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KASPER LEUZINGER, MICHAEL ALLEN JENSEN,
8 and RICARDO AMEZCUA

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11

12 KASPER LEUZINGER, MICHAEL ALLEN
JENSEN, WILLIAM MATNEY-TATE, and
13 RICARDO AMEZCUA, on behalf of
themselves and all others similarly situated,
14

15 *Plaintiffs,*

16 vs.

17 GARDNER TRUCKING, INC., a California
corporation, GARDNER TRUCKING
CONVERSION, LLC, a California Limited
18 Liability Company; CRST EXPEDITED, INC.,
an Iowa Corporation; CRST THE
19 TRANSPORTATION SOLUTION, INC., an
entity of unknown formation; and DOES 1
20 through 50, inclusive,

21 *Defendants.*
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Case No.: 4:21-cv-04952-YGR

Consolidated with:
4:21-cv-07474-YGR
4:21-cv-07741-YGR
4:22-cv-06501-YGR

[Related on July 27, 2021 to *Castro v. Gardner
Trucking, Inc.*, N.D. Cal. Case No. 4:20-cv-
05473-YGR]

**DECLARATION OF SHAUN SETAREH IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND
CERTIFICATION OF SETTLEMENT
CLASS**

Date: July 9, 2024
Time: 2:00 p.m.
Place: Courtroom 1 – 4th Floor

Action Filed: June 28, 2021

DECLARATION OF SHAUN SETAREH

I, Shaun Setareh, declare as follows:

1. I am admitted, in good standing, to practice as an attorney in the State of California, the United States Supreme Court, the Ninth Circuit Court of Appeals, and the United States District Courts for the Central, Eastern, Northern, and Southern Districts of California. I am a fully qualified, adult resident of the State of California, and, if called as a witness herein, I would testify truthfully to the matters set forth herein. All of the matters set forth herein are within my personal knowledge, except those matters that are stated to be upon information and belief. As to such matters, I believe them to be true.

2. I am the principal of the law firm Setareh Law Group. My business address is 9665 Wilshire Boulevard, Suite 430, Beverly Hills, California 90212 and my business telephone number is (310) 888-7771. I am counsel of record for Plaintiffs KASPER LEUZINGER, MICHAEL ALLEN JENSEN, and RICARDO AMEZCUA (together with Plaintiff WILLIAM MATNEY-TATE, the “Plaintiffs”) in this consolidated class action against Defendants GARDNER TRUCKING, INC., GARDNER TRUCKING CONVERSION, LLC, CRST EXPEDITED, INC., and CRST THE TRANSPORTATION SOLUTION, INC. (collectively, the “Defendants” or “CRST”) (collectively with Plaintiffs, the “Parties”).

3. This Declaration is submitted in support of Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement and Certification of Settlement Classes (the “Motion”). A true and correct copy of the Settlement Agreement between the Parties (“Settlement” or “Agreement”) is attached hereto as **Exhibit 1**.

EXPERIENCE OF CLASS COUNSEL

4. I received my undergraduate degree from UCLA in 1996 and my law degree from Loyola Law School in 1999. Since being admitted to the State Bar of California in 1999, I have actively practiced civil litigation for the entirety of that time period.

5. Setareh Law Group and I, as its principal attorney, are well-experienced class action and PAGA representative action attorneys. I, along with the senior attorney assigned to this case, Jose Maria D. Patino, Jr., have considerable experience in class action and PAGA litigation. I, and the attorneys at

Setareh Law Group, have been involved as lead class counsel, co-lead class counsel, and other levels of involvement in over 100 wage-and-hour, consumer, and antitrust class action cases. Because of this, Setareh Law Group has more than 140 Westlaw citable opinions, including the following noteworthy appellate decisions:

State Appellate Decisions

a. *Troester v. Starbucks Corporation, et al.*, 5 Cal.5th 829 (2018) (reversed summary judgment in favor of Defendants, issuing a landmark published decision that clarified and rejected the application of the widely adopted federal *de minimis* doctrine to California’s wage-and-hour laws). In this victory for Plaintiff in the Supreme Court of California, I was appointed as Lead Counsel and received the California Lawyer of the Year or “CLAY” award for my work on the case.

b. *Allen v. Labor Ready Southwest, Inc.* (Cal.App. 2 Dist., 2013) 2013 WL 1910293 (reversing an Order from the Superior Court of Los Angeles County compelling Plaintiff’s claims to arbitration, finding that Defendant waived the right to compel arbitration by litigating the merits of Plaintiff’s arbitrable federal and state claims).

c. *Lacour v. Marshalls of CA, LLC, et al.* (Cal.App. 1 Dist., 2023) 2023 WL 5543622 (reversing an Order from the Superior Court of Alameda County granting judgment on the pleadings, holding that the trial court erred in giving claim preclusive effect to a federal court judgment in a prior PAGA case against the same defendant.).

Setareh Law Group has prevailed in its six most recent Ninth Circuit appeals. Five of the seven cases resulted in reversals of the trial court decision, with the remaining two cases (*Harris* and *Parsittie*) affirming a decision favorable to the Plaintiff. These seven cases are listed below:

Ninth Circuit Decisions

d. *Troester v. Starbucks Corp.*, 738 Fed. Appx. 562 (9th Cir. 2018) (Ninth Circuit opinion following the California Supreme Court answering the Ninth Circuit’s certified question).

e. *Gilberg v. California Check Cashing Stores, LLC*, 913 F.3d 1169 (9th Cir. 2019) (vacated district court’s summary judgment in favor of Defendants and remanded for further

proceedings, holding that Defendants' Fair Credit Reporting Act disclosure form lacked sufficient clarity in a published opinion).

f. *Rodriguez v. U.S. Healthworks*, 813 Fed.Appx. 315 (9th Cir. 2020) (reversed district court's summary judgement in favor of Defendants with instructions to remand the action to state court).

g. *Harris v. KM Industrial, Inc.*, 980 F.3d 694 (9th Cir. November 13, 2020) (affirmed the district court's granting of Plaintiff's motion to remand, holding in a published opinion that Defendants had failed to establish by a preponderance of the evidence that the amount in controversy exceeded \$5 million as required under the Class Action Fairness Act for removal).

h. *Parsittie v. Schneider Logistics, Inc. et al.*, Case No. 20-55470 (9th Cir. June 9, 2021) (reversed the district court's dismissal of Plaintiff's meal and rest break claims, holding that Plaintiff's security check allegations were sufficient to state a claim for break-time violations and remanding for further proceedings).

i. *Ahlstrom v. DHI Mortg. Co., Ltd., L.P.*, 21 F.4th 631 (9th Cir. December 29, 2021) (reversed the district court's ruling compelling claims to arbitration, holding that parties cannot delegate issues of formation of an arbitration agreement to the arbitrator for determination).

j. *Allen v. Bedolla*, 787 F.3d 1218 (9th Cir. June 2, 2015) (affirming the district court's Order denying objector's motion to intervene and remanding to the district court where settlement was granted final approval. Final approval was upheld on a subsequent appeal in the 9th Cir. [*see Bedolla v. Allen*, 736 Fed.Appx. 614 (9th Cir. May 18, 2018)]).

Class Counsel Appointments. The following is a sampling of class actions in which the Setareh Law Group and I have been appointed as class counsel:

Federal Cases

k. *Cerdenia v. USA Truck, Inc.*, U.S. District Court, Central District of California, Case No. 10-CV-1489-JVS (granted final approval in an action on behalf of truck drivers for meal and rest period violations, off-the-clock pre- and post-shift work, and unauthorized wage

deductions).

l. *Fronza v. Staffmark*, U.S. District Court, Northern District of California, Case No. 15-CV-02315-MEJ (granted final approval in a case involving alleged uncompensated security checks for warehouse workers).

m. *Garcia v. Am. Gen. Fin. Mgmt. Corp.*, U.S. District Court, Central District of California, Case No. 09-CV-1916 (granted final approval in a case filed on behalf of account managers in case involving, among other things, alleged overtime miscalculations and meal and rest period violations).

n. *Jones v. Shred-It USA, Inc.*, U.S. District Court, Central District of California, Case No. 11-CV-00526 (granted final approval in a case brought on behalf of customer service representatives and balers for alleged off-the-clock work and meal and rest period violations).

o. *O'Neill v. Genesis Logistics, Inc.*, U.S. District Court, Northern District of California, Case No. 08-CV-4707 (granted final approval in a case involving claims for failure to provide meal periods to employees who worked as drivers delivering goods to 7-11 stores throughout California and failure to pay final wages in a timely manner to terminated employees).

p. *Padilla v. UPS*, U.S. District Court, Central District of California, Case No. 08-CV-1590 (granted final approval in a case involving claims for failure to provide meal periods to part time employees engaged in sort operations and failure to pay final wages in a timely manner to terminated employees).

q. *Pitre v. Wal-Mart Stores, Inc.*, U.S. District Court, Central District of California, Case No. 17-cv-01281-DOC (granting class certification against Wal-Mart for a class of almost 5,000,000 in a Fair Credit Reporting Act action).

r. *Utne v. Home Depot U.S.A., Inc.*, U.S. District Court, Northern District of California, Case No. 16-cv-01854-RS (granting class certification against Home Depot in connection with uncompensated off-the-clock work occurring at the start of all employee shifts and at the end of closing shifts).

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s. *Vang v. Burlington Coat Factory Warehouse Corp.*, U.S. District Court, Central District of California Case No. 09-CV-8061 (granted final approval in a case involving, among other things, vacation pay forfeitures, failures to provide meal and rest periods, and failures to pay overtime wages based on employee misclassification).

t. *Wilson v. TE Connectivity*, Northern District of California Case No. 3:14-cv-04872-EDL (granted class certification through contested motion in case on behalf of manufacturing facility employees subject to auto-deduction of meal breaks).

State Cases

u. *Alvarez v. Gary Grace Enterprises, LP*, Marin Superior Court, Case No. CIV 1002553 (granted final approval in a case on behalf of hair salon employees for overtime miscalculation and related claims).

v. *Butler v. Lexxiom, Inc.*, San Bernardino Superior Court, Case No. CIVRS 1001579 (granted final approval in an action on behalf of debt resolution center employees alleging, among other things, meal and rest period violations and overtime calculation errors).

w. *Calderon v. GreatCall, Inc.*, San Diego Superior Court, Case No. 37-2010-00093743-CU-OE-CTL (granted final approval in a case on behalf of customer service employees for, among other things, alleged meal and rest period violations and overtime calculation errors).

x. *Douglas v. California Credit Union*, Los Angeles Superior Court, Case No. BC445050 (granted final approval in a case on behalf of customer service representatives alleging overtime miscalculation claims).

y. *Green v. Staples Contract and Commercial, Inc.*, Los Angeles Superior Court, Case No. BC389789 (granted final approval in a case involving claims for unprovided meal and rest periods, inaccurate wage statements, waiting time penalties, and unfair business practices on behalf of truck drivers delivering Staples office supplies in California).

z. *Green v. Universal Music Group*, Los Angeles Superior Court, Case No. BC374253 (granted final approval in a case involving misclassification claims of current or former IT Support employees, including engineers, server analysts, desktop support, and

1 technical leads).

2 aa. *Sandoval v. Rite Aid Corp.*, Los Angeles County Superior Court, Case No.
3 BC431249 (granted class certification through contested motion in case on behalf of former
4 pharmacy employees based on late final wage payments in violation of Labor Code §§ 201–
5 203; subsequently granted final approval of class action settlement).

6 bb. *Spokes v. Lush Cosmetics, LLC*, Los Angeles Superior Court, Case No.
7 BC391397 (granted final approval in a case alleging failures to provide meal and rest periods
8 and failure to timely pay all final wages to California sales associates and key holders).

9 cc. *Valencia v. SCIS Air Security Corp.*, Los Angeles Superior Court, Case No.
10 BC421485 (granted class certification through contested motion in case on behalf of former
11 security workers based on late final wage payments in violation of Labor Code §§ 201–203;
12 subsequently granted preliminary approval of proposed class action settlement).

13 6. As the above shows, the Setareh Law Group and I have substantial experience in wage-
14 and-hour class action litigation, including actions alleging failure to provide meal and/or rest periods,
15 failure to pay wages, failure to provide accurate wage statements, failure to provide timely final wage
16 payments, and other related claims. We are knowledgeable about the applicable law and have worked
17 diligently to investigate and identify the potential claims in this action. I will continue to commit my
18 firm’s resources to further the interests of the Class. Setareh Law Group and I have no known conflicts
19 of interest with Plaintiffs, the State of California, or with absent Class Members or aggrieved
20 employees.

21 **PROCEDURAL HISTORY**

22 7. On November 20, 2020, Plaintiff Amezcua submitted a PAGA Notice to the California
23 Labor & Workforce Development Agency (“LWDA”) about, mailed a copy to, and filed a putative class
24 action (the “Amezcua Action”) in Alameda County Superior Court against Gardner Trucking, Inc. and
25 Gamino & Associates, Inc. alleging seven (7) causes of action under the California Labor Code and
26 Business & Professions Code for (1) failure to provide meal periods (Cal. Lab. Code §§ 204, 223, 226.7,
27 512, and 1198); (2) failure to provide rest periods (Cal. Lab. Code §§ 204, 223, 226. 7, and 1198); (3)
28 failure to pay hourly wages (Cal. Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1197. 1 and 1198); (4)

1 failure to indemnify (Cal. Lab. Code § 2802); (5) failure to provide accurate written wage statements
 2 (Cal. Lab. Code § 226(a)); (6) failure to timely pay all final wages (Cal. Lab. Code §§ 201, 202, and
 3 203); and (7) unfair competition (Cal. Bus. & Prof. Code §§ 17200 *et seq.*).

4 8. On June 28, 2021, Plaintiff Leuzinger filed a Class Action Complaint (the “*Leuzinger*
 5 Action”) in the United States District Court for the Northern District of California, Case No. 3:21-cv-
 6 04952-TSH, alleging eight causes of action against Defendants Gardner Trucking, Inc. and CRST
 7 Expedited, Inc. for: (1) Failure to Provide Meal Periods (Cal. Lab. Code §§ 204, 223, 226. 7, 512, and
 8 1198); (2) Failure to Provide Rest Periods (Cal. Lab. Code §§ 204, 223, 226. 7, and 1198); (3) Failure to
 9 Pay Hourly Wages (Cal. Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1197.1 and 1198); (4) Failure to
 10 Indemnify (Cal. Lab. Code § 2802); (5) Failure to Provide Accurate Written Wage Statements (Cal.
 11 Lab. Code § 226(a)); (6) Failure to Timely Pay All Final Wages (Cal. Lab. Code §§ 201, 202, and 203);
 12 (7) Unfair Competition (Cal. Bus. & Prof. Code §§ 17200 *et seq.*); and (8) Failure to Pay Employees for
 13 All Hours Worked (29 U.S.C. § 201, *et seq.*) (Fair Labor Standards Act (FLSA)). (ECF 1.) The case
 14 was eventually reassigned to this Court as Case No. 4:21-cv-04952-YGR. (ECF 15.)

15 9. On August 11, 2021, Plaintiff Jensen filed a Class Action Complaint (the “*Jensen*
 16 Action”) in the Superior Court of the State of California for San Francisco County, Case No. CGC-21-
 17 594399, alleging nine causes of action against Defendant CRST Expedited, Inc. for: (1) Failure to
 18 Provide Meal Periods (Cal. Lab. Code §§ 204, 223, 226.7, 512, and 1198); (2) Failure to Provide Rest
 19 Periods (Cal. Lab. Code §§ 204, 223, 226. 7, and 1198); (3) Failure to Pay Hourly Wages (Cal. Lab.
 20 Code §§ 223, 510, 1194, 1194.2, 1197, 1197. 1 and 1198); (4) Failure to Pay Vacation Wages (Cal. Lab.
 21 Code § 227.3); (5) Failure to Indemnify (Cal. Lab. Code § 2802); (6) Failure to Provide Accurate
 22 Written Wage Statements (Cal. Lab. Code § 226(a)); (7) Failure to Timely Pay All Final Wages (Cal.
 23 Lab. Code §§ 201, 202, and 203); (8) Failure to Pay Wages Without Discount (Cal. Lab. Code § 212);
 24 and (9) Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*). (Case No. 4:21-cv-07741-YGR, ECF
 25 1-1.) On October 4, 2021, the *Jensen* Action was removed to the United States District Court for the
 26 Northern District of California and was later assigned to this Court as Case No. 4:21-cv-07741-YGR.
 27 (Case No. 4:21-cv-07741-YGR, ECF 1 and ECF 13.)

28 10. On September 24, 2021, Plaintiff Matney-Tate filed a Class Action Complaint (the

1 “*Matney-Tate* Action”) in the United States District Court for the Northern District of California, Case
 2 No. 4:21-cv-07474-YGR, alleging eight causes of action against Defendants Gardner Trucking, Inc.,
 3 Gardner Trucking Conversion, LLC, CRST The Transportation Solution, and CRST Expedited, Inc. for:
 4 (1) Failure to Pay Wages Including Overtime (Cal. Lab. Code §§ 510 and 1194); (2) Failure to Provide
 5 Meal Periods (Cal. Lab. Code §§ 226.7 and 512); (3) Failure to Provide Rest Periods (Cal. Lab. Code §§
 6 226.7, and 512); (4) Failure to Pay Timely Wages (Cal. Lab. Code § 203); (5) Failure to Provide
 7 Accurate Itemized Wage Statements (Cal. Lab. Code § 226) (6) Failure to Indemnify (Cal. Lab. Code §
 8 2802); (7) Violation of Cal. Bus. & Prof. Code §§ 17200 *et seq.*; and (8) Failure to Pay Minimum
 9 Wages (29 U.S.C. § 201, *et seq.*) (Fair Labor Standards Act (FLSA)). (Case No. 4:21-cv-07474-YGR,
 10 ECF 1.)

11 11. On September 27, 2021, Plaintiff Matney-Tate submitted a PAGA Notice to the
 12 California Labor & Workforce Development Agency (“LWDA”) about Defendants and mailed a copy
 13 to each of them regarding the same Labor Code violations alleged in the *Matney-Tate* Action.

14 12. On November 18, 2021, Plaintiff Amezcua filed a First Amended Complaint in the
 15 *Amezcua* Action adding a claim for Civil Penalties for the alleged Labor Code violations under PAGA.

16 13. On November 30, 2021, the Court held a hearing on CRST’s motion to dismiss Plaintiff
 17 Jensen’s complaint and Plaintiff Jensen’s motion to consolidate his case with the *Leuzinger* Action, the
 18 *Matney-Tate* Action, and *Castro v. Gardner Trucking, Inc.*, Case No. 4:20-cv-5473-YGR (the “*Castro*
 19 *Action*”), another wage and hour class action against CRST pending before this Court. (ECF 28.)
 20 Following the hearing, the Court denied CRST’s motion to dismiss, granted Plaintiff Jensen’s motion to
 21 consolidate, and ordered the clerk to consolidate the *Jensen* Action with the *Castro*, *Leuzinger*, and
 22 *Matney-Tate* Actions. (ECF 29.) On January 10, 2022, the Court held a status conference for the newly
 23 consolidated matters and ordered that the *Castro* Action would proceed independently and that Plaintiffs
 24 Jensen, Leuzinger, and Matney-Tate should file a consolidated complaint in the *Leuzinger* Action,
 25 which was the designated lead case, in order to combine the various allegations they made against
 26 CRST and Gardner Trucking, Inc. (ECF 33.) On March 23, 2022, Plaintiffs Jensen, Leuzinger, and
 27 Matney-Tate filed their Consolidated Complaint. (ECF 47.) On April 22, 2022, CRST moved to
 28 dismiss and/or strike the Consolidated Complaint. (ECF 50.)

1 14. On December 2, 2021, Plaintiff Matney-Tate filed a PAGA Representative Complaint
 2 (the “*Matney-Tate* PAGA Action”) in the Superior Court of the State of California for San Joaquin
 3 County, Case No. STK-CV-UOE-2021-11019, alleging a cause of action for civil penalties pursuant to
 4 PAGA for the Labor Code violations alleged in the *Matney-Tate* Action against Defendants Gardner
 5 Trucking, Inc., Gardner Trucking Conversion, LLC, CRST The Transportation Solution, and CRST
 6 Expedited, Inc.

7 15. On June 1, 2022, Plaintiffs Leuzinger, Matney-Tate, and Jensen and CRST agreed to
 8 attend mediation with Steven G. Mehta in order to try to resolve the case. Through mutually agreed
 9 upon informal discovery in advance of mediation, CRST provided Class Counsel with documents,
 10 including copies of applicable versions of personnel and payroll policies, and relevant data for the
 11 putative class. However, a settlement could not be reached at that mediation session.

12 16. On June 8, 2022, the Court granted CRST’s motion to dismiss and/or strike the
 13 Consolidated Complaint and ordered Plaintiffs Jensen, Leuzinger, and Matney-Tate to file an amended
 14 consolidated complaint. (ECF 64.) On June 20, 2022, they filed their First Amended Consolidated
 15 Class Action Complaint (“FAC”). (ECF 66.) On July 6, 2022, CRST filed its Answer to the FAC.
 16 (ECF 69.)

17 17. On October 25, 2022, the *Amezcu*a Action was removed to the United States District
 18 Court for the Northern District of California and was later assigned to this Court as Case No. 4:22-cv-
 19 06501-YGR. (Case No. 4:22-cv-06501-YGR, ECF 1 and ECF 13.) On February 16, 2023, CRST filed
 20 a motion to consolidate the *Amezcu*a Action with the *Leuzinger* Action. (Case No. 4:22-cv-06501-
 21 YGR, ECF 26.) On March 2, 2023, the Court granted the motion, and the *Amezcu*a Action was ordered
 22 consolidated with the *Leuzinger* Action, and the new consolidated action was renamed *In re Gardner*
 23 *Trucking Wage and Hour Litigation* (the “Action”). (Case No. 4:22-cv-06501-YGR, ECF 33.) On
 24 March 22, 2023, Plaintiffs filed the Second Consolidated Class Action Complaint (“SAC”) in the
 25 Action, adding Plaintiff Amezcu. (ECF 88.) On April 4, 2023, CRST filed its Answer to the SAC.
 26 (ECF 89.)

27 18. On October 16, 2023, the Parties participated in a second arm’s-length mediation, this
 28 time with Hon. Amy D. Hogue (Ret.), a well-renowned and experienced wage and hour class action

mediator and former presiding judge of the Civil Complex Litigation division of Los Angeles Superior Court. CRST provided class data updated from the first mediation session. At the mediation, the Parties debated their legal positions, the likelihood of certification of Plaintiffs' claims, and the legal bases for the claims and defenses. Ultimately, the Parties agreed resolve the Action on a class-wide basis pursuant to a mediator's proposal.

19. On February 27, 2024, after thorough discussion and revisions, the Parties fully executed a Memorandum of Understanding that memorialized the major terms of the Settlement.

