causes to be violated’ the overtime laws (§ 558(a)) or ‘pays or causes to be paid to any employee’ less than minimum wage (§ 1197.1(a)), then that party is liable for certain civil penalties regardless of the identity or business structure of the employer”); *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S.Dist.LEXIS 40851 (same)

As a result of these violations, and others described below, Claimant alleges that he and other Aggrieved Employees were denied specific rights to which they are/were entitled under California law and the rules promulgated by the IWC Wage Orders, including the following:

**PAGA ASSESSMENT FOR FAILURE TO
PAY ALL MINIMUM, REGULAR, AND OVERTIME WAGES**

(Labor Code §§ 204, 210, 221-223, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198; IWC Wage Order §§ 3, 4(B))

As discussed above, the Company failed to pay all required minimum, regular, and overtime wages to Claimant and the Aggrieved Employees due to the Company’s failure to accurately record and compensate for all hours worked, the failure to compensate for time spent in mandated temperature checks, and the failure to pay overtime and/or properly calculate the regular rate of pay for Claimant and other Aggrieved Employees. This resulted in earned, but unpaid, wages due and owing to Claimant and the Aggrieved Employees. Therefore, Claimants and the Aggrieved Employees performed work for the Company without receiving proper payment of the requisite minimum, overtime, and/or doubletime wages.

Accordingly, Labor Code §§ 210, 558, 1194.2, 1197.1, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay all wages including, but not limited to, minimum, regular, and overtime wages in violation of the Labor Code and/or the IWC Wage Orders.

**PAGA ASSESSMENT FOR DENIAL OF MEAL PERIODS,
REST BREAKS, AND WAGE PREMIUMS**

(Labor Code §§ 226.7(b) & (c), 512, 558; Cal. Admin. Code, Title 8, § 11090)

Labor Code § 226.7(b) states that “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ...” Labor Code § 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than 5 hours per day without providing the employee with an uninterrupted meal period of not less than 30 minutes [...] [a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.”



Section 12 of applicable IWC Wage Order states in pertinent part: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

Here, Claimant and other Aggrieved Employees were regularly not provided compliant mandatory meal periods and paid rest breaks due to the Company’s policies described above. Although the Company was required to pay Claimant and all Aggrieved Employees premium wages equal to an additional hour of pay at the employee’s regular rate of pay for each violation under Labor Code § 226.7(c), the Company did not pay the mandatory one-hour wage premiums and did not do so at the proper rate. Labor Code § 558 imposes a penalty for each violation, plus an amount sufficient to recover the underpaid wages. Additionally, the civil assessment set forth in Labor Code § 2699 applies to these violations.

PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES

(Labor Code § 2802; IWC Wage Order § 9(b))

Labor Code § 2802(a) states “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.”

Here, the Company required Claimant and the Aggrieved Employees to incur expenses in direct consequence of the discharge of their duties without reimbursement. Accordingly, Labor Code § 2699 imposes a penalty upon the Company for each such violation of Labor Code § 2802. Furthermore, Labor Code § 2802(b) states that “[a]ll awards made by a Court for reimbursement of necessary expenditures” shall carry interest, at the same rate as judgments in civil actions, and said interest will accrue from the date on which the employee incurred the necessary expenditure or loss including, but not limited to, reasonable costs and attorney’s fees incurred by the employee enforcing her rights granted pursuant to Labor Code § 2802.

FAILURE TO PAY VESTED VACATION UPON SEPARATION OF EMPLOYMENT

(Labor Code § 227.3)

Pursuant to Labor Code § 227.3, an employer that has implemented a paid vacation, paid time off, or compensated time off policy must, upon an employee’s separation from employment, pay to the employee all vested but unused vacation and/or paid time off at her final rate of pay. However, as alleged herein, the Company failed to pay all accrued and unused vacation upon termination. And the Company also only paid vested vacation upon separation at the base rate of pay rather than at the required final rate, leading to a violation on each such occasion. As a result of these violations, penalties may be assessed pursuant to Labor Code § 2699.

FAILURE TO PAY SICK TIME AT PROPER RATE OF PAY

(Labor Code § 246)

Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees must be “calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.” Additionally, Labor Code § 246(l)(2) states that the paid sick time must be “calculated by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days of employment.”



Here, on the occasions that the Aggrieved Employees took sick time and received paid sick leave, the Company only paid sick time at the base rate of pay (not factoring in the additional compensation as required by Labor Code §§ 246(l)(1-2). As such, penalties may be assessed pursuant to Labor Code § 2699.

**PAGA ASSESSMENT FOR FAILURE TO PAY ALL WAGES DUE AND OWING
EACH PAYROLL PERIOD WITHIN THE TIME REQUIRED BY LAW**

(Labor Code §§ 204, 204.1, 208, 210, 256 and 2699)

Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month. Labor Code § 204(d) states “[t]he requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

As a result of the Company’s failure to pay Claimant and the Aggrieved Employees all compensation to which they were entitled, the Company had a pattern and practice of failing to pay all wages due and owing to Claimant and the Aggrieved Employees within the time mandated by Labor Code § 204. As a result of these violations, penalties may be assessed pursuant to Labor Code §§ 203, 210, 256, and/or 2699.

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201, 202, 203, 256 and 2699)

Labor Code § 201(a) provides in pertinent part: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202(a) states in pertinent part “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours’ previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Labor Code § 203(a) states “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

The Company did not pay the Aggrieved Employees all wages that were due and owing within the required time following the end of their employment in accordance with Labor Code §§ 201-202. As a result, all such Aggrieved Employees are entitled to 30 days of wages as a “waiting time penalty.” (Labor Code § 203.) Labor Code § 2699 also imposes a penalty.

**PAGA ASSESSMENT FOR FAILURE TO PROVIDE ACCURATE,
ITEMIZED WAGE STATEMENTS**

(Labor Code §§ 226, 226.3, and 1174)

Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the pay period, the employee’s name and the last four digits of his or her Social Security number (or



employee identification number), the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all times pertinent hereto, the Company failed to provide accurate itemized wage statements to Claimants and all Aggrieved Employees due to violations including: failure to accurately state total hours worked (the wage statements failed to accurately reflect the compensable hours spent in temperature checks); failure to accurately state gross wages earned; failure to accurately state all deductions; failure to accurately state net wages earned; failure to state the applicable hourly rates (including the accurate overtime rate of pay); and failure to accurately state the corresponding number of hours worked at each hourly rate. Additionally, the Company's wage statements directly violated Labor Code § 226(a)(9) each period because they failed to accurately state the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each rate. Specifically, Claimant alleges that he often received shift differentials for every hour worked at a set rate of pay. These shift differentials were indisputably an "applicable hourly rate" in effect during the periods when they were earned, yet the Company's wage statements failed to provide any information regarding the rate of pay or number of hours worked at the shift differential hourly rate – in direct violation of Labor Code § 226(a)(9). Accordingly, Claimants are entitled to damages under Labor Code § 226(e), including reasonable attorneys' fees. Labor Code §§ 226.3 and 2699 also impose a civil penalty and/or assessment for these violations.

PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199

(Labor Code § 1199)

An employer violates Labor Code § 1199 if said employer: (a) requires or causes an employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission; (b) pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission; or, (c) violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission. Labor Code § 2699.5 specifically enumerates Labor Code § 1199 as a section to which the civil penalties under the PAGA apply. Therefore, as a result of the Company's violations described herein, the Company is subject to the civil penalties in accordance with Labor Code § 2699.

ATTORNEYS' FEES, INTEREST, AND PENALTIES

(Labor Code §§ 2699(f)(2), 2699(g)(1), 2699.5)

Labor Code § 2699(g)(1), give employees the right to recover in a civil action the unpaid balance of the full amount of wages, including interest thereon, penalties and other damages, as applicable, reasonable attorneys' fees, and costs of suit. Additionally, Claimants seek the assessment of penalties, including civil penalties, under Labor Code §§ 203, 210, 225.5, 226.3, 1174.5, 1197.1, 2699, and/or § 20 of the IWC Wage Orders, among possibly other provisions inadvertently omitted herein. Furthermore, Claimants is entitled to bring a wage/hour claim on behalf of all current and former similarly situated employees of the Company. Thus, the Company is exposed to these same penalties for violations involving all Aggrieved Employees.

Additionally, Claimant seeks attorney's fees pursuant to C.C.P. § 1021.5. Please construe this correspondence as Claimants' notification of alleged wrongdoing and attempted resolution in accordance with C.C.P. § 1021.5 and *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553.



CONCLUSION

Based on the foregoing, the Company may be liable for civil penalties related to the foregoing claims and remedies. If Claimant becomes aware of any additional claims for Labor Code violations related to his employment and/or other employees of the Company, he reserves the right to add new claims by supplementing this notice letter. Should you have any questions, please feel free to give me a call. In the meantime, I look forward to your response.

Very Truly Yours,



By: Peter J. Carlson, Esq.

E-mail: peter@lmlfirm.com
www.LMLfirm.com



EXHIBIT “G”