20. On April 26, 2024, Plaintiff Amezcua submitted an Amended PAGA Notice to the LWDA and served it upon CRST, to which a copy of Plaintiffs' proposed Third Amended Consolidated Class Action Complaint ("TAC"), was attached as an enclosure. The proposed TAC is intended to be the operative complaint for the purposes of this Settlement, and it will cover the claims released thereunder. Once the 65-day exhaustion period required under PAGA has transpired without the LWDA taking action, Plaintiffs will seek leave of the Court to file the TAC to make it the Operative Complaint in this Action. Plaintiffs' selected hearing date for this Motion, July 9, 2024, is more than 70 days after submission of the Amended PAGA Notices, and thus, the TAC will be on file before the Court rules as to whether to grant preliminary approval. A true and correct copy of the email from the LWDA confirming receipt of the Amended PAGA Notice is attached hereto as **Exhibit 2**. A true and correct copy of the Amended PAGA Notice letter and enclosed TAC is attached hereto as **Exhibit 3**.

21. On April 30, 2024, the Parties fully executed the Settlement Agreement, and Plaintiff Amezcua submitted a copy of the fully executed Settlement Agreement to the LWDA. A true and correct copy of the email from the LWDA confirming receipt of the fully executed Settlement Agreement is attached hereto as **Exhibit 4**.

22. After the Motion has been filed with the Court, Plaintiffs will submit the conformed copies of the Motion received via ECF to the LWDA.

PLAINTIFFS' CLAIMS AND DEFENDANTS' DEFENSES

Unpaid Wages

23. **Off-the-Clock Work.** Plaintiffs claim that they performed work while off-the-clock, resulting in unpaid wages, based upon the following factual allegations:

1 a. Defendants' trucks are kept at each of their respective locations. Class Members
2 are required to arrive to work early, park their own cars at Defendants' yards, and walk to
3 Defendants' Shipping and Receiving ("S&R") desks. This walk can take up to 5 minutes upon
4 early arrival. Once at S&R, Class Members need to wait to be provided with their daily work
5 and delivery schedules each morning. Once provided, they are required to fill out various
6 paperwork and file copies of their daily schedules in their respective employee files, located at
7 the S&R office. This process takes at least another 5 minutes. Once complete, they must walk to
8 the yard where Defendants' vehicles are kept. Class Members then take up to 30 minutes each
9 day inspecting their vehicles for various mechanical and safety issues prior to starting their daily
10 drives. Once completed, they board their vehicles to clock in for work.

11 b. Each of Defendants trucks are equipped with a remote Qualcomm device, which is
12 linked to the Sprint wireless network. This device was typically installed at the center of the
13 vehicle's dashboard and was used to track each class members' start and end time for their
14 shifts, track their work and various jobs throughout the day, as well as track their meal rest
15 breaks. However, the Qualcomm device needs to be turned on and booted up at the start of each
16 shift, and before Class Members were able to clock in. The boot up time took anywhere between
17 5 to 8 minutes on average, depending on whether a restart was needed. Once clocked in, Class
18 Members would finally depart.

19 c. In addition to the Qualcomm system, Class Members were also provided with
20 daily Driver Timesheets, to be completed each workday. These time sheets allow for the
21 recording of: the arrival and departure for each delivery; the odometer reading at the start and
22 end of each delivery; a table detailing the number of meal and rest breaks to be provided each
23 shift; the start and end time for each meal and rest break taken; the opportunity to waive first
24 and/or second meal periods; and the time Class Members reported to work.

25 d. To make matters worse, Class Members were required to monitor their personal
26 cell phones throughout their entire shift and respond to frequent calls from their supervisors,
27 including during meal unpaid meal periods as well as rest breaks.

28 e. All of the tasks above were worked by Class Members, prior to clocking in, and

1 off the clock, and for which no working time was recorded, nor wages paid.

2 24. **Rounding of Time Worked.** Plaintiffs claim that Defendants rounding practice
3 resulted in unpaid wages based upon the following factual allegations: Defendants rounded Class
4 Members' time worked down more than they rounded up for the purposes of calculating wages.
5 Defendants' uneven rounding resulted in the non-payment of minimum wages for all time worked, as
6 well as the non-payment of overtime wages to Plaintiffs and class members.

7 25. **Incorrect Regular Rate of Pay.** Plaintiffs claim that they were not paid all overtime
8 and premium wages based upon the following factual allegations:

9 a. Plaintiffs and class members received non-discretionary and performance-based
10 bonuses in the same pay periods in which Plaintiffs and class members were regularly,
11 consistently, and frequently scheduled to work, and actually worked, in excess of eight (8), ten
12 (10), and sixteen (16) hours a day.

13 b. Additionally, during the relevant time frame, Defendants also compensated
14 Plaintiffs and the class members with shift differentials in pay periods where class members
15 worked in excess eight (8), ten (10), and sixteen (16) hours a day.

16 c. However, Defendants failed to upwardly adjust Plaintiffs' and class members'
17 regular rates of pay by failing to incorporate the value of their bonuses and shift differentials
18 when calculating their overtime and double-time rates of pay. As such, Plaintiffs and class
19 members were not properly compensated for overtime and double-time hours worked at the
20 correct rates of pay. Thus, Plaintiffs and class members were required to work overtime and
21 double-time hours each pay period but were not paid their proper overtime and double-time
22 wages for each respective pay period in which they earned these forms compensation in addition
23 to their straight time pay.

24 d. Defendants further failed to incorporate all bonuses earned and other
25 remunerations into Plaintiffs' and class member's regular rates of pay when calculating meal
26 and rest period premiums.

27 26. **Defendants' Defenses to Unpaid Wage Claims.** Defendants generally deny all of
28 Plaintiffs' allegations. Furthermore, Defendants contend the following as defenses against Plaintiffs'

1 unpaid wage claims:

2 a. Plaintiffs’ allegations that CRST failed to pay drivers for all hours worked do
3 not apply to Plaintiff Jensen and the Expedited Solutions drivers. Those drivers were paid in two
4 ways. First, CRST paid them through flat rate load pay that compensates them for delivering the
5 load and performing all driving and non-driving tasks necessary to safely deliver the load. This
6 is calculated by taking the number of estimated miles associated with a load, splitting those
7 miles between the two drivers involved in completing the delivery, and multiplying those miles
8 by the per mile compensation rate that a driver is assigned based on his or her experience. The
9 per mile rate determines the amount that will be paid; it does not define the work for which
10 drivers are paid. Drivers know how much they will be paid for the delivery of the load at the
11 time they accept the load for delivery.

12 b. Second, CRST also provides ancillary pay to Expedited Solutions drivers for
13 non-normal work duties unrelated to delivering a load—e.g., for time spent on layovers, time
14 spent during breakdowns, and time spent performing city work. Defendants contend Plaintiffs’
15 boot up time allegations also lack merit as applied to Expedited Solutions drivers because they
16 drive as teams; as a result, when one driver logs out of the onboard computing system, the other
17 driver logs in. There is no shut down of the system and thus no bootup time. To the extent
18 CRST paid Dedicated West drivers, on the other hand, on an hourly basis, they did not “boot
19 up” before starting work, and CRST paid them based on the work hours they wrote on their
20 daily trip sheets or manifests. Accordingly, CRST contends there is no basis for Plaintiffs’
21 allegation that they spent “boot up” time before starting their work when they manually
22 recorded their work hours.

23 c. The FLSA states that employers generally need not compensate employees for
24 time spent on activities that are “preliminary” and “postliminary” to an employee’s “principal
25 activities.” 29 U.S.C. § 254(a). The Portal-to-Portal Act provides that non-compensable
26 activities include: (1) walking, riding, or traveling to and from the actual place of performance
27 of the principal activity or activities which such employee is employed to perform, and (2)
28 activities preliminary to or postliminary to said principal activity or activities, which occur either

1 prior to the time on any particular workday at which such employee commences, or subsequent
 2 to the time on any particular workday at which he ceases, such principal activity or activities. 29
 3 U.S.C. § 254(a). “The words ‘preliminary activity’ mean an activity engaged in by an employee
 4 before the commencement of his ‘principal’ activity or activities, and the words ‘postliminary
 5 activity’ means an activity engaged in by an employee after the completion of his “principal”
 6 activity or activities.” 29 C.F.R. § 790.7(b). The U.S. Supreme Court has created an exception
 7 to the rule that preliminary and postliminary activities are not compensable. *See Steiner v.*
 8 *Mitchell*, 350 U.S. 247, 253–56 (1956). “Preliminary and postliminary activities are still
 9 compensable under the Portal-to-Portal Act if they are ‘integral and indispensable’ to an
 10 employee’s principal activities.” *Busk v. Integrity Staffing Solutions, Inc.*, 713 F.3d 525, 530
 11 (9th Cir.2013) (quoting *Steiner*, 350 U.S. at 249). And “[t]o be ‘integral and indispensable,’ an
 12 activity must be (1) ‘necessary to the principal work performed’ and (2) ‘done for the benefit of
 13 the employer.’” *Id.* at 530. The question in each case is, of course, context specific.
 14 Courts—including the Ninth Circuit—have consistently found that “boot up” time is generally
 15 not compensable and thus does not impact the calculation of minimum wages. *See, e.g., Corbin*
 16 *v. Time Warner Ent.-Advance/Newhouse P’ship*, 821 F.3d 1069, 1081 (9th Cir. 2016) (one
 17 minute of uncompensated work time arising from employee’s actions in logging into auxiliary
 18 computer program before logging into employee’s online timekeeping system was de minimis,
 19 and employer thus did not violate the FLSA by failing to compensate employee for that time);
 20 *Perez v. Banana Republic, LLC*, No. 14-CV-01132-JCS, 2014 WL 2918421, at *6 (N.D. Cal.
 21 June 26, 2014); *Cadena v. Customer Connexx LLC*, No. 2:18-cv-00233-APG-DJA, 2021 WL
 22 3112446, at *8 (D. Nev. July 21, 2021). *See also Gillings v. Time Warner Cable LLC*, No. CV
 23 10-5565-AG RNBX, 2012 WL 1656937, at *4 (C.D. Cal. Mar. 26, 2012), *aff’d in relevant part*,
 24 583 F. App’x 712 (9th Cir. 2014) (“[T]he Court finds that the time spent by Plaintiffs loading
 25 their computer before they could clock into Kronos was de minimus.”).

26 d. With respect to Plaintiffs’ rounding time allegations, Defendants specifically
 27 deny that there is any evidence that CRST’s timekeeping systems rounded down more than they
 28 rounded up. And Plaintiffs’ allegations do not apply to drivers for whom hours worked are

1 based on time manually recorded by drivers in daily timesheets during a substantial portion of
2 the relevant time period.

3 e. Defendants additionally contend that Plaintiffs' allegations about the regular rate
4 of pay utilized to calculate overtime and premium wages owed lack merit for several reasons.
5 First, they argue Plaintiffs are exempt from both FLSA and California overtime requirements.
6 California law does not require overtime for "employees whose hours of service are regulated
7 by (1) the United States Department of Transportation Code of Federal Regulations, Title 49,
8 Sections 395.1 to 395.13, Hours of Service of Drivers; or (2) Title 13 of the California Code of
9 Regulations, subchapter 6.5, Section 1200 and following sections, regulating hours of drivers."
10 IWC Wage Order No. 9-2001 ("Wage Order No. 9"), § 3(L). That overtime exemption parallels
11 the "motor carrier overtime exemption" found in the FLSA which generally applies to motor
12 carriers and truck drivers who operate commercial motor vehicles in interstate commerce. *See*
13 *Collins v. Overnite Transp.*, 129 Cal. Rptr. 2d 254, 256 (Cal. Ct. App. 2003) (describing
14 California's motor carrier exemption as being "based on" FMCSA regulations and "parallel"
15 California regulations). And it adds an exemption for drivers operating commercial motor
16 vehicles with a gross vehicle weight rating (GVWR) of 26,001 or more pounds. *Williams v.*
17 *Hilarides*, No. 1:12-CV-0294 AWI DLB, 2013 WL 459611, at *5 (E.D. Cal. Feb. 5, 2013).
18 Plaintiffs all operated commercial motor vehicles with a GVWR in excess of 26,000 pounds.
19 For this reason alone, CRST contends Plaintiffs' California overtime claims lack merit.

20 f. Additionally, as a motor carrier, CRST called on drivers to transport loads in
21 interstate commerce—i.e., loads that travel "(1) between a place in a State and a place outside of
22 such State (including a place outside the United States); (2) between two places in a State
23 through another State or a place outside of the United States; or (3) between two places in a
24 State as part of trade, traffic, or transportation originating or terminating outside the State or the
25 United States." 49 C.F.R. § 390.5. At the time of being hired, all of CRST Expedited and
26 Gardner's drivers are qualified under the Federal Motor Carrier Safety Regulations (FMCSRs)
27 to haul interstate loads and were required to maintain CDLs, meet the FMCSR driver-
28 qualification requirements, log their hours of service when driving, and to undergo DOT drug

and alcohol testing. Some drivers drove loads across state lines while others drove loads to and from the ports and interstate rail yards that were part of interstate movements. Their work is governed by the DOT hours of service regulations. And the motor carrier exemption applies to all drivers of vehicles that exceed 10,000 pounds and who haul loads in interstate commerce. *See* 29 C.F.R. § 782.3(a).

g. Additionally, and as discussed in Paragraph 27 below, to the extent Plaintiffs' claims are based on the failure to pay premiums for violations of California's meal and rest break rules, CRST contends such claims are preempted under the Supremacy Clause of the U.S. Constitution, art. VI, cl. 2. *See California's Meal and Rest Break Rules for Commercial Motor Vehicle Drivers; Petition for Determination of Preemption*, 83 Fed. Reg. 67470 (Dec. 28, 2018); *see also Int'l Bhd. of Teamsters, Loc. 2785 v. Fed. Motor Carrier Safety Admin.*, 986 F.3d 841 (9th Cir. 2021); *Valiente v. Swift Transportation Co. of Az., LLC*, 54 F.4th 581, 585 (9th Cir. 2022).

Meal Break and Rest Break Violations

27. **Plaintiffs' Claims.** Plaintiffs claim that they were not provided legally required meal breaks and rest breaks during their shifts based upon the following factual allegations:

a. Defendants have implemented the same meal and rest break policies and practices since 2016.

b. Defendants' meal period policy affords Class Members one 30-minute and duty-free meal period for every 5 hours worked. However, in practice, Class Members were consistently denied the opportunity to take meal periods in accordance with California law. As an initial matter, Class Members' time sheets reflect shifts in excess of 11 and 12 hours with no second meal periods being taken. The time sheets have designated slots for up to 3 meal periods, which were consistently denied.

c. Additionally, as mentioned above, Class Members' meal and rest breaks were regularly interrupted by work-related calls on their personal cell phones, which they were required to keep on and continuously monitor throughout their shifts. This comports with Defendants' defective written rest break policy, which fails to require that Class members be

1 relieved of all duty during their designated rest breaks.

2 d. Finally, the substantial pre-shift and off-the-clock work, as discussed above in
3 Paragraph 23, unlawfully delayed Class Members' meal and rest breaks, all in violation of
4 California law.

5 28. **Defendants' Defenses.** Defendants generally deny all of Plaintiffs' allegations. As
6 noted above in Paragraph 26, Defendants contend Plaintiffs' meal and rest break claims are preempted
7 by federal law. Specifically, in December 2018, the FMCSA issued an order concluding California's
8 meal and rest break rules are preempted by federal law as applied to property-carrying commercial
9 motor vehicle drivers covered by the FMCSA's hours-of-services regulations (such as Plaintiffs and
10 their putative class members). *See California's Meal and Rest Break Rules for Commercial Motor*
11 *Vehicle Drivers*, 83 Fed. Reg. 67470 (Dec. 28, 2018). The Ninth Circuit has upheld the FMCSA's
12 preemption determination. *See Int'l Bhd. of Teamsters*, 986 F.3d 841 at 858. That determination applies
13 to claims "regardless of when the underlying conduct occurred." *Valiente v. Swift Transportation Co. of*
14 *Arizona, LLC*, 54 F.4th 581, 585 (9th Cir. 2022). CRST contends its drivers haul freight moving in
15 interstate commerce, and they are therefore all subject to the DOT hours of service regulations. The
16 FMCSA's order accordingly preempts their meal and rest break claims. *See Salter v. Quality Carriers,*
17 *Inc.*, No. CV 20-479-JFW(JPRX), 2021 WL 5049054, at *9 (C.D. Cal. Oct. 27, 2021) (granting
18 summary judgment to defendant motor carrier on plaintiff's claims alleging California meal and rest
19 period violations); *Henry v. Cent. Freight Lines, Inc.*, No. 2:16-cv-00280-JAM-EFB, 2019 WL
20 2465330, at *4 (E.D. Cal. June 13, 2019) (same); *Ayala v. U.S. Xpress Enterprises, Inc.*, No. EDCV 16-
21 137-GW(KKX), 2019 WL 1986760, at *3 (C.D. Cal. May 2, 2019) (same).

22 **Unreimbursed Expenses**

23 29. **Plaintiffs' Claims.** Plaintiffs claim that Defendants required Plaintiff and class members
24 to incur necessary expenditures to execute their work duties but failed to reimburse them based on the
25 following factual allegations: As mentioned above, Class Members were required to use their personal
26 cell phones to execute their work-related duties under Defendants' employ. First, they were required to
27 respond to calls and text messages from management throughout the workday. Additionally, Class
28 Members were never provided with maps or a GPS system to help them navigate. As such, Class

Members were forced to use the GPS applications on their personal cell phones, to map their routes each workday.

30. **Defendants’ Defenses.** Defendants generally deny all of Plaintiffs’ allegations. Defendants contend Plaintiffs will be unable to establish that the expenses they seek reimbursement for were “necessary” for or in “direct consequence” of their duties or that CRST ordered them to incur the expenses. Cal. Lab. Code § 2802(a). If a worker’s business expenses are merely optional, then an employer has no duty to reimburse under Section 2802. *See Novak v. Boeing Co.*, No. 09-01011, 2011 WL 9160940, at *3 (C.D. Cal. July 20, 2011). “Whether an expense is ‘necessary’ depends in part on the “reasonableness of the employee’s choices.” *Williams*, 2021 WL 5816287, at *8; *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal. 4th 554, 568 (Cal. 2007). And when it comes to reimbursing over-the-road truck drivers for the cost of using their personal cell phones when they have access to an onboard computer in their trucks, a court will have to “determin[e] whether phone-related expenses incurred by individual drivers were ‘necessary’” which “would require the court to determine why each driver who elected to use his or her cell phone for work related purposes chose to do so, and whether such a choice was reasonable under the circumstances.” *Williams v. J.B. Hunt Transport, Inc.*, Case No. SA CV 20-1701 PSG (JDEx), 2021 WL 5816287, at *8 (Dec. 7, 2021); *Huckaby v. CRST Expedited, Inc.*, No. 221CV07766ODWPDx, 2022 WL 17101232, at *8 (C.D. Cal. Oct. 3, 2022), *on reconsideration in part*, 2023 WL 2869276 (C.D. Cal. Apr. 10, 2023).

a. CRST contends evidence demonstrates it equipped each truck driven by Plaintiffs and putative class members with an onboard computer (in the form of either a “Qualcomm” unit or “Maven” unit) that drivers can use to communicate with their driver managers, the safety department, and other individuals in their respective organizations. Drivers do not need a cell phone for communication when they can use the Qualcomm or Maven units. The company contends Plaintiffs, meanwhile, will be unable to identify any policy showing that CRST required drivers to use their cell phones. The evidence will also show that drivers can and did use their Qualcomm units to communicate on various issues—including to communicate with their driver manager to request new loads, to receive and accept new loads, to acknowledge that they have completed the delivery of a load, to communicate about logging issues and errors,

1 to communicate about issues related to fueling their truck, and to communicate on issues related
 2 to reimbursement for tickets. Of course, while drivers have free access to the onboard
 3 computing system, some drivers will use their cell phone on occasion to communicate for their
 4 own personal preference or convenience. But as the Court in *Huckaby* recognized, phone
 5 expenses incurred by employees who voluntarily elect to use their cell phones when they have
 6 other forms of employer-provided communication systems available do not constitute necessary
 7 business expenses. *See Huckaby*, 2022 WL 1710232, at *8-9; *see also Novak*, 2011 WL
 8 9160940, at *3; *Carter v. Entercom Sacramento, LLC*, 219 Cal.App.4th 337, 346 (Cal. Ct. App.
 9 2013) (unnecessary employee expenditures are not subject to the right of indemnity under
 10 Section 2802).

11 b. There are also no records showing if, when, or how often drivers used their cell
 12 phones.

13 c. And finally, Plaintiffs will be unable to certify a class related to their cell phone
 14 reimbursement expense claim because “determining whether phone-related expenses incurred
 15 by individual drivers were ‘necessary’ . . . would require the Court to determine why each driver
 16 who elected to use his or her cell phone for work related purposes chose to do so, and whether
 17 such a choice was reasonable under the circumstances.” *Huckaby*, 2022 WL 1710232, at *8-9;
 18 *Williams*, 2021 WL 5816287, at *8. CRST recently defeated class certification of a Section
 19 2802 claim based on precisely the same reasons in a related matter filed against CRST, which is
 20 discussed below. *Huckaby*, 2022 WL 1710232, at *9 (“[T]o resolve the question of whether
 21 CRST must reimburse the Business Expense Subclass for cell phone expenses, the Court would
 22 be required to determine whether drivers incurred phone-related expenses that were reasonably
 23 necessary under the circumstances.”) (quotation omitted). Defendants contend there is no reason
 24 for Plaintiffs or the Court to conclude there will be a different outcome in this case.

25 **Unpaid Vested Vacation Wages**

26 31. **Plaintiffs’ Claims.** Plaintiffs claim that Defendants failed to pay Plaintiffs and class
 27 members vested vacation wages based on the following factual allegations: Plaintiffs and the putative
 28 class accrued vacation wages during their employment with Defendants. Under California law, vacation

wages are considered a form of wages under Labor Code section 200. Vested vacation pay and other similar forms of paid time off earned based on labor performed are considered wages that cannot be subject to forfeiture without compensation for forfeited days at the applicable rates required by law. At all relevant times, Defendants maintained policies that provide for the unlawful forfeiture of vested vacation pay in violation of Labor Code section 227.3 and *Suastez v. Plastic Dress-Up Co.*, (1982) 31 Cal. 3d 774. Plaintiffs and the putative class are entitled to vacation accrued during their employment with Defendants. However, upon termination or separation of employment, Defendants failed to pay Plaintiffs and the putative class for all accrued vacation pay. As such, Plaintiffs and class members were both entitled to vested vacation wages and were denied vested vacation wages in violation of Labor Code § 227. *See Whitehead v. Pacifica Senior Living Mgt. LLC*, 21-15035, 2022 WL 313844, at *3 (9th Cir. Feb. 2, 2022).

32. **Defendants’ Defenses.** Defendants contend CRST has longstanding policies and practices that comply with Section 227.3. For all relevant times here, Jensen and Expedited Solutions drivers were subject to a policy where “all unused accrued vacation is considered wages earned” and CRST was required to pay that sum “upon termination.” Leuzinger, Matney-Tate, and other Dedicated West drivers, meanwhile, were subject to a similar policy where “upon termination of employment, employees will be paid all accrued and unused vacation time earned through the last day worked.” Under these policies, Plaintiffs and Settlement Class members were paid all accrued (and vested) vacation time upon termination. And Plaintiffs cannot show—nor have they alleged—specific evidence to the contrary.

Derivative Claims

33. **Plaintiffs’ Claims.** Plaintiffs allege claims for statutory penalties under Labor Code section 203 for failure to timely pay all final wages. This is purely derived from the fact that upon termination, the unpaid wages to any employee would not be reflected in the final paycheck upon separation of employment, since they were never paid or recorded in the first place, and the final paycheck would be based only upon the records that were kept by the employer. Plaintiffs allege claims for statutory penalties under Labor Code section 226 for failure to provide accurate itemized wage statements. This is purely derived from the fact that any unpaid wages would not be reflected in the

1 wage statements provided with the paycheck, and such the wage statements must, by definition, be
 2 inaccurate. Plaintiffs also seek restitution of unpaid wages under Business and Professions Code section
 3 17200 *et seq.* for unfair competition. The UCL provides for restitution of amounts gained through
 4 unjust enrichment by unfair competition, which is how unpaid wages are characterized, so the claim is
 5 also purely derived from the same underlying Labor Code violations. Finally, Plaintiffs seek civil
 6 penalties under Labor Code section 2698 *et seq.* (PAGA), which derive by definition from the same
 7 alleged substantive Labor Code violations.

8 34. **Defendants’ Defenses.** CRST contends Plaintiffs’ derivative claims will fail for the
 9 same reasons as their underlying, substantive claims. Additionally, CRST asserts that Plaintiffs cannot
 10 prove that any nonpayment was willful—a requirement for recovery based on the failure to timely pay
 11 wages owed under Section 203. *See Smith v. Rae-Venter Law Grp.*, 29 Cal. 4th 345, 354 n.3 (Cal.
 12 2002). Nonpayment of wages is not willful when, as here, the employer has a good faith reason to
 13 believe that all wages have in fact been paid. *Id.* Nor can Plaintiffs show CRST knowingly and
 14 intentionally violated Labor Code Section 226, as is required to recover penalties for CRST’s alleged
 15 failure to provide accurate wage statements. This is because CRST has a good faith defense that
 16 Plaintiffs are not owed any wages based on the overtime exemption, and FMCSA preemption of meal
 17 and rest break requirements. The clear weight of authority applies a good faith defense to wage
 18 statement penalty claims. *See, e.g., Ornelas v. Tapestry, Inc.*, No. C 18-06453 WHA, 2021 WL
 19 2778538, at *7 (N.D. Cal., July 2, 2021) (“While plaintiff points to a few cases finding that a good faith
 20 dispute that acts as a defense under Section 203 cannot be applied to Section 226, defendant rightly
 21 points out that the weight of authority has held that it does. A majority of courts find that an employer’s
 22 good faith belief that it is not violating Section 226 precludes a finding of a knowing and intentional
 23 violation. This order adopts the majority view that a good faith dispute can preclude recovery by the
 24 plaintiff under both Section 203 and Section 226.”).

25 **PLAINTIFFS’ ASSESSMENT OF DAMAGES**

26 35. The following chart provides the estimated potential recovery on a class basis that
 27 Plaintiffs believe they could reasonably achieve *if they were to prevail on all their claims*:
 28

Plaintiffs' Estimated Potential RecoveryAssumptions based on data from CRST (as of October 31, 2023):

Putative Class Members ("PCMs"): 12,680	Putative PAGA Members (PCMs in 1-yr SOL): 9,690
Total Workweeks: 636,964	Pay Periods during PAGA Period: 431,488 (Weekly)
Avg Straight Time ("ST") Rate: \$25.00/hour	Avg Reg Rate Factor: 105% Avg ST Rate (5% more)
Avg Off-the-Clock Time: 15 mins/Workweek	Avg Net Rounding Loss: 7.5 min/Workweek
Avg. Shifts/Workweek: 4.5	Avg Reimbursable Expenses: \$10/Workmonth
Total Workmonths: 146,992	PCMs Separated during 3-yr SOL: 7,549
Meal Break Violation Rate: 15%	Rest Break Violation Rate: 15%
Avg. Min Wage: \$13.00/hr	Gardner-Dedicated West Workweeks: 448,166

Claim	Estimated Potential Recovery	Calculations for Estimated Potential Recovery
Off-the-Clock Unpaid Overtime Wages	\$6,270,114.38	15 mins/Workweek Avg Off-the-Clock x 636,964 workweeks x \$25.00/hr Avg. Wage x 105% Avg. Reg Rate Factor x 1.5 OT multiplier
Off-the-Clock Unpaid Minimum Wages	\$1,456,539.50	15 mins/Workweek Avg Off-the-Clock x 448,166 Gardner-Dedicated West Workweeks x \$13.00/hr Avg. Min Wage
Rounding Overtime Unpaid Wages	\$3,135,057.19	7.5 mins/Workweek Avg Net Rounding Loss x 636,964 workweeks x \$25.00/hr Avg. Wage x 105% Avg. Reg Rate Factor x 1.5 OT multiplier
Meal Period Premiums	\$11,286,205.88	15% Meal Break Violation Rate x 636,964 workweeks x 4.5 Avg. Shifts/Workweek x \$25.00/hr Avg. Wage x 105% Avg. Reg Rate Factor
Rest Period Premiums	\$11,286,205.88	15% Rest Break Violation Rate x 636,964 workweeks x 4.5 Avg. Shifts/Workweek x \$25.00/hr Avg. Wage x 105% Avg. Reg Rate Factor
Expense Reimbursement	\$1,469,920.00	146,992 Total Workmonths x \$10/Workmonth Avg Reimbursable Expenses
Subtotal (Compensatory Claims)	\$34,904,042.81	Sum of all above
Late Pay (Labor Code § 203) Penalties	\$45,294,000.00	7,549 PCMs Separated During 3-yr SOL x \$25.00/hr Avg. ST Rate x 8 hours/day x 30 days
Wage Statement (Labor Code § 226) Penalties	\$38,760,000.00	9,690 PCMs in 1-yr SOL x \$4,000 Maximum Penalty per PCM
Subtotal (Statutory Penalties)	\$84,054,000.00	Sum of Late Pay and Wage Statement Penalties

PAGA Penalties	\$43,148,800.00	431,488 Total PAGA Pay Periods x \$100 initial penalty
Total Potential Recovery	\$162,106,842.81	<i>Sum of all above</i>

36. The data used in the above chart is based upon information provided by Defendants for the Parties' mediations. Furthermore, Plaintiffs and Plaintiffs' counsel have not found any evidence of unpaid vested vacation pay for Plaintiffs or putative class members. Plaintiff Jensen believed that he could have been eligible for vacation benefits, but he had only worked for CRST for 6 months. The other Plaintiffs, who had worked for CRST (or Gardner before the merger) for longer did not make such claims and appear to have been paid all vested vacation wages upon separation of employment or shortly thereafter. Accordingly, the estimated potential recovery on the vacation pay claim here is zero. Also, there are no claims for minimum wages for the Expedited Solutions Class, as such claims were carved out in the terms of the Settlement, to leave undisturbed the claims of the Amended Piece-Rate Class certified in *Huckaby*.

37. Despite a total potential recovery of just under \$35 million on their compensatory claims (i.e., for unpaid wages and reimbursable expenses), and just under \$119 million on all class claims, including statutory penalties, Plaintiffs recognize the challenges they face in certifying a class action and establishing liability on the wage and hour claims. Plaintiffs estimate that their likelihood of prevailing on all their causes of action are extremely low and thus their likelihood of recovering \$119 million or anything close to that amount on behalf of a class is very unlikely.

38. **Risks Supporting Discount.** To obtain a realistic value of the claims, the estimated potential recovery must be adjusted according to the attendant risks at each of the major procedural thresholds of proving liability on the merits at trial, prevailing on an appeal, or obtaining class certification—all three of which Plaintiffs will likely have to prevail to succeed in litigation. With respect to the claims asserted on behalf of the Settlement Classes in this case, there are significant risks that support the reduced compromise amount. As discussed in detail in Paragraphs 23 through 34, above, these risks include, but are not limited to, the following:

(i) Compensatory Claims – Liability – Trial/Summary Judgment Risks. There is the risk that Plaintiffs would be unable to establish liability on the compensatory claims, i.e. for

1 alleged unpaid overtime wages, for alleged failure to provide compliant meal periods and rest
2 breaks, or for failure to reimburse necessary expenditures on the facts. But, this is heightened
3 by the significant risk that California law regarding Plaintiffs' meal and rest break claims could
4 be found to be pre-empted by federal law for Settlement Class Members, and that Plaintiffs and
5 Settlement Class Members may be found to be exempt from overtime under California and
6 federal law. Plaintiffs also face significant obstacles to succeeding on the merits of their
7 minimum wage claims in light of CRST policies requiring drivers record all hours worked.
8 Thus, the likelihood of succeeding on the merits at trial or upon motion for summary
9 adjudication (50% under normal circumstances) is reduced to 40%.

10 (ii) Compensatory Claims – Liability – Appellate Risks. This 40% likelihood of
11 success on the merits also goes to any appeals filed to reverse an unfavorable decision and is a
12 risk factor that must also be applied to the potential recovery analysis.

13 (iii) Compensatory Claims – Certification Risks. There is a risk that that to establish
14 liability would require an individualized inquiry that would prevent these issues from being
15 resolved on a class and/or collective basis. *See Duran v. US Bank Nat'l Ass'n*, 59 Cal.4th 1, 39,
16 n. 33 (2014) (citing *Dilts v. Penske Logistics, LLC*, No. 08-cv-218-CAB (BLM), 2014 WL
17 305039 (S.D. Cal. Jan. 21, 2014) (dismissing certified off-the-clock claims based on proof at
18 trial)). For example, Plaintiffs alleged that Defendants maintained a policy or practice of
19 requiring Plaintiffs and the putative class members to work through meal breaks and rest breaks.
20 Defendants denied these allegations and contend that, even if those claims are not pre-empted,
21 any inquiry into why some employees missed meal and rest breaks would necessarily require an
22 individualized inquiry that would prevent this issue from being resolved on a class and/or
23 collective basis. As another example, Defendants have contended that Plaintiffs' allegations in
24 support of their claims for unpaid wages are not subject to common proof since they are based
25 on Plaintiffs' allegation that drivers performed work off the clock, despite CRST's policies
26 requiring that drivers record all hours worked, and the variations in the methods by which CRST
27 paid Dedicated West drivers. For a final example, CRST has contended that it does not have a
28 uniform policy requiring drivers to have cell phones, only a "functional two-way

communication device,” and it equips each truck with an onboard Qualcomm communication system for that purpose, and though cell phones can be used to submit required paperwork, there exist other methods by which such paperwork could be submitted. Thus, determining when and why each individual driver used a cell phone, and the reasonableness of that decision under the circumstances, would require an individualized and fact-intensive analysis that would predominate over any common questions on the expense reimbursement claim. Plaintiffs believe that they could muster evidence from the putative class members to show that these occurrences are common to all of them and happen under similar conditions, however a court recently denied certification of a nearly identical claim pled against CRST in the Central District of California. *Huckaby*, 2022 WL 17101232, at *9. For these reasons, Plaintiffs estimate the likelihood of obtaining class certification of Plaintiffs’ claims is 50%.

(iv) Statutory Penalties – Liability – Trial/Summary Judgment Risks. There is a risk that Plaintiffs would not recover waiting time and wage statement penalties pursuant to Labor Code sections 203 and 226. Section 203 requires that a plaintiff show the employer committed a “willful” violation of the law in withholding wages. “A good faith dispute that any wages are due will preclude imposition of waiting time penalties under Section 203.” 8 Cal. Code Regs. § 13520. Similarly, penalties pursuant to section 226 require a “knowing and intentional” violation. Defendants contend that they would present several good faith defenses that would preclude a finding of willfulness under section 203. *See Choate v. Celite Corp.*, 215 Cal.App.4th 1460 (2013) (reversing award of section 203 penalties based on good faith defense where underlying wage claim presented issue of first impression). Any such good faith dispute could preclude penalties. This additional willfulness requirement makes establishing liability for these statutory penalties even more fraught. Plaintiffs estimate the likelihood of doing so is approximately 15%.

(v) Statutory Penalties – Liability – Appellate Risks. The risk that lengthy appellate litigation could ensue as to both liability and certification issues, with associated litigation risk and costs, further enhances the value of a confirmed settlement as opposed to unpredictable litigation. (*Id.*) For statutory penalties, to reverse a determination regarding willfulness, which

would be a fact-based inquiry, would subject the ruling to a higher standard of review deferential to the findings of the trial court, making it much more difficult to prevail upon. This places the likelihood of success at about 20%.

(vi) Statutory Penalties – Certification Risks. For the same reasons, certification risks are heightened given: (1) the risk that uncertainties pertaining to the ultimate legality of Defendants’ policies and practices could preclude class-wide awards of statutory penalties under Labor Code section 226(e); (2) the risk that individual differences between Settlement Class Members could be construed as pertaining to liability, and not solely to damages, *see, Duran*, 59 Cal.4th at 19; and (3) the risk that class or collective treatment could be deemed improper as to one or more claims except for settlement purposes. (*Id.*) The likelihood of certifying the claims for statutory penalties is 33.33%

(vii) PAGA Penalties. Although the PAGA penalties calculated by applying the initial violation to the total number of pay periods amounts to an extravagant \$43,148,800.00, that amount is not likely to bear fruit in this case. The ultimate decision as to the amount of penalties awarded, if any, is always up to the discretion of the Court. Labor Code § 2699(e)(2) states: “In any action by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (f), a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Subdivision (a) states, “Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.” Subdivision (f) specifies the penalties in instances where the underlying statute does not specify any civil penalty. In other words, where the facts and circumstances of the particular case demonstrate that an unreduced award would be “unjust, arbitrary and oppressive, or confiscatory,” the court

may reduce the award so as to ameliorate any such finding. *See Jordan v. NCI Grp., Inc.*, No. EDCV161701JVSSPX, 2018 WL 1409590, at *3 (C.D. Cal. Jan. 5, 2018); *Magadia v. Wal-Mart Assocs., Inc.*, 384 F. Supp. 3d 1058, 1104 (N.D. Cal. 2019), rev'd on other grounds, in part, 999 F.3d 668 (9th Cir. 2021).

39. On this basis, Plaintiffs estimate the following risk-adjusted values for their claims:

- Compensatory Claims: \$34,904,042.81 x 50% (chance to certify) x 40% (chance to win at trial) x 40% (chance to win on appeal) = \$2,792,323.43 risk-adjusted value.
- Statutory Penalties: \$84,054,000.00 x 33.33% (chance to certify) x 15% (chance to win at trial) x 20% (chance to win on appeal) = \$840,455.95 risk-adjusted value.
- PAGA Penalties: \$431,488.00 risk-adjusted value based upon defenses to underlying claims and the Court's discretion to reduce award in light of other recovery.

These total \$4,064,267.37.

40. For the reasons discussed above, among others, CRST strongly denies any liability and the propriety of class certification for any reason other than settlement. Continued litigation of this lawsuit presents Plaintiffs and CRST with substantial legal risks that were (and continue to be) very difficult to assess. Accordingly, in light of the uncertainties of protracted litigation, the Gross Settlement Amount reflects a fair and reasonable recovery for the Settlement Class Members. The GSA is, of course, a compromise figure. By necessity, it took into account risks related to liability, damages, class action certification, and all the defenses asserted by the Defendants as to all such matters. Indeed, CRST contends that Plaintiffs would not have recovered any of these amounts, due to their defenses and the likelihood that the Court would not certify class claims.

OTHER CASES POTENTIALLY IMPACTED BY THE SETTLEMENT

41. *Huckaby v. CRST Expedited, Inc. et al.*, U.S. District Court for the Central District of California, Case No. 2:21-cv-07766-ODW (PDx).

a. On August 9, 2021, Keith Huckaby ("Huckaby")—a California resident who worked as an over the road driver for CRST Expedited, Inc.—filed a Class Action Complaint against CRST Expedited, Inc. in California Superior Court for Los Angeles County. (*See Huckaby*, ECF 1-1.) CRST removed the case to the U.S. District Court for the Central District of

California on September 29, 2021 (*id.*, ECF 1), and Huckaby subsequently filed an amended complaint, which remains the operative complaint in that action. (*Id.*, ECF 44). Huckaby asserts claims against CRST for: (1) failure to pay minimum wages; (2) failure to pay statutory/contractual wages; (3) failure to reimburse business expenses; (4) failure to provide itemized wage statements; (5) failure to timely pay wages; and (6) Unfair competition, under Business & Professions Code §§ 17200, *et. seq* (UCL claim).¹

b. On May 22, 2022, while his Motion for Class Certification was pending, Huckaby filed a Motion to Intervene in this Action on grounds that the claims he was seeking to certify “are subsumed in the Consolidated Class Action Complaint,” and that intervention was “was necessary to protect his interests in light of an upcoming mediation in the instant action.” (ECF 51; ECF 60 at 10.) Huckaby alternatively requested that the Court transfer his case to this Court. (*Id.*) On June 7, 2022, the Court denied Huckaby’s Motion to Intervene, explaining that “his involvement in this case would be duplicative of his other action against [CRST].” (ECF 62.) The Court also declined to transfer the case because it “does not have jurisdiction to transfer Huckaby’s case to itself.” (*Id.*)

c. On October 3, 2022, the Court granted Huckaby’s Motion for Class Certification, in part, and certified an “Amended Piece-Rate Class” as to Huckaby’s claims for failure to pay minimum and statutory/contractual wages, and his derivative claim for violation of California’s Unfair Competition Law. (*Huckaby*, ECF 60.)² The Court defined the Amended Piece-Rate Class as including all individuals who “performed work as a truck driver for CRST (‘CA Truck Driver’) who were compensated by a piece-rate from August 9, 2017, through the date of final disposition of this action, excluding the participants in the settlement in *Montoya v. CRST Expedited, Inc.*, Case No. 16-cv- 10095-PBS (D. Mass.).” (*Id.*) CRST filed a motion for

¹ Huckaby also asserted claims alleging violation of the federal Fair Credit Reporting Act, and California’s Investigative Consumer Reporting Agencies Act, but voluntarily dismissed those claims. (*Id.*, ECF No. 45.)

² The Court denied certification as to Huckaby’s claims for failure to reimburse business expenses, failure to timely pay wages, and failure to provide accurate, itemized wage statements. (*Id.*)

1 reconsideration of that order, and on April 10, 2023, the court modified the definition of the
 2 Amended Piece-Rate Class to have a fixed end date as of the date of that order. (Case No. 2:21-
 3 cv-07766-ODW, ECF 86.)

4 d. The Settlement here has been tailored to carve out the claims certified for
 5 Huckaby to pursue on behalf of the Amended Piece-Rate Class, as defined in *Huckaby*.
 6 (Agreement, ¶¶ 21, 22.) Accordingly, no class claims in *Huckaby* will be released by the
 7 Settlement.

8 42. *Huckaby v. CRST Expedited, Inc. et al.*, California Superior Court for the County of Los
 9 Angeles, Case No. 21STCV37657.

10 a. Approximately two weeks after CRST removed Huckaby's then-putative class
 11 action complaint to federal court, on October 13, 2021, Huckaby filed a separate Representative
 12 Complaint for Damages in California Superior Court for Los Angeles County. That complaint
 13 sought penalties under PAGA for substantially the same Labor Code violations Huckaby
 14 asserted on behalf of a class in the federal action, including claims for: (1) failure to pay
 15 minimum wages; (2) failure to pay statutory/contractual wages; (3) failure to reimburse business
 16 expenses; (4) failure to provide itemized wage statements and maintain payroll records; (5) and
 17 failure to timely pay wages.³ Accordingly, each of the substantive labor code violations on
 18 which Huckaby predicates his PAGA claims is already being litigated in the first filed case,
 19 which CRST removed to federal court in September 2021. In September 2022, CRST filed a
 20 motion to stay Huckaby's PAGA action pending resolution of his case pending in federal court.
 21 The Court granted that motion on September 27, 2023, and the case remains stayed.

22 b. As with Huckaby's class claims, the Settlement Agreement provides that "[t]he
 23 Released PAGA Claims do not include the PAGA claims related to the claims that have been
 24 certified on behalf of the Amended Piece-Rate Class in the *Huckaby* case." (Agreement, ¶ 22.)
 25

26
 27 ³ The complaint additionally alleged CRST failure to provide meal and rest periods under California
 28 law, however Huckaby subsequently agreed to file an amended complaint removing those
 allegations.

1 43. *Castro v. Gardner Trucking, Inc.*, U.S. District Court for the Northern District of
2 California, Case No. 4:20-cv-05473-YGR.

3 a. On June 10, 2020, Marcelino Castro—a former driver for Gardner Trucking,
4 Inc.—filed a Class Action Complaint in California Superior Court for the County of Monterey
5 alleging claims for: (1) failure to pay for all hours worked; (2) failure to pay minimum wage; (3)
6 failure to provide meal and rest periods; (4) failure to reimburse business expenses; (5) failure to
7 timely pay final wages; (6) failure to maintain accurate records; (7) failure to provide accurate
8 wage statements; (8) failure to pay overtime under the FLSA; and (9) Unfair business practices
9 under California’s UCL. CRST removed the case to this Court on August 6, 2020. After CRST
10 moved to dismiss the Complaint filed by Plaintiff Leuzinger, on September 22, 2021, the Court
11 issued an order denying that motion, and granting Plaintiff Leuzinger’s separately filed motion
12 to consolidate his complaint with the *Castro* action. (ECF 26.) Subsequently, on December 1,
13 2021, the Court consolidated the *Castro* and *Leuzinger* actions with the then-separately pending
14 *Jensen* and *Matney-Tate* actions. (*Castro*, ECF 47.) On January 10, 2022, the Court amended its
15 consolidation order, holding that *Castro* “shall proceed separately from the *Leuzinger*, *Matney-*
16 *Tate*, and *Jensen* actions.” (*Id.*)

17 b. *Castro* filed a Motion for Class Certification on June 28, 2023 seeking to
18 represent a class consisting of “all current and former drivers who worked for Defendant during
19 the period from April 6, 2016 ... through trial (‘Class Period’), excluding those whose full
20 employment was released in *Jerry Taylor v. Gardner Trucking, Inc.* San Bernardino Superior
21 Court Case No. CIVDS1614280.” (*Id.*, ECF 69.) CRST opposed that motion, which is fully
22 briefed. CRST additionally filed a motion to exclude the opinions of two experts Castro
23 submitted in support of his class certification motion. (*Id.*, ECF 77.) After CRST filed that
24 motion, the Parties in *Castro* submitted a stipulation agreeing to stay proceedings pending the
25 settlement approval proceedings in the instant case. (*Id.*, ECF 78.) The Court granted the
26 stipulation and deemed the Parties’ pending motions withdrawn without prejudice. (*Id.*, ECF
27 79.) The Parties are scheduled to provide the Court with an update on the status of these
28 settlement proceedings on May 3, 2024. (*Id.*, ECF 84.)

c. If this Settlement is approved, the Released Class Claims will encompass the claims of putative class members in the *Castro* matter who resided in California.⁴

44. *Ramos v. Gardner Trucking, Inc.*, California Superior Court for the County of San Bernardino, Case No. CIVDS2004038.

a. On February 6, 2020, Mario Ramos Sr.—a former driver and yardman for Gardner Trucking, Inc.—filed a complaint seeking to recover penalties under PAGA for violations of the California Labor Code by: (1) requiring employees to perform work off the clock; (2) shaving time due to an allegedly unlawful rounding practice; (3) failing to provide compliant meal and rest breaks; (4) failing to issue accurate, itemized wage statements; and (5) failing to timely pay wages owed.

b. Before and in between the dates of the two mediations, Plaintiffs' Counsel had minimal discussions with counsel for Ramos regarding mediation and settlement. On or about February 20, 2024, Defendants' counsel informed Counsel for Castro and Ramos that the mediations covering *Leuzinger* were successful and explained that Ramos and Castro's class action lawsuits and the representative action lawsuit covered the same claims are fully encompassed by the settlement in this action. All of the claims alleged in the *Ramos* and *Castro* actions are released by the Settlement in the instant Action.

c. If this Settlement is approved, the Released Class Claims will encompass the claims of allegedly aggrieved employees in the *Ramos* action.

45. Prior to attending mediation in October 2023, counsel for Castro, Huckaby, and Ramos were informed of the upcoming mediation, and CRST's counsel asked them if they would be willing to participate in the mediation, provided the Parties agreed upon a bracket for the various Plaintiffs' opening demand. Counsel for Castro, Huckaby, and Ramos were not willing to agree to the opening bracket proposed by CRST and declined to participate in the mediation.

///

⁴ *Castro*'s putative class definition is not limited to California residents. (*Castro*, ECF 69 at 2.)

THE THIRD-PARTY ADMINISTRATOR

46. The parties have agreed that administration will be handled by a third-party administrator. The Parties requested price quotes for administration of the Settlement according to its terms from three similar neutral third-party class action settlement administrators with whom counsel have had experience in similar wage-and-hour actions with a similar number of employees: (1) ILYM Group, Inc., (2) Simpluris, Inc., and (3) CPT Group. All three are fully capable of administering the Settlement at a competitive and reasonable cost. ILYM provided a cost-effective quote, estimating at this time costs of approximately \$59,950 for administration of the Settlement to 13,000 class members, which is a reasonable amount for a class of this size. Class Counsel will provide an updated settlement administration expense estimate, if any such adjustment is necessary at the time the Parties file the motion for final approval of the Settlement.

47. Over the last two years, Setareh Law Group has engaged with ILYM Group, Inc. 13 times in 13 class actions and/or PAGA representative actions, and James Hawkins APLC has done so 22 times.

THE SETTLEMENT IS FAIR, JUST, AND REASONABLE

48. The Parties reached a settlement in good faith after negotiating at arm's length with two professional mediators skilled in resolving class action cases, including wage and hour actions. The Parties thoroughly investigated and evaluated the factual and legal strengths and weaknesses of this case before reaching the Settlement. The Settlement was reached after extensive investigation and research, thorough calculations and risk evaluation, correspondence between Plaintiffs' counsel and Defendants' counsel, informal exchanges of data and documents—including an evaluation of Class Members' payroll and timekeeping data during the relevant Class Periods—and an exchange of information required to evaluate all potential defenses and damages. With the information produced by CRST, and the additional detailed data with respect to the class produced for mediation, it was sufficient to permit Plaintiffs' counsel to adequately evaluate the Settlement.

49. Plaintiffs and their counsel have diligently investigated the claims of the members of the settlement classes. Plaintiff and Class Counsel concluded, after taking into account the disputed factual and legal issues involved in this Action, the substantial risks attending further prosecution, including

1 risks related to the outcome of certification and possible summary judgment efforts, and the substantial
2 benefits to be received pursuant to the compromise and settlement of the Action as set forth in the
3 Settlement, that settlement on the terms agreed to are in the best interest of Plaintiff and the putative
4 class and are fair and reasonable. Plaintiffs' counsel brought to bear a great deal of experience with class
5 actions in negotiating the settlement of this case.

6 50. One fundamental purpose of the class action device is to promote efficiency. Resolution
7 at this time will forestall the need for additional expensive and time-consuming litigation that could very
8 well result in an outcome less satisfactory than that proposed under this settlement. But, before any
9 other consideration, we have agreed to this Settlement because it is objectively reasonable. The
10 potential for resolution benefits the class members, since they do not have to wait additional years for a
11 similar recovery. The efficiency of this litigation benefits the Court, the Parties and their counsel. A
12 class-wide resolution is the most realistic method for addressing the claims raised in this matter.

13 51. We have engaged in the necessary investigation in this case that made it possible for us
14 to exercise informed judgment in those aspects of the settlement process in which we were involved.
15 The exchange of timeclock and payroll information, and wage and hour policy documents, were
16 sufficient to permit Plaintiffs' counsel to adequately evaluate the Settlement. Plaintiffs had more than
17 enough information upon which to evaluate a fair and reasonable settlement amount. In addition to
18 disputing the merits of Plaintiffs' claims at trial, Defendants intended to aggressively challenge
19 Plaintiffs' case at the certification stage.

20 52. The Settlement is the product of arm's-length negotiations between the Parties occurring
21 throughout the litigation. In light of the uncertainties of protracted litigation and the state of the law
22 regarding the legal positions of the Parties, the settlement amount reflects the best feasible recovery for
23 the members of the settlement classes. The settlement amount is, of course, a compromise figure. By
24 necessity it took into account risks related to liability, damages, and all the defenses asserted by the
25 Defendants. Moreover, each Class Member will be given the opportunity to opt out of the Settlement,
26 allowing those who feel they have claims that are greater than the benefits they can receive under this
27 Settlement, to pursue their own claims. As estimated by Defendants at the time the Agreement was
28 executed, there are an estimated 12,680 Class Members. Defendants represented at the mediation that

the total workweeks among the Settlement Classes is 636,964 workweeks through October 31, 2023. The NSA estimated to be paid to Class Members—after all Court-approved deductions from the GSA, *i.e.*, Class Counsel fees of \$1,350,000 (1/3 of the GSA), litigation costs of up to \$35,000, settlement administration costs estimated not to exceed \$100,000, the PAGA Payment of \$200,000 (\$150,000 to the Labor & Workforce Development Agency (“LWDA”) and \$50,000 to the PAGA Aggrieved Employees), Plaintiffs’ Service awards of \$10,000 each, and the estimated payroll taxes on the wage-allocated portion of the Settlement Fund—is **\$2,142,500.00**. With 12,680 persons in the settlement classes the average estimated recovery from the Net Settlement Amount will be roughly **\$168.97** per class member. These values of this amount fall well within the range of reasonableness. Given the strong case that Defendants could bring to bear to challenge certification and liability, this is not an inconsequential sum in these challenging economic times. The Agreement does not provide for any reversion of settlement funds to Defendants.

REASONABLENESS OF THE REQUESTED FEE AWARD

53. The lodestar to date for Setareh Law Group in this matter is \$291,600.00 according to the following hourly rates which are consistent with the prevailing market rates for attorneys of similar experience: Shaun Setareh (bar date 1999) \$1,150 an hour; Jose Maria D. Patino, Jr. (bar date 2010) \$750 an hour; Farrah B. Grant (bar date 2013) \$700 an hour; David Keledjian (bar date 2016) \$550 an hour; Shane R. Farley (bar date 2021) \$400 an hour; David Arakelyan (bar date 2021) \$400 an hour; and Tyson Gibb (bar date 2021) \$400 an hour.

54. Looking at the work done by all Plaintiffs’ Counsel from both Setareh Law Group and James Hawkins APLC, the lodestar to date in this matter is as follows:

Attorney	Bar Year	Hourly Rate	Hours	Total Fees
Shaun Setareh	1999	\$ 1,150.00	92.4	\$ 106,260.00
Jose Patino	2010	\$ 750.00	73	\$ 54,750.00
Farrah B. Grant	2013	\$ 700.00	14	\$ 9,800.00
David Keledjian	2016	\$ 550.00	131.4	\$ 72,270.00
Shane R. Farley	2021	\$ 400.00	41.3	\$ 16,520.00
David Arakelyan	2021	\$ 400.00	43.4	\$ 17,360.00
Tyson Gibb	2021	\$ 400.00	36.6	\$ 14,640.00
James Hawkins	1997	\$ 1,050.00	101.2	\$ 106,260.00
Greg Mauro	2002	\$ 850.00	140.2	\$ 119,170.00

Michael Calvo	2017	\$ 600.00	99.8	\$ 59,880.00
Melissa Whitson	(Paralegal)	\$ 220.00	61.6	\$ 13,552.00
Total			432.1	\$ 590,462.00
Fees Sought				\$ 1,350,000.00
Multiplier				2.29

55. With a multiplier of 2.29 multiplied by the lodestar for all counsel of \$590,462.00 would result in an amount close to the fee award of \$1,350,000.00 being requested by Plaintiffs' counsel.

56. The work done by the attorneys working on this case includes communicating with Plaintiffs, drafting pleadings, filing and opposing pleadings and consolidation motions, comprehensive informal requests for production to Defendants, reviewing documents produced by Defendants, working up and drafting two mediation briefs, working with an expert to analyze the data produced by Defendants, attending two mediation sessions with two mediators experienced in resolving wage and hour class actions, coordinating with the Parties and counsel to draft the MOU and long-form Settlement Agreement, and drafting a motion for preliminary approval.

57. When this case was taken on a contingent fee basis, with the firm agreeing to assume responsibility for litigation costs, the ultimate result was far from certain. In the course of this litigation, Setareh Law Group paid filing fees, copy charges, Westlaw fees, and mailing, telephone and express mail charges. There was never a guarantee that Setareh Law Group would recoup those expenditures. The firm took on this case, which necessarily required the firm to forego other opportunities, given finite resources to devote to cases.

58. Because of the uncertainty of the outcome in this and other wage and hour litigation undertaken by Setareh Law Group, we took this case with the expectation that a risk enhancement, either in the form of a lodestar multiplier or a percentage of the fund award equivalent thereto, would be available if we prevailed. This expectation stems from the fact that many cases we undertake as putative class actions do not resolve successfully. Several examples of cases where long delays, individual arbitration orders, or outright failures precluded a recovery are as follows:

- a. *Jefferson v. ABM Janitorial Services-South Central, Inc.*, Case No RG16832708 (Alameda County Superior Court): Motion to compel

individual arbitration granted in putative wage and hour class action on March 14, 2017;

- b. *Solis v. Ameri-Force Management Services, Inc.*, Case No. 37-2014-00013506-CU-OE-CTL (San Diego Superior Court): Motion for class certification denied and appeal decided in the last year adversely to Plaintiff;
- c. *Castro v. Cedars-Sinai Health System*, Case No. BC675795 (Los Angeles Superior Court): Putative class action Ordered to individual arbitration;
- d. *Ahlstrom v. DHI Mortgage Company GP, Inc.*, Case No. 5:17-cv-04383-BLF (Northern District): Putative wage and hour class action stayed pending outcome of *Morris v. Ernst & Young LLP*, 834 F.3d 975 (9th Cir. 2016) (subsequently reversed by U.S. Supreme Court).
- e. *Troester v. Starbucks Corporation*, Case No. 2:12-CV-07677-GAF-PJW (Central District): Filed in **2012**, the District Court granted summary judgment for Defendants, plaintiff appealed, and the Ninth Circuit certified a question of law to the California Supreme Court, which accepted the question and recently decided that matter nearly six years later;
- f. *Rodriquez v. Taco Bell Corp.*, Case No. 1:13-CV-01498-SAB (Eastern District): Filed in **2013**, the District Court granted summary judgment, which plaintiff appealed. The matter was recently decided adversely to Plaintiff after argument;
- g. *Nichols v. Northrop Grumman Systems Corporation*, Case No. 17CV317207 (Santa Clara Superior Court): Defendants' request to compel individual arbitration was stayed pending outcome of *Morris v. Ernst & Young LLP*, 834 F.3d 975 (9th Cir. 2016);
- h. *Perry v. John Stewart Company*, Case No. CGC-17-558785 (San Francisco Superior Court): Ordered to individual arbitration;
- i. *Gilberg v. California Check Cashing Stores, Inc.*, Case No. 2:15-CV-02309-JAM-AC (Eastern District): After motion for summary judgment by

defendants granted in putative class action, matter was just decided in the Ninth Circuit after appeal by plaintiff; and,

j. *Watterson v. Garfield Beach CVS LLC*, Case No. 14-cv-01721-HSG (Northern District): Summary judgment granted in putative wage and hour class action, and subsequently affirmed on appeal to the Ninth Circuit.

59. In the past 5 years, Setareh Law Group has settled many dozens of wage & hour class actions. This is consistent with common practice, consistent with analogous California law approving the percentage of the fund method to award fees from a common fund, *Laffitte v. Robert Half International, Inc.*, 1 Cal.5th 480, 503 (2016), and not inappropriate in light of the hundreds of hours expended by attorneys and paralegals performing work for Plaintiff before and after the filing of this matter.

60. I anticipate that Class Counsel will spend an additional 40 hours on this matter, appearing at the hearing of preliminary approval, answering class member calls, working with the administrator to finalize documents in mailing format, conferring with counsel over any notice issues, drafting the final approval motion and motion for fees and costs, appearing at the final approval hearing, and resolving any post-approval issues that may arise, and appearing at a final accounting hearing. Setareh Law Group has also incurred costs in this matter to date of \$13,396.28.

THE CONTRIBUTION OF PLAINTIFFS AND THE REASONABLENESS OF THE REQUESTED INCENTIVE AWARD

61. Here, Plaintiffs each seek a Service Award that may not exceed \$10,000.00. This amount is very reasonable given the risks undertaken by Plaintiffs their involvement in the Action. Taking the risk of filing a lawsuit against an employer, particularly one of the magnitude of Defendants, deserves recognition, especially in light of the settlement achieved by Plaintiffs. Additionally, the Plaintiffs were actively involved in the litigation and settlement negotiations of this Action, expending considerable effort in advancing the interests of the classes, including participating in two day-long mediation sessions. Plaintiffs provided information to counsel before the filing of their matters; they assisted with mediation (which included conferring with counsel during the preparation of Plaintiffs' mediation brief); and regularly conferred with their counsel regarding the case whenever questions

1 arose.

2 62. If the case were lost, Plaintiffs could have been ordered to pay Defendants' costs and
3 even attorneys' fees in this case, which could have been thousands of dollars by the end. Moreover,
4 Plaintiffs face significant stigma for having filed a class action since such records are easily available
5 online to prospective employers who conduct an online search on a job applicant. This, in addition to
6 Plaintiffs' significant contributions to this case, justifies the \$10,000 class representative enhancement
7 sought on behalf of each of them.

8 **CLASS CERTIFICATION**

9 63. Plaintiff is typical of the Settlement Class. Plaintiff is a former employee of Defendants.
10 Plaintiff worked during the class period. Plaintiff's claims are typical of the Settlement Class proposed
11 in this settlement. Like other class members, Plaintiff experienced work under policies and procedures
12 impacting wage and hour compliance.

13 64. Common *issues* exist. Here, Class Members have shared a common interest in
14 determining whether Defendants violated wage and hour requirements under state and related federal
15 law. The factual and legal issues are the same for all of the identified class members, including
16 Plaintiffs.

17 65. There are common issues that may predominate over individual issues in this litigation.
18 For example: (1) whether all meal periods and rest breaks were provided in accordance with the
19 requirements of California law; (2) whether employees were paid for all hours worked; (3) whether
20 employees were reimbursed for all business expenses; and (4) whether Defendants have any viable
21 class-wide defenses to the class claims.

22 66. My declaration, in the paragraphs above, summarizes the firm's experience that
23 establishes its adequacy to represent the settlement Class. Plaintiff's counsel has no known conflicts of
24 interest with absent Settlement Class Members. Plaintiffs have demonstrated, through their participation
25 in this action, their willingness to serve as representatives for the Class. Plaintiffs have no known
26 conflicts of interest with absent Settlement Class Members and have agreed to place the class's interests
27 above their own. Plaintiffs' actions also demonstrate their adequacy.

28 67. By consolidating all of these potential individual actions into one proceeding, this

Court's use of the class action device enables it to manage this litigation in a manner that serves the economics of time, effort and expense for the litigants and the judicial system. Absent class treatment, similarly-situated employees with small but potentially meritorious claims for damages would, as a practical matter, have no means of redress because of the time, effort and expense required to prosecute individual actions. Moreover, in the context of settlement, superiority concerns are almost non-existent, since case management is controlled and a methodology for trial need not be identified.

68. CRST will provide notice to the appropriate governmental officials within 10 days of the Plaintiffs filing the Motion for Preliminary Approval of Class Action Settlement.

69. This Agreement was reached after evaluating the Parties' theories of potential exposure for the underlying claims. The Parties also assessed appropriate discounts to the potential liability based on Defendants' contentions and defenses. Solely for the purpose of settling this case, the Parties agree that the requirements for establishing class and collective action certification with respect to this class have been met and are met. If this Settlement is not approved by the Court for any reason, Defendants reserve all rights to contest class and/or collective action certification. This Agreement, if approved by the Court, will result in the termination with prejudice of the Litigation through the entry of the Judgment, and the release of all Released Claims for all persons within the Settlement Class (as defined in the Settlement) who have not properly elected to exclude themselves from the Settlement.

PAST DISTRIBUTIONS AND SETTLEMENTS

70. Setareh Law Group previously litigated a hybrid action in the Northern District for a matter involving California wage and hour and FLSA claims that settled for a slightly lesser settlement amount, though it also included an FCRA class not present in the instant action:

Case Name	Total Settlement Fund	Total Class Members	Total Class Notice Sent	Method of Notice	Percentage Claims Submitted	Average Recovery	Amounts Cy Pres	Settlement Administration Costs	Attorneys' Fees and Costs
<i>Quiruz v. Specialty Commodities, Inc., et al.</i> (Northern District CA)	\$1,500,000	<u>Non-Exempt:</u> 625 <u>Exempt:</u> 105 <u>FCRA:</u> 25,038	25,789	Mail	20.2% (126 of 625 FLSA claim Forms)	<u>Non-Exempt:</u> \$816 <u>Exempt:</u> \$476.19 <u>FCRA:</u> \$11.98	N/A	\$65,000	<u>Fees</u> \$460,000 <u>Costs</u> \$15,000

PROPOSED SCHEDULE

71. The Parties propose the following schedule for approval of the Settlement, which assumes that preliminary approval of the Settlement is granted on July 9, 2024:

Date	Event
July 23, 2024	Defendants to provide to Settlement Administrator database containing Class Member information necessary to calculate Settlement Payment (10 calendar days after Preliminary Approval)
August 2, 2024	Settlement Administrator to mail Class Notice to all Class Members.
September 21, 2024	Last day for Class Members to submit Objections, Requests for Exclusion, and/or Dispute Forms to the Settlement Administrator (50 calendar days after Settlement Administrator mails Class Notice to all Class Members), subject to extension provisions of Settlement Agreement
September 26, 2024	Date by which Settlement Administrator will provide Parties with a list of all Class Members who submitted timely and valid Request for Exclusion Forms (5 calendar days after the deadline for submitting exclusions), subject to extension provisions of Settlement Agreement
October 23, 2024	Date by which Settlement Administrator will provide to Parties declaration certifying that notice has been mailed under the provisions of the Settlement Agreement
October 29, 2024	Date by which Plaintiff and Settlement Administrator will file with the Court a summary of objections received and Plaintiff's responses thereto (21 calendar days before the final approval hearing)
October 15, 2024	Date by which Plaintiff shall file with the Court a motion for final approval of the Settlement, requesting final approval of the Settlement Agreement and a determination of the amounts payable for the Service Award, the Class Counsel Award, the PAGA Payment, and the Settlement Administration Costs. Plaintiff shall provide drafts of these papers to Defense Counsel at least five (5) court days before filing the documents.
November 12, 2024	Date by which the parties must file responsive documents to any objections (5 business days before the final approval hearing).
November 19, 2024	Hearing on Plaintiff's motion for final approval of Settlement (not less than 90 calendar days after order preliminarily approving Settlement)

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed this 1st day of May 2024, at Beverly Hills, California.

/s/ Shaun Setareh
Shaun Setareh

EXHIBIT 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KASPER LEUZINGER, MICHAEL ALLEN
JENSEN, WILLIAM MATNEY-TATE, and
RICARDO AMEZCUA, on behalf of themselves and
all others similarly situated,

Plaintiff,

v.

GARDNER TRUCKING, INC., a California
corporation; GARDNER TRUCKING
CONVERSION, LLC, a California Limited Liability
Company; CRST EXPEDITED, INC., an Iowa
Corporation; CRST THE TRANSPORTATION
SOLUTION, INC., an entity of unknown formation;
and DOES 1 through 50, inclusive,

Defendants.

Case No. 4:21-cv-04952-YGR

Consolidated with:
4:21-cv-07474-YGR
4:21-cv-07741-YGR
4:22-cv-06501-YGR

SETTLEMENT AGREEMENT

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by and between Plaintiffs, Kasper Leuzinger, Michael Allen Jensen, William Matney-Tate, and Ricardo Amezcua, on behalf of themselves, the putative settlement classes defined in Paragraphs 9 and 12 below (collectively, the “Settlement Classes”) and the PAGA Aggrieved Employees defined in Paragraph 16 below, and Defendant, CRST Expedited, Inc., d/b/a CRST The Transportation Solution, Inc., including Gardner Trucking, Inc., Gardner Trucking Conversion, LLC, and CRST Expedited, Inc. (collectively, “CRST”),¹ to settle the wage and hour class actions involving the consolidated cases pending in the U.S. District Court for the Northern District of California under Case No. 4:21-cv-04952-YGR, which have been recaptioned as *In re Gardner Trucking Wage and Hour Litigation* (the Action). This Agreement is subject to the terms and conditions set forth below and to the approval of the Court. If the Court does not execute and file an order granting Final Approval of the Settlement, or if the associated judgment does not become final for any reason, this Agreement shall be deemed null and void and shall be of no force or effect whatsoever.

Recitals

A. Plaintiffs are prosecuting the Action on their own behalf and on behalf of the Settlement Classes defined below against CRST. Plaintiffs allege that they and the Settlement Classes were injured as a result of CRST’s violation of various wage-and-hour laws. They assert the following claims: (1) failure to provide meal and rest periods under California law; (2) failure to pay minimum wages under California law; (3) failure to pay vacation wages under California law; (4) failure to reimburse for necessary business expenses as required by California law; (5) failure to provide accurate written wage statements under California law; (6) failure to timely pay all final wages under California law; (7) engaging in unfair

¹ As a result of a corporate restructuring, CRST International, Inc. and Gardner Trucking, Inc. merged into CRST Expedited, Inc. on January 2, 2021, which is now known as CRST Expedited, Inc. d/b/a CRST The Transportation Solution, Inc. As of the date of that merger, CRST International, Inc. and Gardner Trucking, Inc. ceased to exist. The former operations of Gardner Trucking, Inc. are now being operated as a separate operating division referred to as CRST Expedited, Inc. d/b/a CRST The Transportation Solution, Inc. – Dedicated West. For ease of reference, this Settlement Agreement refers to these operations as “Dedicated West.” Similarly, as a result of the merger, CRST Expedited Inc.’s over-the-road operations are being operated as a separate operating division referred to as CRST Expedited, Inc. d/b/a CRST The Transportation Solution, Inc. – Expedited Solutions. For ease of reference, this Settlement Agreement refers to these over-the-road operations as “Expedited Solutions.”

1 competition under California law; and (8) failure to pay minimum wage for all hours worked under the
2 federal Fair Labor Standards Act (FLSA).

3 B. CRST denies Plaintiffs' allegations and any liability to Plaintiffs and members of the
4 Settlement Classes and have asserted defenses to Plaintiffs' claims in the Action.

5 C. Arm's-length settlement negotiations have taken place between Counsel for the Settlement
6 Classes and counsel for CRST. The Parties mediated this matter on two separate days. Following the
7 Parties' second mediation, and with the assistance of Plaintiffs' and CRST's chosen mediator, Hon. Amy
8 D. Hogue (Ret.) (the "Mediator"), on October 16, 2023,² the Parties reached this Agreement. The
9 Agreement is the product of the Parties' mediations, as well as subsequent negotiations regarding relevant
10 terms that continued throughout the several months following the Parties' second mediation.

11 D. Plaintiffs, through their counsel, have conducted an investigation into the facts and the law
12 regarding the Action and have concluded that resolving the claims against CRST, according to the terms
13 set forth below, including the value of the Gross Settlement Amount, is in the best interest of Plaintiffs and
14 the Settlement Classes.

15 NOW, THEREFORE, in consideration of the covenants, agreements, and releases set forth herein
16 and for other good and valuable consideration, it is agreed by and among the undersigned that the Action
17 be settled, compromised, and dismissed on the merits with prejudice as to the Releasees (as defined in
18 Paragraph 23, subject to the approval of the Court, on the following terms and conditions:

19 **A. DEFINITIONS**

20 1. "Action" means the consolidated civil action captioned *In re Gardner Trucking Wage and*
21 *Hour Litigation*, which is pending in the U.S. District Court for the Northern District of California under
22 Case No. 4:21-cv-04952-YGR. It includes the following consolidated actions, previously captioned as (a)
23 *Amezcuca v. Gardner Trucking, Inc., et al.*, under Case No. 4:22-cv-06501-YGR in the U.S. District Court
24 for the Northern District of California; (b) *Jensen v. CRST Expedited, Inc.*, under Case No. 4:21-cv-07741-
25 YGR in the U.S. District Court for the Northern District of California; (c) *Leuzinger v. Gardner Trucking,*
26 *Inc., et al.*, under Case No. 3:21-cv-04952-TSH in the U.S. District Court for the Northern District of

27 ² Plaintiffs Leuzinger, Matney-Tate, and Jensen previously participated in an additional full-day, private
28 mediation with CRST on June 1, 2022 with a different mediator, Steven G. Mehta.

1 California; and (d) *Matney Tate v. Gardner Trucking, Inc., et al.*, under Case No. 3:21-cv-07474 in the U.S.
2 District Court for the Northern District of California.

3 2. “Agreement” or “Settlement” means this Settlement Agreement, which the Parties
4 acknowledge sets forth all material terms and conditions of the resolution of the dispute between them,
5 which is subject to Court approval.

6 3. “Attorneys’ Fees and Costs” means the fees and litigation costs incurred by Settlement
7 Classes Counsel or any other counsel retained by Plaintiffs and means one-third (33-1/3%) of the Gross
8 Settlement Amount and reimbursement of all approved litigation costs expected not to exceed \$35,000.

9 4. “Class Representatives” or “Plaintiffs” mean the named Plaintiffs in the Action, Kasper
10 Leuzinger, Michael Allen Jensen, William Matney-Tate, and Ricardo Amezcua.

11 5. “Court” means the United States District Court for the Northern District of California.

12 6. “Defendant(s)” means CRST Expedited, Inc., d/b/a CRST The Transportation Solution,
13 Inc., Gardner Trucking, Inc., and Gardner Trucking Conversion, LLC (collectively, “CRST”).

14 7. “Defense Counsel” means Scopelitis, Garvin, Light, Hanson & Feary, P.C.

15 8. “Effective Date” means the date when all of the following events have occurred: (a) this
16 Agreement has been executed by the Parties and by Settlement Classes Counsel and Defense Counsel; (b)
17 the Court has issued an order granting preliminary approval to the Agreement; (c) notice has been given to
18 members of the Settlement Classes providing them with an opportunity to opt-out of the Settlement; (d) the
19 Court has held a Fairness Hearing to determine the fairness, adequacy, and reasonableness of the Settlement
20 and has entered a final order and judgment approving this Settlement; and (e) in the event there are written
21 objections filed prior to the Fairness Hearing that are not later withdrawn, the later of the following events:
22 (i) when the period for filing any appeal, writ, or other appellate proceeding opposing the Settlement has
23 elapsed without any appeal, writ, or other appellate proceeding having been filed; or any appeal, writ, or
24 other appellate proceeding opposing the Settlement has been dismissed finally and conclusively with no
25 right to pursue further remedies or relief, or (ii) any appeal, writ, or other appellate proceeding has upheld
26 the Court’s final order with no right to pursue further remedies or relief. In this regard, it is the intention of
27 the Parties that the Settlement shall not become effective until the Court’s order approving the Settlement
28 is completely final and there is no further recourse by an appellant or objector who seeks to contest the

1 Settlement.

2 9. “Expedited Settlement Class” means: All California resident truck driver employees who
3 worked for CRST as part of what is now known as Expedited Solutions at any time from August 10, 2017
4 through February 29, 2024 (the “Expedited Class Period”).

5 10. “Fairness Hearing” or “Final Approval Hearing” means the hearing at which the Court will
6 determine whether the terms of the Settlement are fair, reasonable, and adequate for the Settlement Classes
7 and meet all applicable requirements for Final Approval.

8 11. “Final Approval Order” means the order by the Court approving the Settlement Agreement
9 following the Fairness Hearing and entering final judgment.

10 12. “Gardner-Dedicated West Settlement Class” means: All California resident truck driver
11 employees who worked for CRST as part of what is now known as Dedicated West at any time from April
12 6, 2016 through February 29, 2024, (the “Gardner-Dedicated West Class Period”).

13 13. “Gross Settlement Amount” means the maximum settlement amount of \$4,050,000 payable
14 by CRST. The Gross Settlement Amount includes (a) the Settlement Fund, (b) PAGA Penalties; (c)
15 Settlement Administration Costs, (d) Counsel for the Settlement Classes claims for Attorney Fees and
16 Costs, (e) a Service Award to each Plaintiff as approved by the Court, and (f) payroll taxes on any portion
17 of payments to the Settlement Classes or PAGA Aggrieved Employees that constitute wages. CRST will
18 have no obligation to pay any amount in connection with this Settlement apart from the Gross Settlement
19 Amount.

20 14. “Individual PAGA Payment” means the individual distribution from the PAGA Penalties
21 to PAGA Aggrieved Employees as described in Paragraph 60, below.

22 15. “Individual Settlement Payment” means the individual distribution from the Settlement
23 Fund to each Participating Class Member, as described in Paragraph 61, below.

24 16. “PAGA Aggrieved Employees” means: All California resident truck driver employees who
25 worked for CRST as part of what is now known as Dedicated West or Expedited Solutions at any time
26 during the PAGA Release Period.

27 17. “PAGA Release Period” means the time period from December 3, 2018 through February
28 29, 2024.

1 18. “PAGA Penalties” means the amount allocated to penalties to settle claims alleged under
2 the California Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2698-2699.5, which is
3 \$200,000, with 75% allocated to the California Labor and Workforce Development Agency (“LWDA”)
4 and 25% allocated to the Settlement Fund for distribution to PAGA Aggrieved Employees, on a *pro rata*
5 basis as set forth in Paragraph 60, below.

6 19. “Participating Class Member(s)” means all members of the Settlement Classes who do not
7 timely and effectively opt out of the Settlement.

8 20. “Parties” collectively means Plaintiffs and CRST.

9 21. “Released Class Claims” means all wage and hour claims, known or unknown, at law or in
10 equity, which the Named Plaintiffs and the Settlement Classes have or may have, arising out of or related
11 to the wage and hour claims (including all derivative claims) and the facts and allegations asserted in the
12 Complaints, including the claims under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*, Cal. Labor
13 Code §§ 201-204, 223, 225.5, 226.2, 226, 226.7, 227.3, 500, 510, 512, 558, 1174, 1174.5, 1194, 1194.2,
14 1197, 1197.1, 1198, 2698-99, and 2802, IWC Wage Order No. 9, and claims under the Cal. Business &
15 Professions Code §§ 17200-17204 based on the foregoing. The Released Class Claims do not include the
16 certified claims of the Amended Piece-Rate Class in *Huckaby v. CRST Expedited, Inc.*, pending in the
17 Central District of California under Case No. 2:21-cv-07766-ODW (“*Huckaby*”), as defined by the Court
18 order granting class certification, in part, dated October 3, 2022 (ECF No. 60), and as amended in the order
19 granting CRST’s motion for reconsideration of that order, in part, dated April 10, 2023 (ECF No. 86).

20 22. “Released PAGA Claims” means any claims under Cal. Labor Code § 2698, *et seq.* (the
21 “PAGA claims”), related to the facts that were asserted or could have been asserted in the underlying wage
22 and hour claims brought under Cal. Labor Code §§ 201-204, 223, 225.5, 226.2, 226, 226.7, 227.3, 500, 510,
23 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2698-99, and 2802 during the PAGA Release
24 Period. The Released PAGA Claims do not include the PAGA claims related to the claims that have been
25 certified on behalf of the Amended Piece-Rate Class in the *Huckaby* case identified in Paragraph 21. The
26 Aggrieved Employees of the Gardner-Dedicated West Settlement Class and the Expedited Settlement Class
27 will release all rights under Cal. Civil Code § 1542 as to the Released PAGA Claims only. Released PAGA
28 Claims are limited to those claims arising during the PAGA Period.

23. “Released Parties” means CRST and all its present and former officers, directors, shareholders, members, agents, employees, representatives, attorneys, parent companies, subsidiaries, divisions, affiliates, related companies, owners, successors, and assigns.

24. “Service Awards” means the amounts to be requested by the named Plaintiffs as award for their service to the Settlement Classes. Those amounts shall be as follows:

- a. For Plaintiff, Kasper Leuzinger: \$10,000.
- b. For Plaintiff, William Matney-Tate: \$10,000.
- c. For Plaintiff, Michael Allen Jensen: \$10,000.
- d. For Plaintiff, Ricard Amezcua: \$10,000.

25. “Settlement Administration Costs” means the costs and expenses incurred by the Settlement Administrator in the performance of its tasks and duties as provided by this Agreement, including the mailing of notices, distributing payments, recording opt-outs, and tax reporting costs. Such costs are not expected to exceed \$100,000.

26. “Settlement Administrator” means ILYM Group, Inc., or another mutually acceptable settlement administrator to be selected by the Parties.

27. “Settlement Classes” means the Gardner-Dedicated West Settlement Class and the Expedited Settlement Class, collectively.

28. “Settlement Fund” or “Net Settlement Amount” (“NSA”) means the Gross Settlement Amount minus court-approved Attorney Fees and Costs, Settlement Administration Costs, Plaintiffs’ Service Awards, and the PAGA Penalties.

29. “Counsel for the Settlement Classes” shall refer to the law firms of:

Setareh Law Group
9665 Wilshire Blvd., Suite 430
Beverly Hills, CA 90212

James Hawkins APLC
9880 Research Drive, Suite 200
Irvine, CA 92618

B. NON-ADMISSION OF LIABILITY

30. By entering into this Agreement, CRST, on behalf of itself and all Released Parties, deny that there is any basis in law or fact to find that they are liable for any of the claims alleged in the Action or

1 any potential or unknown claims based on facts alleged in the Action, including wage and hour violations,
2 under state and federal law.

3 31. CRST specifically denies that any of the Released Parties have engaged in any unlawful or
4 wrongful conduct against Plaintiffs or the Settlement Classes.

5 **C. STIPULATION TO CONDITIONAL CLASS CERTIFICATION SOLELY FOR**
6 **PURPOSES OF SETTLEMENT**

7 32. For the purposes of this Settlement Agreement and the settlement of this Action only, the
8 Parties agree to certification of this matter as a class action pursuant to Federal Rule of Civil Procedure 23.
9 CRST does not waive, and expressly reserves, the right to challenge the propriety of class or collective
10 action certification, or any other representative treatment of Plaintiffs' claims, for any other purpose, should
11 the Court not certify the Settlement Classes.

12 33. Evidence of this Stipulation to certification of a class action for settlement purposes only
13 will be deemed inadmissible for any other purpose in this or any other proceeding.

14 **D. TERMS OF SETTLEMENT**

15 34. **Gross Settlement Amount.** CRST shall fund the Gross Settlement Amount of \$4,050,000.
16 The Gross Settlement Amount shall constitute adequate consideration for the Settlement and will be made
17 in full and final settlement of: (a) the Released Class Claims and Released PAGA Claims released by
18 Plaintiffs, members of the Settlement Classes and PAGA Aggrieved Employees; (b) Attorneys' Fees and
19 Costs; (c) Settlement Administration Costs; (d) Plaintiffs' Service Awards; (e) payroll taxes on any portion
20 of payments to the Settlement Classes or PAGA Aggrieved Employees that constitute wages; and (f) any
21 other obligations of CRST under this Settlement Agreement. Subject to the sole exception set forth in
22 Paragraph 35 below, in no event shall CRST pay more than \$4,050,000.

23 35. CRST represents that as of October 31, 2023, the Settlement Classes had worked an
24 estimated 591,000 workweeks. If it is determined that the total number of workweeks exceeds 591,000 by
25 more than 10% (i.e., if the total number of weeks worked by the Settlement Classes exceeds 650,100
26 workweeks for the time period extending through October 30, 2023, then either, (a) the Gross Settlement
27 Amount will be increased on a proportional basis by the same number of percentage points above 650,100
28 (e.g., if there is an 11% increase in the total number of weeks worked by the Settlement Classes through

1 October 30, 2023, CRST will increase the Gross Settlement Amount by 1%); or (b) CRST may elect to end
2 the Class Period on an earlier date at CRST's discretion in order to limit the covered workweeks to no more
3 than 10% above 591,000 in lieu of paying a proportional increase to the Gross Settlement Amount.

4 36. **Attorneys' Fees and Costs.** Counsel for the Settlement Classes shall request that the Court
5 approve an award of attorneys' fees in an amount of one-third (33-1/3%) of the Gross Settlement Amount
6 plus all reasonable litigation costs, expected not to exceed \$35,000, subject to Court approval. CRST will
7 not oppose these requests. Attorneys' fees and costs shall be paid out of the Gross Settlement Amount.

8 37. The Court's approval of attorneys' fees and costs requested by Counsel for the Settlement
9 Classes is not a material term of the Agreement. If the Court does not approve the amount requested by
10 Counsel for the Settlement Classes for attorneys' fees or costs, or approves a lesser amount, the remaining
11 terms of the Agreement shall remain in force and effect. A denial by the Court of such request for attorneys'
12 fees or costs shall not be construed as a basis from which to abrogate the Agreement.

13 38. **Service Awards to Class Representatives.** Subject to Court approval, CRST will not
14 oppose Plaintiffs' request for Service Awards to be paid to the Named Plaintiffs from the Gross Settlement
15 Amount not to exceed \$10,000 each, as compensation for services rendered to the Settlement Classes. Any
16 such Service Award shall be separate from, and in addition to, any payment to which each Plaintiff may
17 otherwise be entitled as a Participating Class Member. Each Service Award shall be allocated as
18 miscellaneous income, which shall not be subject to payroll taxes and withholdings and will be reported on
19 an IRS 1099 Form. Each Plaintiff shall be solely and legally responsible to pay any and all applicable taxes
20 on their respective Service Award.

21 39. The Parties agree that any amount awarded as the Service Award to a named Plaintiff less
22 than the requested amount shall not be a basis for Counsel for the Settlement Classes to void this Agreement
23 nor to appeal that aspect of the District Court's ruling. Should the District Court approve a lesser amount
24 for the Service Awards, the difference shall be part of the Settlement Fund to be distributed to the
25 Participating Class Members.

26 40. **Settlement Administration Costs.** Plaintiffs sought bids based on an anticipated settlement
27 class size of approximately 13,000 putative class members and selected ILYM Group, Inc. as the low bidder
28 to be the third-party Settlement Administrator, which will send the Notice of Proposed Class Action

Settlement (“Class Notice”), an initial draft of which is attached hereto as “**Exhibit A**,” and perform the requisite tasks and duties, including: maintaining a website that lists key deadlines and has links to the Class Notice, preliminary approval order, motions for preliminary and final approval and for attorneys’ fees, and any other important documents in the case; the formatting and printing of the Class Notice and other documents to be mailed to the Settlement Classes (including Spanish translations, if needed); processing and maintaining Settlement Classes’ data; updating mailing addresses for members of the Settlement Classes before the initial mailing of the Class Notice; calculating estimated Individual Settlement Payments; providing declarations regarding administration as may be required by the Court; providing weekly status reports; resolving disputed claims; issuing Individual Settlement Payment checks; tax reporting and managing uncashed checks.

41. **Settlement Fund.** After deducting the portion of the Court-approved amount for PAGA Penalties, the Service Awards, Attorney Fees and Costs, Settlement Administration Costs, and payroll taxes on any portion of payments to the Settlement Classes or PAGA Aggrieved Employees that constitute wages from the Gross Settlement Amount, the remaining balance will be distributed to Participating Class Members *pro rata* based on the total number of workweeks each worked during the applicable class period.

E. CLAIMS RELEASED BY THIS SETTLEMENT AGREEMENT

42. **Release of Claims by the Settlement Classes.** Upon CRST’s deposit of the Gross Settlement Amount with the Settlement Administrator, and except as to the right to enforce the terms and conditions of this Agreement, all Participating Class Members shall be deemed to have fully released the Released Parties from the Released Class Claims.

a. **Release of FLSA Claims.** Participating Class Members shall be required to affirmatively opt in for purposes of the Fair Labor Standards Act (“FLSA”) in order to waive all Released Class Claims falling under the FLSA by endorsing their Individual Settlement Payment checks, which shall contain thereon the following or substantially similar language:

By endorsing and cashing this check, I agree to the waiver of the wage and hour claims set forth in the Class Notice in *In re Gardner Trucking Wage and Hour Litigation*, including all claims under the Fair Labor Standards Act (“FLSA”), and hereby affirmatively opt into the FLSA claim and FLSA waiver for purposes of 29 U.S.C. § 216(b).

///

1 This FLSA release shall not apply to PAGA Aggrieved Employees who timely submit a valid Request for
 2 Exclusion from the Settlement Classes, and this language shall not appear on the checks provided to such
 3 an individual for his or her Individual PAGA Payment only.

4 43. Upon CRST's deposit of the Gross Settlement Amount with the Settlement Administrator,
 5 and except as to the right to enforce the terms and conditions of this Agreement, all PAGA Aggrieved
 6 Employees shall be deemed to have fully released the Released Parties from the Released PAGA Claims.

7 44. **Mutual Release of Claims by Plaintiffs**

8 a. **Release.** In order to settle their claims against CRST in the Action, and as consideration for
 9 CRST's payment of the Gross Settlement Amount, their respective Service Awards, and other good and
 10 valuable consideration described in this Agreement, Plaintiffs, individually and on behalf of their heirs,
 11 executors, administrators, and representatives, shall and do hereby forever release and discharge CRST and
 12 the Released Parties from the Released Claims, and any and all other claims, charges, complaints, claims,
 13 liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights,
 14 demands, costs, losses, debts, and expenses (including attorney fees and costs), known or unknown, at law
 15 or in equity, which they may now have or may have at the signing of this Agreement, against CRST or the
 16 Released Parties arising out all transactions, matters, or occurrences between Plaintiffs and CRST prior to
 17 the date of final approval of the Settlement. Without limiting the generality of the foregoing, this release
 18 shall include, but not be limited to, any and all claims under the (i) Americans With Disabilities Act (ADA),
 19 42 U.S.C. § 12101, *et seq.*, as amended; (ii) Title VII of the Civil Rights Act of 1964, as amended; (iii) the
 20 Civil Rights Act of 1991; (iv) 42 U.S.C. § 1981, as amended; (v) the Age Discrimination in Employment
 21 Act (ADEA), as amended; (vi) the Fair Labor Standards Act (FLSA), 29 U.S.C. § 216(b), as amended; (vii)
 22 the Equal Pay Act; (viii) the Employee Retirement Income Security Act, as amended; (ix) the Consolidated
 23 Omnibus Budget Reconciliation Act (COBRA), 29 U.S.C. § 1161, *et seq.*; (x) the Rehabilitation Act of
 24 1973, as amended; (xi) the Family and Medical Leave Act of 1993, 29 U.S.C. § 2601, *et seq.*, as amended;
 25 (xii) the Civil Rights Act of 1966; (xiii) the National Labor Relations Act, 29 U.S.C. § 151, *et seq.*; (xiv)
 26 the Workers Adjustment and Retraining Notification Act (WARN), 29 USC § 2100 *et seq.*, as amended;
 27 (xv) the California Fair Employment and Housing Act; (xvi) the California Constitution; (xvii) the
 28 California Labor Code; (xviii) the California Government Code; (xix) the California Civil Code; and (xx)

any and all other federal, state and local statutes, ordinances, regulations, rules and other laws, and any and all claims based on constitutional, statutory, common law or regulatory grounds as well as any other claims based on theories of wrongful or constructive discharge, breach of contract or implied contract, fraud, misrepresentation, promissory estoppel or intentional and/or negligent infliction of emotional distress, or damages under any other federal, state or local statutes, ordinances, regulations, rules or laws. This release is for any and all relief, no matter how denominated, including, but not limited to, back pay, front pay, vacation pay, bonuses, compensatory damages, tortious damages, liquidated damages, punitive damages, damages for pain and suffering, and attorney fees and costs. Finally, Plaintiffs hereby forever release and discharge CRST and the Released Parties from any and all claims for attorney fees and costs arising out of the matters released in this Agreement. This release does not include claims that cannot be released by agreement, including but not limited to workers' compensation claims.

b. **Section 1542.** Plaintiffs specifically acknowledge that they are aware of and familiar with the provisions of Section 1542, which provides as follows:

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

Plaintiffs, being aware of Section 1542, hereby expressly waive and relinquish all rights and benefits they may have under Section 1542, as well as any other statutes or common law principles of a similar effect. Plaintiffs and CRST may hereafter discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of the Released Claims and all the claims referenced in this Agreement, but they stipulate and agree that Plaintiffs shall and hereby do fully, finally, and forever settle and release any and all claims against CRST and the Released Parties, known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist or previously existed upon any theory of law or equity without regard to the subsequent discovery of such different or additional facts.

1 45. **Period to Consider Terms of Agreement.** Plaintiffs acknowledge that they are entitled to
2 and have been given 21 days to consider whether to accept the terms of the release given in Paragraph 46
3 of this Agreement. If Plaintiffs execute this Agreement before the expiration of the 21-day period, they do
4 so voluntarily, upon the advice and with the approval of Counsel for the Settlement Classes, and they
5 expressly and voluntarily waive their right to consider the release set forth in Paragraph 45 for any remaining
6 portion of that 21-day period.

7 46. **Revocation of Agreement.** Plaintiffs understand that, after executing this Agreement, they
8 have the right to revoke it within seven days after execution. Plaintiffs understand that this Agreement will
9 not become effective and enforceable unless and until the 7-day revocation period has passed. The release
10 provided for in Paragraph 45 by Plaintiffs shall become effective and enforceable as of the Effective Date
11 of this Agreement provided that the Effective Date of this Agreement occurs after the seven-day revocation
12 period has expired.

13 47. **Waiver of Money or Damages.** Plaintiffs also agree that, to the extent permitted by law, if
14 a claim is prosecuted in their name against the Released Parties before any court or administrative agency,
15 they waive and agree not to take any award of money or other damages from such proceeding. Plaintiffs
16 agree that, if a claim is prosecuted in their name against Released Parties that, unless otherwise compelled
17 by law, they will immediately request in writing that the claim(s) be withdrawn upon a written request by
18 Defense Counsel.

19 **F. NOTICE TO MEMBERS OF THE SETTLEMENT CLASS**

20 48. Within 14 days of the Court's issuance of an order granting preliminary approval of the
21 Settlement, CRST shall provide the Settlement Administrator a spreadsheet list identifying all members of
22 the Settlement Classes, including their names, last known addresses, last known telephone numbers, last
23 known email addresses, the number of weeks during which each member of the Settlement Classes was
24 employed by Dedicated West or Expedited Solutions during the applicable Class Period (and, for PAGA
25 Aggrieved Employees, the number of weeks during which they were employed by Dedicated West or
26 Expedited Solutions during the PAGA Period), and the social security number or tax identification number
27 under which all compensation was paid to the member of the Settlement Classes ("Class List"). This
28 information will be provided confidentially to the Settlement Administrator only, and the Settlement

1 Administrator shall treat the information as private and confidential and take all necessary precautions to
2 maintain the confidentiality of the Class List. The Settlement Administrator shall not share the Class List
3 with any other party or counsel for any of the Parties. This information is to be used only to carry out the
4 Settlement Administrator's duties as specified in this Agreement.

5 49. Within 10 days of receipt of the Class List, the Settlement Administrator shall send a Class
6 Notice to each member of the Settlement Classes by First Class U.S. Mail and by email.

7 50. No claim form is required for each Participating Class Member to receive a proportionate
8 share of the Settlement Fund. The Settlement Administrator will calculate and mail an Individual Settlement
9 Payment to each Participating Class Member and an Individual PAGA Payment to each PAGA Aggrieved
10 Employee pursuant to Paragraph 62, below, after the close of the opt-out period described in Paragraph 67,
11 below.

12 51. To provide the best notice practicable, any Class Notice sent to an email address that replies
13 as an invalid or undeliverable email address shall not be relied upon, and the Settlement Administrator shall
14 solely rely upon the Class Notice concurrently sent by U.S. Mail. If any mailed Class Notice is returned to
15 the Settlement Administrator as non-deliverable with an updated mailing address affixed, it shall be sent by
16 First Class U.S. Mail to the forwarding address affixed thereto. If a Class Notice is returned as undeliverable
17 without a forwarding address affixed thereto, the Settlement Administrator shall attempt to locate a current
18 mailing address for the member of the Settlement Class by skip-tracing and will mail the Class Notice to
19 the updated address identified. If no current address can be located, the Class Notice for that individual will
20 be deemed undeliverable. If a Class Member whose Class Notice was undeliverable by U.S. Mail
21 nevertheless receives the copy of the Class Notice sent to his or her email address, that Class Member may
22 still receive payment under in the Settlement, object to the Settlement, or opt out of the Settlement; however,
23 in order to do so, the Class Member will have the added requirement of updating their mailing address with
24 the Settlement Administrator on or before the deadline to object or to opt out, as described in Paragraphs

25 52. On the remailing of Class Notices by the Settlement Administrator to an updated mailing
26 address found through skip-tracing or provided by Counsel for the Settlement Classes, the Settlement
27 Administrator shall keep a record of the postmark mailing dates for such re-mailed Class Notices and record
28 all undelivered Class Notices.

G. EFFECT OF SETTLEMENT UPON TAXES AND EMPLOYER PLANS

53. **No Tax Advice & Circular 230 Disclaimer.** No provision of this Agreement or other communications or disclosures is, or was intended, to constitute tax advice within the meaning of United States Treasury Department Circular 230 (31 C.F.R., Subtitle A, Part 10, as amended). The Parties further represent they: (1) shall be solely responsible for reporting and paying any applicable federal, state and/or local income tax, employment tax or any other withholding on all taxable income or other benefit they individually receive as consideration exchanged pursuant to this Agreement; (2) have relied exclusively upon their own, independent legal and tax advisors for tax advice in connection with this Agreement; and (3) in keeping with their individual rights to due process, shall not be entitled to rely upon any communication or disclosure by Plaintiffs, CRST, or Parties' counsel to avoid the payment of any assessment, penalty, tax, attorneys' fees, and/or other amounts based on the taxability of any consideration provided or exchanged pursuant to this Settlement Agreement.

54. The Parties make no representations concerning the taxability, tax treatment, or legal effect of any tax laws on any consideration provided or exchanged pursuant to the Agreement, including any Individual Settlement Payments or any Individual PAGA Payments and that Participating Class Members should consult with their own tax advisors concerning the tax consequences of their receipt of any payment under the Agreement.

55. For the purpose of calculating applicable taxes for the payment of the Individual Settlement Payments paid to Participating Class Members (excluding any Service Fee Awards to Plaintiffs), the Parties agree that one-third of the Individual Settlement Payments will be allocated to taxable wages, and two-thirds of the Individual Settlement Payments will be allocated to interest, penalties, and liquidated damages and will not be subject to tax withholding. The Settlement Administrator shall be responsible for issuing and providing IRS Forms W-2s and 1099s to Participating Class Members for their Individual Settlement Payments. Accordingly, any applicable withholdings for payroll taxes owed by CRST under this Agreement will be paid and deducted from the Gross Settlement Amount. Unless otherwise specifically set forth herein, Plaintiffs, Participating Class Members and Counsel for the Settlement Classes will be responsible for payment of their own tax obligations, if any. Members of the Settlement Classes who may have questions about their tax liability, if any, should consult independent tax counsel. Except as otherwise provided herein,

1 the Released Parties shall have no liability or responsibility whatsoever for the taxes due by Participating
2 Class Members related to the distribution and payment of the Gross Settlement Amount. Each Participating
3 Class Member shall be responsible for the payment of any taxes due by him or her in connection with any
4 distribution and payment from the Gross Settlement Amount. In addition, the individual receiving the
5 Individual Settlement Payment shall indemnify and hold harmless each of the Released Parties for any taxes
6 related to the distribution and payment of the Gross Settlement Amount.

7 56. **No Effect on Employer Plans.** Neither this Agreement nor any amounts paid under the
8 Agreement will modify any previously credited hours, days, or weeks of service under any program
9 sponsored by CRST for members of the Settlement Classes. Such amounts will not form the basis for
10 additional contributions to, benefits under, or any other monetary entitlement under any of CRST's
11 sponsored programs. The payments made under the terms of this Agreement shall not be applied
12 retroactively, currently, or on a going forward basis, as any form of compensation for the purposes of any
13 of CRST's programs. CRST retains the right to modify the language of its sponsored programs to effect
14 this intent and to make clear that any amounts paid pursuant to this Agreement are not for "weeks worked,"
15 "weeks paid," "weeks of service," or any similar measuring term as defined by any programs for purpose
16 of eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are
17 not required by this Agreement. CRST does not consider payments made under the Agreement as
18 "compensation" for purposes of determining eligibility for, or benefit accrual within, any employer-
19 sponsored programs, or any other plan sponsored by CRST.

20 **H. DISTRIBUTION OF GROSS SETTLEMENT AMOUNT**

21 57. The Settlement Administrator shall establish a Settlement Fund for purposes of
22 administering the Settlement.

23 58. Within 30 days following the Effective Date, CRST will deposit the Gross Settlement
24 Amount into the qualifying settlement fund (QSF) account established by the Settlement Administrator,
25 pursuant to Section 468B of the Internal Revenue Code.

26 59. CRST is not responsible for paying any interest on the amount deposited, and it is the
27 responsibility of the Settlement Administrator to select and administer the interest-bearing account.

28 ///

1 60. **Formula for Calculating Individual PAGA Payments.** The Parties agree to allocate
2 \$200,000 as PAGA Penalties. 75% of the PAGA Penalties (i.e., \$150,000) shall be paid to the LWDA.

3 a. The remaining 25% of the PAGA Penalties (i.e., \$50,000) shall be paid to the PAGA
4 Aggrieved Employees on a *pro rata* basis, based on the total number of weeks during which each PAGA
5 Aggrieved Employee was employed by Dedicated West or Expedited Solutions during the PAGA Period,
6 based on CRST's records. Absent evidence to the contrary, CRST's records shall be assumed correct for
7 purposes of calculating the number of weeks during which each PAGA Aggrieved Employee was
8 employed, as well as any payments made pursuant to the Agreement.

9 b. The sum of the number of weeks during which all PAGA Aggrieved Employees worked as
10 an employee truck driver of Dedicated West or as an Expedited Solutions during the PAGA Period, by all
11 PAGA Aggrieved Employees will be referred to as the "Total PAGA Workweeks."

12 c. The amount to be paid per workweek to a PAGA Aggrieved Employee will be calculated
13 by dividing \$50,000 by the Total PAGA Workweeks.

14 61. **Formula for Calculating Individual Settlement Payments.** The portion of the Settlement
15 Fund to pay Individual Settlement Payments to Participating Class Members shall be determined as follows:

16 a. The payment to each individual Participating Class Member will be based on their *pro rata*
17 share of the Settlement Fund, as determined by the total number of weeks during which each Participating
18 Class Member worked as an employee truck driver of Dedicated West during the Gardner-Dedicated West
19 Class Period or Expedited Solutions during the Expedited Class Period, based on CRST's records. Absent
20 evidence to the contrary, CRST's records shall be assumed correct for purposes of calculating the number
21 of weeks during which each member of the Settlement Classes was employed, as well as any payments
22 made pursuant to the Agreement.

23 b. The sum of the number of weeks during which all Participating Class Members worked as
24 either an employee truck driver of Dedicated West during the Gardner-Dedicated West Class Period or as
25 an employee truck driver of Expedited Solutions during the Expedited Class Period by will be referred to
26 as the "Total Class Workweeks."

27 c. The amount to be paid per workweek to a Participating Class Member will be calculated by
28 dividing the value of the Settlement Fund by the Total Class Workweeks.

62. **Distribution of Individual Settlement Payments and Individual PAGA Payments.**

Within 15 days after the funding of the QSF or within 45 days of the Effective Date, whichever is sooner, The Settlement Administrator shall distribute the Court-approved Individual Settlement Payments and Individual PAGA Payments by check to the last known mailing address for each Participating Class Member and PAGA Aggrieved Employee.

63. **Uncashed Settlement Checks.** If any check remains uncashed after 180 days from the date the check is issued, such check(s) will be canceled by the Settlement Administrator. Those funds will be delivered to the State of California Unclaimed Property Fund. The Participating Class Members who do not cash their Individual Settlement Payment checks shall remain bound by the terms of this Agreement.

64. **Distribution of Service Awards and Attorney Fees and Costs.** Within 15 days after the funding of the QSF or within 45 days of the Effective Date, whichever is sooner, the Settlement Administrator shall distribute the Service Awards to each Class Representative and shall distribute the Attorney Fees and Costs to Counsel for the Settlement Classes, as approved and awarded by the Court.

65. **Settlement Administration Costs.** Within 15 days after the funding of the QSF, the Settlement Administrator shall deduct the Court-approved sum for payment of its fee and costs for administering the Settlement pursuant to its terms.

I. OBJECTIONS TO AND OPTING OUT OF THE SETTLEMENT

66. **Objections to the Settlement.** Members of the Settlement Classes wishing to object to the Settlement must submit only to the Court a written and signed objection, postmarked or electronically submitted via PACER at <https://ecf.cand.uscourts.gov>, within 50 days of the date of initial mailing or remailing of the Class Notice. The postmark date or date of electronic or physical filing will be the exclusive means to determine whether an objection has been timely submitted. Any members of the Settlement Classes objecting to the Settlement must: (1) clearly identify the case name and case number of this Action; (2) must include their name, address, and signature on the objection; and (3) must state the reasons for objecting to the Settlement. All objections will be scanned into the electronic case docket, and the parties will receive electronic notices of filings. Settlement Class Members may also appear at the Fairness Hearing to present any timely submitted objection. Settlement Class Members may submit objections and appear at the Fairness Hearing through their own attorneys, but, if they do so, they are solely responsible for hiring

1 and paying such attorneys. Counsel for the Settlement Classes will not represent any Settlement Class
2 Members with respect to any such objections to this Settlement, and any Settlement Class members who
3 request exclusion from the Settlement will not have standing to object to it.

4 **67. Exclusion From the Settlement.** Members of the Settlement Classes who wish to exclude
5 themselves from the Settlement must submit to the Settlement Administrator a written letter that must:
6 (1) contain the Class Member's name, address, and the last four digits of his or her Social Security Number;
7 (2) clearly state the Class Member's request to be excluded from the Settlement and from releasing the
8 Released Class Claims; (3) be signed by the Class Member or his or her lawful representative; and (4) be
9 postmarked within 50 days of the date of initial mailing or remailing of the Class Notice. A request to opt
10 out of the Settlement will be deemed timely if postmarked on or before the 50th day after the initial mailing
11 or remailing of the Class Notice.

12 **68.** Members of the Settlement Classes who timely opt out may not submit an objection to the
13 Agreement.

14 **69.** In the event that 10% or more of the Settlement Classes exercise their right to exclude
15 themselves and opt out of the Settlement, CRST retains the exclusive right, but not the obligation, to
16 withdraw from and terminate the Settlement and return all parties back to their same positions as before the
17 Settlement was reached and the Settlement Agreement was entered into or, alternatively, to reduce the Gross
18 Settlement Amount proportionally by the number of weeks worked for each member of the Settlement
19 Classes who opts out. In the event that CRST exercises its right to withdraw from and terminate the
20 Settlement under the terms set forth in this paragraph, CRST must notify Counsel for the Settlement Classes
21 and the Court in writing of such a decision no later than seven days prior to the date of the Fairness Hearing.
22 In the event of CRST's withdrawal, no party may use the fact that the Parties agreed to the Settlement for
23 any reason. Further, only in the event that CRST exercises its right to withdraw from and terminate the
24 Settlement, CRST shall be solely responsible for the costs of the settlement administration incurred to date.

25 **70. Disputes as to Workweeks Allocated.** Members of the Settlement Classes or PAGA
26 Aggrieved Employees who wish to dispute the Workweeks allocated to them in their Class Notice have the
27 option to submit to the Settlement Administrator a written letter that must: (1) contain the individual's name,
28 address, and the last four digits of his or her Social Security Number; (2) include documents or other

evidence in support of the individual's challenge to the number of Workweeks allocated to him or her; (3) be signed by the disputing individual or his or her lawful representative; and (4) be postmarked within 50 days of the date of initial mailing or remailing of the Class Notice. A letter of Dispute as to Workweeks Allocated will be deemed timely if postmarked on or before the 50th day after the initial mailing or remailing of the Class Notice. If a valid dispute letter is received timely, the Settlement Administrator shall review the written explanation and any supporting documentation provided, as well as CRST's records, to resolve any disputes regarding the accurate number of Workweeks. CRST's calculation of Workweeks will be presumed accurate unless clear and compelling documentary evidence has been provided that establishes that a mistake was made by CRST. The Settlement Administrator shall investigate the dispute, request information from CRST as necessary, and determine whether any additional amount is owed to the disputant. The Settlement Administrator's determination as to such disputes shall be final.

J. SCHEDULE FOR PRELIMINARY AND FINAL APPROVAL

71. The following procedures for obtaining the Court's approval shall be implemented with respect to the Settlement, notice to the Settlement Classes, and all benefits provided under this Agreement:

72. **Stay of All Litigation.** As of the filing of the motion for preliminary approval of this Settlement, and pending preliminary and final approval of the Settlement, the Parties agree that there will be a stay of all litigation not reasonably necessary for approval by the Court of this Agreement and all terms herein. The Parties additionally agree that all litigation in the separately pending PAGA action filed by Plaintiff Matney-Tate, entitled *Matney-Tate v. Gardner Trucking, Inc.*, pending in California Superior Court for San Joaquin County under Case No. STK-CV-UOE-2021-11019, shall continue to be stayed pending settlement approval proceedings in this Action.

73. **Request for Approval by the Court.** Counsel for the Settlement Classes will prepare and file a mutually agreeable motion for preliminary approval of this Agreement the applicable deadline set by the Court in the Action. Should the Court grant preliminary approval of the Settlement, Counsel for the Settlement Classes will also prepare and file a mutually agreeable motion for final approval of the Settlement within the applicable deadline set by the Court.

74. Prior to the Fairness Hearing, the Settlement Administrator shall provide written reports or declarations to the Parties and Parties' Counsel describing, among other things, the process and results of

the settlement administration process, the total number of opt-out requests received (both timely and valid or otherwise), the total number of notices of objection received (both timely and complete or otherwise), the total number of disputes received (both timely and valid or otherwise), and the actual or projected Settlement Administration Costs to date, which report or declarations Plaintiffs may file with the Court prior to the Fairness Hearing.

75. **Notice to State and Federal Officials and Filing of the Third Amended Consolidated Complaint.** Within ten days of execution of this Agreement, Counsel for the Settlement Classes shall file another letter with the LWDA providing the LWDA with notice, pursuant to Cal. Lab. Code § 2699.3, of all claims being released as part of this settlement, including notice of Plaintiffs' allegation that CRST failed to pay all wages owed based on a rounding policy in effect during the Gardner-Dedicated West Class Period. Following exhaustion of the 65-day notice period required under Cal. Lab. Code § 2699.3(a)(2)(A), Plaintiffs will file a Third Amended Consolidated Complaint, which will include all claims being released as part of this Settlement by Plaintiffs, the Gardner-Dedicated West Settlement Class, the Expedited Settlement Class, and the PAGA Aggrieved Employees.

76. On the same date or prior to the date that Counsel for the Settlement Classes files the Motion for Preliminary Approval of this settlement, Counsel for the Settlement Classes shall additionally file a notice with the LWDA providing the LWDA with notice of the Settlement as required by Cal. Labor Code § 2699(l)(2). The hearing on the motion for preliminary approval shall be set for no earlier than 70 days after the motion is filed.

77. Within 10 days of the date Plaintiffs file a Motion for Preliminary Approval of this Settlement, CRST shall serve the Notice of this Stipulation on the appropriate federal and state officials, as required by the Class Action Fairness Act (CAFA), 28 U.S.C. § 1715(b).

78. **Dismissal with Prejudice of the Action.** The Action shall be dismissed with prejudice within ten days after CRST deposits the Gross Settlement Amount into the QSF account as described in Paragraph 59 of this Agreement, as part of the consideration for the Settlement. On the same date, Plaintiff Matney-Tate shall additionally move to dismiss his separately pending PAGA action entitled *Matney-Tate v. Gardner Trucking, Inc.*, pending in California Superior Court for San Joaquin County under Case No. STK-CV-UOE-2021-11019.

79. **Duties of the Parties Following Final Court Approval.** Following final approval of the Settlement, Counsel for the Settlement Classes will submit a mutually agreeable Final Approval Order: approving the Agreement, adjudicating the terms thereof to be fair, reasonable, and adequate; directing consummation of all terms and provisions; dismissing the Action with prejudice; and, without affecting the finality of the Final Approval Order, allowing the Court to retain jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation, and enforcement of the Final Approval Order and the Agreement. The executed Final Approval Order shall be posted on the Settlement Administrator's website.

K. MISCELLANEOUS PROVISIONS

80. **Mutual Full Cooperation.** The Class Representatives, CRST, Counsel for the Settlement Classes, and Defense Counsel agree to cooperate fully with each other to accomplish the terms of this Agreement, including execution of necessary documents and other such other action as may reasonably be necessary to implement the terms herein.

81. **Parties' Authority.** The signatories to this Agreement represent that they are fully authorized to enter into this Agreement and bind Plaintiffs, the Gardner-Dedicated West Settlement Class, the Expedited Settlement Class, and CRST to all terms stated herein.

82. **Binding Nature of the Agreement.** This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Released Parties. Plaintiffs represent, covenant, and warrant that they have not, directly or indirectly, assigned, transferred, or encumbered any of the Released Claims.

83. This Agreement may not be admitted into evidence or used in any proceeding except an action, motion or proceeding to approve, interpret, or enforce the terms of this Agreement.

84. **Amendments.** Material amendments to this Agreement may be made only by a written instrument signed by Counsel for the Settlement Classes, Plaintiffs, Defense Counsel, and CRST. Plaintiffs and CRST authorize their respective counsel to make any ministerial amendments or modifications to this Agreement, including formatting changes, typographic corrections, and any necessary revisions to the draft Class Notice documents attached hereto, by way of written instrument signed by Counsel for the Settlement Classes and Defense Counsel on their respective clients' behalf. No rights under this Agreement may be waived except in writing.

1 85. **Joint Drafting of Settlement Documents.** Counsel for the Settlement Classes and Defense
2 Counsel have arrived at this Agreement through a series of informed and arm's-length negotiations,
3 including two private, full-day mediations, and taking into account all relevant factors, present and potential.
4 This Agreement has been drafted jointly by Counsel for the Settlement Classes and Defense Counsel and,
5 therefore, in any construction or interpretation of this Agreement, the same shall not be construed against
6 any of the Parties.

7 86. **Public Comments Regarding the Action or the Agreement.** Neither Plaintiffs nor
8 Counsel for the Settlement Classes shall issue any press release related to the Settlement. Plaintiffs and
9 Counsel for the Settlement Classes agree that, prior to preliminary approval of the Settlement, they will
10 keep the terms of the Settlement confidential except for purposes of communicating with Plaintiffs.
11 Plaintiffs have been informed that the Settlement is confidential and shall be advised to keep the Settlement
12 confidential.

13 87. From and after preliminary approval of the Settlement, Plaintiffs and Counsel for the
14 Settlement Classes may: (a) as required by law; (b) as required under the terms of the Settlement; or (c) as
15 required under Settlement Classes Counsel's duties and responsibilities as Settlement Classes Counsel,
16 comment regarding the specific terms of the Settlement. In all other cases, Plaintiffs and Counsel for the
17 Settlement Classes agree to limit their statements regarding the terms of the Settlement, whether oral,
18 written or electronic (including the world wide web), to say the Action has been resolved. Nothing in this
19 Paragraph is intended to interfere with Settlement Classes Counsel's duties and obligations to faithfully
20 discharge their duties as Counsel for the Settlement Classes, including but not limited to, communicating
21 with members of the Settlement Classes regarding the Settlement.

22 88. Following entry of the order granting final approval of the Settlement, Counsel for the
23 Settlement Classes shall be prohibited from including information regarding the Settlement on its firm's
24 website.

25 89. All necessary disclosures may be made on the Parties' financial statements; to the Parties'
26 accountants and auditors; in public filings; to government regulatory agencies; and to any local, state, or
27 federal taxing authority; or as otherwise required by law.

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1 90. **Confidentiality of Documents.** After the expiration of any appeals period, the Settlement
2 Administrator, shall return to CRST all documents, deposition transcripts, declarations and other
3 information designated confidential by CRST and obtained in the Action or shall certify to Defense Counsel
4 that all such documents, transcripts, declarations, and other information, whether in paper or electronic
5 form, including copies, have been destroyed. Plaintiffs' Counsel shall retain those documents confidential
6 pursuant to any protective order and pursuant to its obligations and duties. Plaintiffs' Counsel may not use
7 the documents for any other cases or for any other purposes.

8 91. **Execution of the Agreement.** This Agreement may be executed in one or more
9 counterparts and by facsimile. All executed copies of this Agreement, and photocopies thereof, shall have
10 the same force and effect and shall be as legally binding and enforceable as the originals.

11 92. **No Third-Party Beneficiaries.** Plaintiffs, members of the Settlement Classes, CRST, and
12 the Released Parties are direct beneficiaries of this Agreement. There are no third-party beneficiaries of this
13 Agreement.

14 93. **Continuing Jurisdiction.** The Court shall retain jurisdiction over the implementation of
15 this Agreement and all matters arising out of, or related to, its implementation. The Court shall not have
16 jurisdiction to modify the terms of the Agreement without the consent of all Parties in writing.

17 94. **Severability.** In the event that any one or more of the provisions contained in this
18 Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity,
19 illegality, or unenforceability shall in no way effect any other provision if Defense Counsel and Counsel for
20 the Settlement Classes, on behalf of the Parties and the Settlement Classes, mutually agree in writing to
21 proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

22 95. **Governing Law.** This Settlement is intended to and shall be governed by the laws of the
23 State of California, without regard to conflict of law principles, in all respects, including execution,
24 interpretation, performance, and enforcement.

25 96. **Disputes.** Any dispute arising out of or relating to this Agreement that cannot be resolved
26 by the Parties, other than a dispute by a member of the Settlement Classes, will be submitted to the Mediator,
27 Hon. Amy D. Hogue (Ret.), for further mediation. The Parties will split the Mediator's costs, and all Parties
28 will bear their own attorneys' fees and other costs incurred resolving any dispute arising out of this

Agreement. Nothing in this provision shall limit Counsel for the Settlement Classes ability to seek any such attorneys' fees and other costs incurred as part of the Gross Settlement Amount.

97. **Stay Upon Appeal.** In the event of a timely appeal from judgment and dismissal, the judgment shall be stayed, CRST shall have no obligation to fund the Gross Settlement Amount, and none of the Gross Settlement Amount shall be distributed. The actions required by this Settlement shall not take place until all appeal rights have been exhausted by operation of law.

PLAINTIFF KASPER LEUZINGER

Dated: 4/24/2024

By:



ID 5Ts3VeFaw7WQthU3y5r2gjVq

Kasper Leuzinger

PLAINTIFF WILLIAM MATNEY-TATE

Dated: _____

By: _____

William Matney-Tate

PLAINTIFF MICHAEL ALLEN JENSEN

Dated: 4/23/2024

By:



ID utd9G9oHN56tA128RQ66s8e3

Michael Allen Jensen

PLAINTIFF RICARDO AMEZCUA

Dated: 4/24/2024

By:



ID SwgaukMzWEa8GnqCFYbuTd3v

Ricardo Amezcua

CRST EXPEDITED, INC. d/b/a CRST The
Transportation Solution, Inc.

Dated: _____

By: _____

Lisa A. Stephenson, its General Counsel

1 Agreement. Nothing in this provision shall limit Counsel for the Settlement Classes ability to seek any such
2 attorneys' fees and other costs incurred as part of the Gross Settlement Amount.

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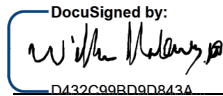
7
8 PLAINTIFF KASPER LEUZINGER

9
10 Dated: _____

By: _____
Kasper Leuzinger

11
12 PLAINTIFF WILLIAM MATNEY-TATE

13 Dated: 4/23/2024
14 _____

By: 
William Matney-Tate

15
16 PLAINTIFF MICHAEL ALLEN JENSEN

17 Dated: _____

By: _____
Michael Allen Jensen

18
19 PLAINTIFF RICARDO AMEZCUA

20
21 Dated: _____

By: _____
Ricardo Amezcua

22
23
24 CRST EXPEDITED, INC. d/b/a CRST The
Transportation Solution, Inc.

25
26 Dated: _____

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7
 8 PLAINTIFF KASPER LEUZINGER

9
 10 Dated: _____

By: _____
 Kasper Leuzinger

11
 12 PLAINTIFF WILLIAM MATNEY-TATE

13
 14 Dated: _____

By: _____
 William Matney-Tate

15
 16 PLAINTIFF MICHAEL ALLEN JENSEN

17
 18 Dated: _____

By: _____
 Michael Allen Jensen

19
 20 PLAINTIFF RICARDO AMEZCUA

21
 22 Dated: _____

By: _____
 Ricardo Amezcua

23
 24 CRST EXPEDITED, INC. d/b/a CRST The
 Transportation Solution, Inc.

25
 26 Dated: April 24, 2024

By: 
 Lisa A. Stephenson, its General Counsel

SETAREH LAW GROUP

Dated: 4/30/2024

By:



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Shaun Setareh
Jose Maria D. Patino, Jr.
Attorneys for Plaintiffs

JAMES HAWKINS APLC

Dated: _____

By:

James Hawkins
Gregory Mauro
Attorneys for Plaintiffs

SCOPELITIS, GARVIN, LIGHT, HANSON &
FEARY, P.C.

Dated: _____

By:

James H. Hanson
Attorney for CRST Expedited, Inc.

SETAREH LAW GROUP

Dated: _____

By: _____

Shaun Setareh
Jose Maria D. Patino, Jr.
Attorneys for Plaintiffs

JAMES HAWKINS APLC

Dated: 04.23.2024

By: _____

James Hawkins
Gregory Mauro
Attorneys for Plaintiffs

SCOPELITIS, GARVIN, LIGHT, HANSON &
FEARY, P.C.

Dated: _____

By: _____

James H. Hanson
Attorney for CRST Expedited, Inc.

SETAREH LAW GROUP

Dated: _____

By: _____

Shaun Setareh
Jose Maria D. Patino, Jr.
Attorneys for Plaintiffs

JAMES HAWKINS APLC

Dated: _____

By: _____

James Hawkins
Gregory Mauro
Attorneys for Plaintiffs

SCOPELITIS, GARVIN, LIGHT, HANSON &
FEARY, P.C.

Dated: _____

By: _____


James H. Hanson
Attorney for CRST Expedited, Inc.

EXHIBIT A

NOTICE OF CLASS AND PAGA SETTLEMENT

Kasper Leuzinger et al v. Gardner Trucking Inc., et al. (In re Gardner Trucking Wage and Hour Litigation)
U.S. District Court for the Northern District of California Case No. 4:21-cv-04952-YGR

**IF YOU ARE OR WERE A CALIFORNIA RESIDENT TRUCK DRIVER OF CRST
AS PART OF EITHER (1) WHAT IS NOW KNOWN AS DEDICATED WEST SOLUTIONS
AT ANY TIME FROM APRIL 6, 2016 THROUGH FEBRUARY 29, 2024,
OR (2) WHAT IS NOW KNOWN AS EXPEDITED SOLUTIONS
AT ANY TIME FROM AUGUST 10, 2017 THROUGH FEBRUARY 29, 2024,
THIS CLASS ACTION AND PAGA SETTLEMENT MAY AFFECT YOUR RIGHTS.**

A court authorized this Notice. This is not a solicitation by a lawyer. You are not being sued.

Why should you read this Notice?

A proposed settlement (the “Settlement”) has been reached in a consolidated class and representative action lawsuit entitled *Kasper Leuzinger et al v. Gardner Trucking Inc., et al.*, which has been recaptioned as *In re Gardner Trucking Wage and Hour Litigation*, U.S. District Court for the Northern District of California Case Nos. 4:21-cv-04952-YGR (the “Civil Action”). The purpose of this Notice of Class and PAGA Settlement (“Notice”) is to briefly describe the Civil Action, and to inform you of your rights and options in connection with it and the proposed Settlement. The proposed Settlement will resolve all claims in the Civil Action.

This Notice summarizes the proposed settlement. For the precise terms of the settlement, please see the settlement agreement available online at [settlement website URL], by contacting class counsel at the phone numbers and email addresses listed below, by accessing the Court docket in this case, for a fee, through the Court’s Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, 1301 Clay Street, Oakland, California 94612, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays. The website listed above lists key deadlines and has links to the notice, preliminary approval order, motions for preliminary and final approval and for attorneys’ fees, and any other important documents in the case.

A hearing concerning the Settlement will be held before the Honorable Yvonne Gonzalez Rogers on [redacted], at [redacted], in Courtroom 1 – 4th Floor of the U.S. District Court for the Northern District of California, 1301 Clay Street, Oakland, California 94612, to determine whether the Settlement is fair, adequate, and reasonable. The proposed Settlement will resolve all claims that were alleged or could have been alleged in the Civil Action. It is important that you read this Notice carefully as your rights may be affected by the Settlement.

AS A CLASS MEMBER, YOU ARE ELIGIBLE TO RECEIVE A SETTLEMENT PAYMENT UNDER THE SETTLEMENT AND WILL BE BOUND BY THE RELEASE OF RELEASED CLASS CLAIMS DESCRIBED IN THIS NOTICE AND THE SETTLEMENT AGREEMENT FILED WITH THE COURT, UNLESS YOU TIMELY REQUEST TO BE EXCLUDED FROM THE SETTLEMENT. IN ADDITION, THIS PROPOSED SETTLEMENT RELEASES CLAIMS UNDER THE PRIVATE ATTORNEYS GENERAL ACT (“PAGA”). IF YOU WERE AN HOURLY OR NON-EXEMPT EMPLOYEE OF DEFENDANTS IN CALIFORNIA WITHIN THE LIMITATIONS PERIOD FOR THE PAGA CLAIMS, YOU WILL RECEIVE AN INDIVIDUAL PAGA PAYMENT UNDER THE SETTLEMENT AND WILL BE BOUND BY THE RELEASE OF RELEASED PAGA CLAIMS DESCRIBED IN THIS NOTICE AND THE SETTLEMENT AGREEMENT FILED WITH THE COURT. YOU CANNOT REQUEST TO BE EXCLUDED FROM THE RELEASE OF RELEASED PAGA CLAIMS, REGARDLESS OF WHETHER YOU TIMELY REQUEST TO BE EXCLUDED FROM THE SETTLEMENT.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
DO NOTHING	If you do nothing, as explained more fully below, you will be considered a Participating Class Member and will receive settlement benefits. You will also give up the right to pursue a separate legal action against CRST for the same or similar claims in this lawsuit as detailed further below in the section describing the released claims.
EXCLUDE YOURSELF FROM THE CLASS SETTLEMENT	You have the option to pursue separate legal action against CRST with respect to the claims in this lawsuit, except for the Released PAGA Claims (defined below). If you would like to retain the option to do so, you must submit a written request to be excluded from the Class and the Settlement (“Opt Out”). If you elect to be excluded as such, you will not receive any benefits under the Settlement apart from the benefits that are allotted to you as a PAGA Aggrieved Employee, if any. As discussed below, please also be aware that the Released PAGA Claims are binding on the PAGA Aggrieved Employees regardless of whether an individual has submitted a valid request to be excluded from the Settlement and the release of the Released Class Claims. If you are a PAGA Aggrieved Employee who has requested to be excluded from the Settlement and the release of the Released Class Claims, you will still receive your Individual PAGA Payment and will still release the Released PAGA Claims.
OBJECT	To object to the Settlement, you must set forth why you oppose the Settlement by submitting a written Objection. This option is available only if you do not exclude yourself from the Settlement. You must remain a Class Member of the lawsuit to object to the Settlement.

Who is affected by this proposed Settlement?

The Court has certified the following Classes for settlement purposes:

All California resident truck driver employees who worked for CRST as part of what is now known as Dedicated West at any time from April 6, 2016 through February 29, 2024 (the “Gardner-Dedicated West Settlement Class,” “Class,” “Class Member,” or “Class Members”).

All California resident truck driver employees who worked for CRST as part of what is now known as Expedited Solutions at any time from August 10, 2017 through February 29, 2024 (the “Expedited Settlement Class,” “Class,” “Class Member,” or “Class Members”).

The Court has also approved the following “PAGA Aggrieved Employees” definition for settlement purposes: All California resident truck driver employees who worked for CRST as part of what is now known as Dedicated West or Expedited Solutions at any time from December 3, 2018 through February 29, 2024 (the “PAGA Release Period”).

According to CRST’s records, you are a member of the Class [and a PAGA Aggrieved Employee].

What is this case about?

Plaintiffs Kasper Leuzinger, Michael Allen Jensen, William Matney-Tate, and Ricardo Amezcua (“Plaintiffs” or “Class Representatives”) alleged claims against Defendants Gardner Trucking, Inc., Gardner Trucking Conversion, LLC, CRST Expedited, Inc., and CRST The Transportation Solution, Inc. (collectively, “CRST”) for: (1) failure to provide meal and rest periods under California law; (2) failure to pay minimum wages under California law; (3) failure to pay vacation wages under California law; (4) failure to reimburse for necessary business expenses as required by California law; (5) failure to provide accurate written wage statements under California law; (6) failure to timely pay all final wages under

California law; (7) engaging in unfair competition under California law; and (8) failure to pay minimum wage for all hours worked under the federal Fair Labor Standards Act (FLSA), as well as a representative claim for penalties pursuant to the California Labor Code Private Attorney General Act of 2004, Labor Code Sections 2698, *et seq.* (“PAGA”) based on the violations alleged above. Plaintiffs asserted these claims on behalf of the Class Members and PAGA Aggrieved Employees. Plaintiffs sought damages, restitution, civil penalties, statutory penalties, pre-and post-judgment interest, costs, and attorneys’ fees.

CRST denies all liability in the Civil Action and is confident that it has strong legal and factual defenses to these claims, but recognizes the risks, distractions, and costs associated with litigation. CRST contends that its conduct is and has been lawful at all times relevant and that Plaintiffs’ claims do not have merit and do not meet the requirements for class certification or to maintain a representative action.

This Settlement is a compromise reached after good faith, arm’s-length negotiations between Plaintiffs and CRST (collectively, the “Parties”), through their attorneys, and is not an admission of liability on the part of CRST. Both sides agree that in light of the risks and expenses associated with continued litigation, this Settlement is fair, adequate, and reasonable. Plaintiffs also believe this Settlement is in the best interests of all Class Members and PAGA Aggrieved Employees.

The Court has not ruled on the merits of Plaintiffs’ claims or CRST’s defenses.

Who are the attorneys representing the Parties?

The attorneys representing the Parties in the Civil Action are:

Class Counsel

Shaun Setareh (SBN 204514)

shaun@setarehlaw.com

Jose Maria D. Patino, Jr. (SBN 270194)

jose@setarehlaw.com

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Defense Counsel

Christopher C. McNatt, Jr. (SBN 174559)

cmcnatt@scopelitis.com

SCOPELITIS, GARVIN, LIGHT, HANSON & FEARY, LLP

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Chicago, IL 60603

P: 312-255-7200; F: 312-422-1224

What are the Settlement terms?

Subject to the Court's final approval, the key terms of the Settlement are as follows:

Gross Settlement Amount

Subject to final Court approval, CRST will pay \$4,050,000.00 (the "Gross Settlement Amount"), which shall be inclusive of all payments to individual Class Members ("Individual Settlement Payments"), all attorneys' fees and expenses (including court costs) to be paid to Counsel for the Settlement Classes, any Class Representative Service Awards, settlement administration costs and expenses, and all payments to PAGA Aggrieved Employees and the State of California Labor and Workforce Development Agency ("LWDA") for PAGA penalties, and payroll taxes on any portion of payments to members of the Gardner-Dedicated West Settlement Class, the Expedited Settlement Class, and the PAGA Aggrieved Employees that constitute wages. In no event will CRST be required to pay more than the Gross Settlement Amount for the claims under the terms of the Settlement.

Net Settlement Amount

The "Settlement Fund" means the portion of the Gross Settlement Amount available for distribution to Class Members after the deduction of: (1) the Class Representative Service Awards to the Plaintiffs in an amount up to \$10,000.00 each for their services to the class as Class Representatives and individual releases for a total of \$40,000.00; (2) the Settlement administration costs to the Settlement Administrator, ILYM Group, Inc., currently estimated at approximately \$60,000, but not to exceed \$100,000; (3) \$200,000.00 for PAGA payments to the LWDA and the PAGA Aggrieved Employees ("PAGA Penalties"); and (4) Counsel for the Settlement Classes' attorneys' fees payment in an amount up to \$1,350,000.00 and Counsel for the Settlement Classes' litigation costs payment in an amount expected not to exceed \$35,000. All of these payments are subject to Court approval.

PAGA Penalties

The "PAGA Penalties" means the amount allocated to penalties to settle claims alleged under the California Private Attorneys General Act of 2004 ("PAGA"), Labor Code §§ 2698-2699.5, which is \$200,000.00. 75% of the PAGA Penalties or \$150,000.00 shall be paid to the LWDA and \$50,000.00 shall be distributed to the PAGA Aggrieved Employees.

Settlement Share Formulas**(a) Individual Settlement Payments (to Participating Class Members from the Settlement Fund)**

If you are a Class Member and do not submit a valid and timely Opt Out, you will receive an Individual Settlement Payment determined based on the number of other Class Members that do not submit a valid and timely Opt Out (the "Participating Class Members") and your Workweeks.

The payment to each individual Participating Class Member will be based on their *pro rata* share of the Settlement Fund, as determined by the total number of weeks during which each Participating Class Member worked as an employee truck driver of either Dedicated West during the Gardner-Dedicated West Class Period or Expedited Solutions during the Expedited Class Period, based on CRST's records. "Total Class Workweeks" means the total number of weeks that you worked as an employee truck driver of Dedicated West during the Gardner-Dedicated West Class Period or as an employee truck driver of Expedited Solutions during the Expedited Class Period.

According to CRST's records, you are a Class Member and you worked [dates of employment].

Pursuant to these calculations, your projected Individual Settlement Payment under the Settlement based on your membership in the Class would be approximately \$_____. 1/3(or 33.333%) of your Settlement Payment will be allocated to taxable wages, and 2/3 (or 66.666%) of the Individual Settlement Payments will be allocated to interest, penalties, and liquidated damages and will not be subject to tax withholding. The Settlement Administrator shall be responsible for issuing and providing IRS Forms W-2s and 1099s to Participating Class Members for their Individual Settlement Payments.

Nothing in this Notice or the Settlement is intended to be tax advice. You should consult your own tax advisor for such advice in connection with any Individual Settlement Payment. In addition, if additional Class Members are identified, your Individual Settlement Payment may be reduced based on the above formula.

(b) Individual PAGA Payments (to PAGA Aggrieved Employees from 25% of the PAGA Penalties)

As noted above, the PAGA Penalties in this case are \$200,000.00. \$150,000.00 of the PAGA Penalties, if approved, shall be issued to the LWDA. The remaining \$50,000.00 shall be paid to the PAGA Aggrieved Employees. This payment is calculated on a *pro rata* basis, based on the total number of weeks during which you were employed by Dedicated West or Expedited Solutions during the PAGA Period. As explained below, a PAGA Aggrieved Employee cannot Opt Out of the release of the PAGA Released Claims.

Pursuant to these calculations, your projected Individual PAGA Payment based on your workweeks as a PAGA Aggrieved Employee would be approximately \$_____. Taxes will not be deducted from your Individual PAGA Payment. Nothing in this Notice or the Settlement is intended to be tax advice. You should consult your own tax advisor for such advice in connection with the PAGA Payment. In addition, if additional PAGA Employees are identified, your Individual PAGA Payment may be reduced based on the above formula.

Settlement Distribution

The Settlement Administrator shall distribute the Court-approved Individual Settlement Payments and Individual PAGA Payments by check to the last known mailing address for each Participating Class Member and PAGA Aggrieved Employee within 15 days after the funding of the Qualified Settlement Fund or within 45 days of the Effective Date, whichever is sooner. To ensure that you receive all payments that may be due to you, please ensure that the contact information and mailing address on file with the Settlement Administrator is accurate:

[Name]
[Mailing Address]
[City, State ZIP]
[Phone Number]
[Email Address]

If any of the above is incorrect, please call the Settlement Administrator at _____ to update your contact information.

If any Individual Settlement Payment or Individual PAGA Payment check remains uncashed after 180 days from issuance, the Settlement Administrator will cancel those checks and shall pay the funds represented by such un-redeemed checks to the State of California Unclaimed Property Fund, as unclaimed property, in the name of the individual Participating Class Member and/or PAGA Aggrieved Employee. In that event, the Participating Class Member and/or PAGA Aggrieved Employee nonetheless shall be bound by the terms of the Settlement.

What claims are being released by the proposed Settlement?

Providing there is final Court approval of this Settlement, then as of the date that CRST transmits the Gross Settlement Amount to the Settlement Administrator, the Participating Class Members, individually and on behalf of all their respective successors, assigns, agents, attorneys, executors, heirs, and personal representatives, shall be deemed to have fully, finally, and forever released and discharged the Released Parties, and each of them, from all Class Released Claims.

“Released Class Claims” means all wage and hour claims, known or unknown, at law or in equity, which the Named Plaintiffs and the Settlement Classes have or may have, arising out of or related to the wage and hour claims (including all derivative claims) and the facts and allegations asserted in the Complaints, including the claims under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*, Cal. Labor Code §§ 201-204, 223, 225.5, 226.2, 226, 226.7, 227.3, 500, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2698-99, and 2802, IWC Wage Order No. 9, and claims under the Cal. Business & Professions Code §§ 17200-17204 based on the foregoing. The Released Class Claims do not include the certified claims of the Amended Piece-Rate Class in *Huckaby v. CRST Expedited, Inc.*, pending in the Central District

of California under Case No. 2:21-cv-07766-ODW (*Huckaby*), as defined by the Court order granting class certification, in part, dated October 3, 2022 (ECF No. 60), and as amended in the order granting CRST's motion for reconsideration of that order, in part, dated April 10, 2023 (ECF No. 86).

Providing there is final Court approval of this settlement, then as of the date that CRST transmits the Gross Settlement Amount to the Settlement Administrator, the PAGA Aggrieved Employees, Plaintiffs, on behalf of themselves individually, the aggrieved employees, and the LWDA, and the LWDA, individually and on behalf of all their respective successors, assigns, agents, attorneys, executors, heirs, and personal representatives shall be deemed to have fully, finally, and forever released and discharged the Released Parties, and each of them, from all Released PAGA Claims.

"Released PAGA Claims" means any claims under Cal. Labor Code § 2698, *et seq.*, related to the facts that were asserted or could have been asserted in the underlying wage and hour claims brought under Cal. Labor Code §§ 201-204, 223, 225.5, 226.2, 226, 226.7, 227.3, 500, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2698-99, and 2802 during the PAGA Release Period. The Released PAGA Claims do not include the PAGA claims related to the claims that have been certified on behalf of the Amended Piece-Rate Class in the *Huckaby* case identified above. The Aggrieved Employees of the Gardner-Dedicated West Settlement Class and the Expedited Settlement Class will release all rights under Cal. Civil Code § 1542 as to the Released PAGA Claims only. Released PAGA Claims are limited to those claims arising during the PAGA Period.

The "Released Parties" means CRST and all its present and former officers, directors, shareholders, members, agents, employees, representatives, attorneys, parent companies, subsidiaries, divisions, affiliates, related companies, owners, successors, and assigns.

HOW TO RECEIVE YOUR SETTLEMENT PAYMENT?

You do not need to do anything to receive your Individual Settlement Payment and/or Individual PAGA Payment. However, no settlement payments will be made unless and until the Court grants final approval of the Settlement.

TO REQUEST EXCLUSION FROM THE SETTLEMENT AND THE CLASS

If you do not want to be part of the Settlement and do not want to be bound by the release of the Released Class Claims, you must submit a written request to be excluded from both (the "Opt Out") to the Settlement Administrator at the following address below, postmarked on or before **[Response Deadline]**:

ILYM Group, Inc.
[ILYM to add address]

In order to be valid, your written Opt Out must: (1) contain your name, address, and the last four digits of your Social Security Number; (2) clearly state your request to exclude yourself from the Settlement and from releasing the Released Class Claims; (3) be signed by you or your lawful representative; and (4) be returned to the Settlement Administrator at the specified address postmarked on or before **[Response Deadline]**. If you do not submit a timely and valid written Opt Out, you will be bound by the release of Released Class Claims as described above and all other terms of the Settlement. If you timely submit a valid, signed written Opt Out, you will have no further role in the Civil Action as to the Released Class Claims, and you will not be entitled to any benefit as a result of Settlement as a Class Member. Any untimely or incomplete Opt Out shall be considered null and void. **You cannot object to the Settlement if you submit a valid Opt Out.**

This Settlement also resolves claims and actions brought pursuant to PAGA by Plaintiffs acting as a proxy and as Private Attorneys of, and for, the State of California and the LWDA. A PAGA Aggrieved Employee will be bound by the release of the Released PAGA Claims upon approval of the Settlement by the Court at the Final Fairness and Approval Hearing, regardless of whether he or she submitted an Opt Out as a Class Member, and regardless of whether he or she cashes an Individual PAGA Payment check.

TO OBJECT TO THE SETTLEMENT

If you believe the proposed Settlement is not fair, reasonable or adequate in any way, you may object to it. To object, you (or your attorney) must submit a written brief or statement of objection ("Objection") to the Court. You have two options for submitting the Objection:

(1) You may mail the Objection to (or file it in person at) the following address: United States District Court for the Northern District of California, Oakland Courthouse, Attn: District Judge Yvonne Gonzalez Rogers, Courtroom 1 – 4th Floor, 1301 Clay Street, Oakland, California 94612.

(2) You may submit your Objection electronically via PACER at <https://ecf.cand.uscourts.gov>.

If you submit a written Objection, the Objection must: (1) clearly identify the case name and number: *In re Gardner Trucking Wage and Hour Litigation*, U.S. District Court for the Northern District of California Case No. 4:21-cv-04952-YGR; (2) state your full name, address, and the last four digits of your Social Security Number (for identification purposes only); (3) state the grounds for the objection; (4) be signed by you or your lawful representative; and (5) be postmarked or electronically or physically filed with the Court on or before **[Response Deadline]**. If you timely submit an Objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. **Even if you submit an Objection, you will be bound by the terms of the Settlement, including the release of Released Class Claims and Released PAGA Claims as set forth above, unless the Settlement is not finally approved by the Court.**

DISPUTES AS TO WORKWEEKS ALLOCATED

If you disagree with the number of Workweeks written on this Notice of Class and PAGA Settlement, you have the option of submitting a written explanation of why you believe the Workweeks count is inaccurate. The written explanation must be submitted to the Settlement Administrator and must: (1) contain your name, address, and the last four digits of your Social Security Number; (2) include documents or other evidence in support of your challenge to the number of Workweeks allocated to you; (3) be signed by you or your lawful representative; and (4) be postmarked by **[Response Deadline]** and returned to the Settlement Administrator at the address specified below.

If you wish to dispute the number of Workweeks allocated to you, the Settlement Administrator to whom your optional written explanation disputing the number of Workweeks allocated to you must be mailed is:

ILYM Group, Inc.
[ILYM to add Address]

Do not use a postage meter because that may not result in a postmark appearing on the envelope containing your optional written explanation. The Settlement Administrator will review your written explanation and any supporting documentation that you provide, as well as CRST's records, to resolve any disputes regarding the accurate number of Workweeks. CRST's calculation of your Workweeks will be presumed accurate unless you submit clear and compelling documentary evidence that establishes that a mistake was made by CRST. The Settlement Administrator shall investigate the dispute, requesting information from CRST as necessary and make the final determination of whether any additional amount is owed. All such challenges must be postmarked no later than **[Response Deadline]**.

WHAT IF I DO NOTHING?

If you do nothing, you will receive an Individual Settlement Payment and Individual PAGA Payment, if applicable, should the Court grant final approval of the Settlement. If you do nothing, you will be bound by the terms of the Settlement, including the release of Released Class Claims and Released PAGA Claims, and barred from suing Defendants or any of the Released Parties on the Released Class Claims and Released PAGA Claims.

What is the next step in the approval of the Settlement?

The Final Fairness and Approval Hearing on the fairness and adequacy of the proposed Settlement, including the plan of distribution, the payment of attorneys' fees and costs, the Class Representative Service Awards to the Class Representatives, if any, the PAGA Penalties, or any other aspect of the Settlement will be held **on _____, at _____**, in Courtroom 1 – 4th Floor of the U.S. District Court for the Northern District of California, 1301 Clay Street, Oakland, California 94612. The Final Fairness and Approval Hearing may be moved or continued without further notice. You are not required to attend the Final Approval Hearing to receive an Individual Settlement Payment or Individual PAGA Payment. If you choose to attend the Final Approval Hearing, you may appear in person or remotely depending upon the Court's decision whether such a hearing will be held remotely or in person.

Please check the settlement website or the Court's PACER website to confirm that the date listed above has not changed. For instructions on how to access the case docket, please see the instructions above. If the Court grants Final Approval of the Settlement, the Order granting Final Approval and entering a Judgment will be posted on a website created by the Settlement Administrator for this case for a period of at least 90 days following the entry of that Order in the Court record. That website is: [settlement website URL].

How can I get additional information?

This Notice summarizes the Civil Action and the basic terms of the Settlement. More details are in the Class Action and PAGA Settlement Agreement. You may also request a copy of the Class Action and PAGA Settlement Agreement from Class/PAGA Counsel, at the address listed above. If you have questions regarding the Settlement, you may visit [settlement website URL], or you may contact the Settlement Administrator at [ILYM phone number].

PLEASE DO NOT CONTACT THE COURT REGARDING THIS NOTICE OR THE SETTLEMENT.

EXHIBIT 2

Tyson Gibb

From: DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
Sent: Friday, April 26, 2024 4:10 PM
To: Tyson Gibb
Subject: Thank you for your Amended PAGA Claim Notice Submission.

04/26/2024 04:09:26 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Amended PAGA Claim Notice

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

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

EXHIBIT 3

SETAREH LAW GROUP

Wage-and-Hour and Consumer Class Actions and Complex
Litigation

Shaun Setareh

Principal

shaun@setarehlaw.com

Shaun Setareh

Thomas Segal

William M. Pao

Jose Maria D. Patino, Jr.

Farrah Grant

Tyson J. Gibb

April 26, 2024

BY ONLINE SUBMISSION

PAGA Administrator
California Labor and Workforce Development Agency
1515 Clay Street, Suite 801
Oakland, California 94612

BY CERTIFIED MAIL

GARDNER TRUCKING, INC.
c/o Cogency Global Inc.
1325 J Street, Suite 1550
Sacramento, CA 95814

BY CERTIFIED MAIL

GARDNER TRUCKING CONVERSION,
LLC
c/o Cogency Global Inc.
1325 J Street, Suite 1550
Sacramento, CA 95814

BY CERTIFIED MAIL

CRST EXPEDITED, INC.
c/o Cogency Global Inc.
1325 J Street, Suite 1550
Sacramento, CA 95814

Re: Amezcua, et al. v. Gardner Trucking, Inc., et al.; AMENDED NOTICE
PURSUANT TO LABOR CODE SECTIONS 2698, et seq.

To Whom It May Concern:

PLEASE TAKE NOTICE that plaintiff RICARDO AMEZCUA, et al. individually and on behalf of all similarly situated representative aggrieved employees, give NOTICE to commence and/or amend a civil action pursuant to California Labor Code Sections 2698, *et seq.* Plaintiff hereby gives written notice by certified mail to the Labor and Workforce Development Agency, GARDNER TRUCKING, INC., a California corporation; GARDNER TRUCKING CONVERSION, LLC, a California Limited Liability Company; CRST THE

Amezcuca, et al. v. Gardner Trucking, Inc., et al.

April 26, 2024

Page 2 of 2

TRANSPORTATION SOLUTION, INC., an entity of unknown formation; CRST EXPEDITED, INC., an Iowa Corporation through their Agent for Service of Process.

Plaintiff hereby attaches as **Exhibit A** a copy of the Proposed Third Amended Class and PAGA Representative Action Complaint to be filed in the United States District Court Northern District Of California, as though fully set forth herewith setting out the specific provisions of the Labor Code Plaintiff alleges have been violated, including the facts and theories. All labor provisions in the Proposed Third Amended PAGA Representative Action Complaint alleged to have been violated pertain to all entities and individuals named in the Complaints, even if not expressly specified.

Please advise within sixty (60) days of the post mark on this letter if the LWDA intends to investigate these claims.

Thank you, and if you have any questions, please do not hesitate to contact me.

Very truly yours,

SETAREH LAW GROUP

/s/Shawn Setareh

Shawn Setareh, Esq.

EXHIBIT A

1 Shaun Setareh (SBN 204514)
shaun@setarehlaw.com
2 Jose Maria D. Patino, Jr. (SBN 270194)
jose@setarehlaw.com
3 SETAREH LAW GROUP
9665 Wilshire Blvd., Suite 430
4 Beverly Hills, California 90212
Telephone (310) 888-7771
5 Facsimile (310) 888-0109

6 *(Counsel continued on following page)*

7 Attorneys for Plaintiffs
KASPER LEUZINGER, MICHAEL ALLEN JENSEN, and RICARDO AMEZCUA

8 UNITED STATES DISTRICT COURT
9
10 NORTHERN DISTRICT OF CALIFORNIA

11 KASPER LEUZINGER, MICHAEL ALLEN
12 JENSEN, WILLIAM MATNEY-TATE, and
13 RICARDO AMEZCUA on behalf of
themselves and all others similarly situated,

14 *Plaintiffs,*

15 v.

16 GARDNER TRUCKING, INC., a California
17 corporation; GARDNER TRUCKING
CONVERSION, LLC, a California Limited
18 Liability Company; CRST EXPEDITED,
INC., an Iowa Corporation; CRST THE
19 TRANSPORTATION SOLUTION, INC., an
entity of unknown formation; and DOES 1
20 through 50, inclusive,

21 *Defendants.*

Case No.: 4:21-cv-04952-YGR

Consolidated with:
4:21-cv-07474-YGR
4:21-cv-07741-YGR
4:22-cv-06501-YGR

**THIRD AMENDED CONSOLIDATED
CLASS ACTION COMPLAINT**

1. Failure to Provide Meal Periods (Lab. Code §§ 204, 223, 226.7, 512 and 1198);
2. Failure to Provide Rest Periods (Lab. Code §§ 204, 223, 226.7 and 1198);
3. Failure to Pay Hourly Wages (Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1197.1 and 1198);
4. Failure to Pay Vacation Wages (Lab Code § 227.3)
5. Failure to Indemnify (Lab. Code § 2802);
6. Failure to Provide Accurate Written Wage Statements (Lab. Code §§ 226(a));
7. Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203);
8. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*); and
9. Failure to Pay Employees for All Hours Worked (29 U.S.C. § 201, *et seq.*)
10. Civil Penalties (Lab. Code § 2698 *et seq.*)

JURY TRIAL DEMANDED

1 JAMES HAWKINS APLC
James R. Hawkins, Esq. (#192925)
2 Gregory Mauro, Esq. (#222239)
Michael Calvo, Esq. (#314986)
3 Lauren Falk, Esq. (#316893)
Ava Issary, Esq. (#342252)
4 9880 Research Drive, Suite 200
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7 Email: Michael@jameshawkinsaplc.com
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9 individually and on behalf of all others similarly situated

1 Plaintiffs KASPER LEUZINGER, MICHAEL ALLEN JENSEN, WILLIAM MATNEY-
 2 TATE, and RICARDO AMEZCUA (collectively “Plaintiffs”), on behalf of themselves, all others
 3 similarly situated, and the general public, complains and alleges as follows:

4 **INTRODUCTION**

5 1. Plaintiffs bring this class action against Defendants GARDNER TRUCKING, INC., a
 6 California corporation; GARDNER TRUCKING CONVERSION, LLC, a California limited liability
 7 company; CRST EXPEDITED, INC., an Iowa corporation; CRST THE TRANSPORTATION
 8 SOLUTION, INC., an entity of unknown formation; and DOES 1 through 50, inclusive (collectively
 9 referred to as “Defendants”) for alleged violations of the California Labor Code, California Business
 10 and Professions Code, and the Fair Labor and Standards Act. As set forth below, Plaintiffs allege
 11 that Defendants have:

- 12 (1) failed to provide him and all other similarly situated individuals with meal
 13 periods;
- 14 (2) failed to provide them with rest periods;
- 15 (3) failed to pay them premium wages for missed meal and/or rest periods;
- 16 (4) failed to pay them premium wages for missed meal and/or rest periods at the
 17 regular rate of pay;
- 18 (5) failed to pay them at least minimum wage for all hours worked;
- 19 (6) failed to pay them overtime wages at the correct rate;
- 20 (7) failed to pay them double time wages at the correct rate;
- 21 (8) failed to pay them overtime and/or double time wages by failing to include all
 22 applicable remuneration in calculating the regular rate of pay;
- 23 (9) failed to pay wages without discount;
- 24 (10) fail to pay vested vacation wages;
- 25 (11) failed to reimburse them for all necessary business expenses;
- 26 (12) failed to provide them with accurate written wage statements; and
- 27 (13) failed to pay them all of their final wages following separation of employment.

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2. Based on these alleged violations, Plaintiffs now brings this class action to recover unpaid wages, restitution, and related relief on behalf of themselves, all others similarly situated.

3. This is a representative action for recovery of penalties under the Private Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code sections 2698 *et seq.* PAGA permits “aggrieved employees” to bring a lawsuit as a representative action on behalf of the general public as private attorney general and all other current and former aggrieved employees, to recover civil penalties and address an employer’s violations of the California Labor Code.

4. Such actions and policies, as described above and further herein, were and continue to be in violation of the California Labor Code. Plaintiffs, on behalf of themselves and all class members, bring this action pursuant to the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*, Cal. Labor Code §§ 201-204, 223, 225.5, 226.2, 226, 226.7, 227.3, 500, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2698-99, and 2802, IWC Wage Order No. 9, and claims under the Cal. Business & Professions Code §§ 17200-17204., seeking unpaid wages, unpaid premiums for missed meal and rest periods, penalties, liquidated damages, and reasonable attorneys’ fees and costs. Plaintiffs also seeks penalties under Labor Code 2698, *et. seq.* on behalf of the general public as private attorney general and all other aggrieved employees.

JURISDICTION AND VENUE

5. This Court has jurisdiction under 28 U.S.C. § 1331 over the claims arising under 29 U.S.C. § 201, the Federal Fair Labor Standards Act (“FLSA”). Furthermore, this Court has supplemental jurisdiction under 28 U.S.C. § 1367 over the remaining and related claims under the California Labor Code.

6. Venue is proper in this District under 28 U.S.C. section 1391(b)(2) and (c) because a substantial part of the events and omissions giving rise to the claims alleged in this complaint occurred in this District.

7. This Court has personal jurisdiction over this matter because Defendants conduct substantial business activity in this District, and because many of the unlawful acts described in this complaint occurred in this District and gave rise to the claims alleged.

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PARTIES

8. Plaintiff KASPER LEUZINGER is, and at all relevant times mentioned herein was, an individual residing in the State of California. Plaintiff KASPER LEUZINGER is currently employed by Defendants.

9. Plaintiff MICHAEL ALLEN JENSEN is, and at all relevant times mentioned herein was, an individual residing in the State of California.

10. Plaintiff WILLIAM MATNEY-TATE is, and at all relevant times mentioned herein was, an individual residing in the State of California.

11. Plaintiff RICARDO AMEZCUA is, and at all relevant times mentioned herein was, an individual residing in the State of California.

12. Defendant GARDNER TRUCKING, INC. is, and at all relevant times mentioned herein, a California corporation, and doing business in the State of California.

13. Defendant GARDNER TRUCKING CONVERSION, LLC, is, and at all relevant times mentioned herein, a California corporation, and doing business in the State of California.

14. Defendant CRST EXPEDITED, INC. is, and at all relevant times mentioned herein, an Iowa corporation, and doing business in the State of California

15. Defendant CRST THE TRANSPORTATION SOLUTION, INC. is, and at all relevant times mentioned herein, a corporation of unknown formation, and doing business in the State of California.

16. Plaintiffs are ignorant of the true names, capacities, relationships, and extent of participation in the conduct alleged herein, of the defendants sued as DOES 1 through 50, inclusive, but are informed and believe and thereupon allege that the defendants are legally responsible for the wrongful conduct alleged herein and therefore sue these defendants by such fictitious names. Plaintiffs will amend the Complaint to allege the true names and capacities of the DOE defendants when ascertained.

17. Plaintiffs are informed and believe and thereupon allege that, at all relevant times mentioned herein, all defendants were the representatives, agents, employees, partners, directors, associates, joint venturers, principals or co-participants of some or all of the other defendants, and in

1 doing the things hereinafter alleged, were acting within the course and scope of such relationship and
 2 with the full knowledge, consent, and ratification of each of the other defendants.

3 18. Plaintiffs are informed and believe, and thereupon allege that, at all relevant times
 4 mentioned herein, some of the defendants pursued a common course of conduct, acted in concert and
 5 conspired with one another, and aided and abetted one another to accomplish the occurrences, acts
 6 and omissions alleged herein.

7 **CLASS ALLEGATIONS**

8 19. This action has been brought and may be maintained as a class action pursuant to the
 9 Federal Rules of Civil Procedure, Rule 23 because there is a well-defined community of interest
 10 among the persons who comprise the readily ascertainable classes defined below and because
 11 Plaintiffs are unaware of any difficulties likely to be encountered in managing this case as a class
 12 action.

13 20. **Relevant Classes:**

- 14 • **Gardner-Dedicated West Class.** The Gardner-Dedicated West Class is defined as follows:
 15 “All California resident truck driver employees who worked for CRST as part of what is now
 16 known as Dedicated West from April 6, 2016 through February 29, 2024.”
- 17 • **Expedited Class.** The Expedited Class is defined as follows: “All California resident truck
 18 driver employees who worked for CRST as part of what is now known as Expedited Solutions
 19 from August 10, 2017 through February 29, 2024.”

20 The Gardner-Dedicated West Class and the Expedited Class are referred to, collectively, as the
 21 “Class.”

22 21. **Reservation of Rights:** Plaintiffs reserve the right to amend or modify the class
 23 definitions with greater specificity, by further division into sub-classes and/or by limitation to
 24 particular issues.

25 22. **Numerosity:** The class members are so numerous that the individual joinder of each
 26 individual class member is impractical. While Plaintiffs do not currently know the exact number of
 27 class members, Plaintiffs are informed and believe that the actual number exceeds the minimum
 28 required for numerosity under Federal law.

1 23. **Commonality and Predominance:** Common questions of law and fact exist as to all
 2 class members and predominate over any questions which affect only individual class members.
 3 These questions include, but are not limited to:

- 4 A. Whether Defendants maintained a policy or practice of failing to provide
- 5 employees with their meal periods;
- 6 B. Whether Defendants maintained a policy or practice of failing to provide
- 7 employees with their rest periods;
- 8 C. Whether Defendants failed to pay premium wages to class members when they
- 9 have not been provided with required meal and/or rest periods;
- 10 D. Whether Defendants failed to pay minimum and/or overtime wages to class
- 11 members as a result of policies that fail to provide meal periods in accordance
- 12 with California law;
- 13 E. Whether Defendants failed to pay minimum and/or overtime wages to class
- 14 members for all time worked;
- 15 F. Whether Defendants failed to pay overtime wages to class members as a result
- 16 of incorrectly calculating their regular rates of pay;
- 17 G. Whether Defendants failed to pay premium wages to class members based on
- 18 their respective “regular rates of compensation” by not including commissions
- 19 and/or other applicable remuneration in calculating the rates at which those
- 20 wages are paid;
- 21 H. Whether Defendants failed to reimburse class members for all necessary
- 22 business expenses incurred during the discharge of their duties;
- 23 I. Whether Defendants failed to provide class members with accurate written
- 24 wage statements as a result of providing them with written wage statements
- 25 with inaccurate entries for, among other things, amounts of gross and net
- 26 wages, and total hours worked;
- 27 J. Whether Defendants failed to pay class members all wages without discount;
- 28 K. Whether Defendants used pay cards to pay class members;

- L. Whether Defendants failed to pay class members for all vested vacation wages;
- M. Whether Defendants applied policies or practices that result in late and/or incomplete final wage payments;
- N. Whether Defendants are liable to class members for waiting time penalties under Labor Code section 203; and
- O. Whether class members are entitled to restitution of money or property that Defendants may have acquired from them through unfair competition.
- P. Whether Defendants violated the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*, Business and Professions Code §§ 7200, *et seq.*, and Labor Code sections 201-204, 223, 225.5, 226.2, 226, 226.7, 227.3, 500, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2698-99, and 2802 and applicable IWC Wage Orders which violation constitutes a violation of fundamental public policy.

24. **Typicality:** Plaintiffs' claims are typical of the other class members' claims. Plaintiffs are informed and believe and thereupon alleges that Defendants have a policy or practice of failing to comply with the FLSA, California Labor Code, and California Business and Professions Code as alleged herein.

25. **Adequacy of Class Representative:** Plaintiffs are adequate class representatives in that they have no interests that are adverse to, or otherwise in conflict with, the interests of absent class members. Plaintiffs are dedicated to vigorously prosecuting this action on behalf of class members. Plaintiffs will fairly and adequately represent and protect the interests of class members.

26. **Adequacy of Class Counsel:** Plaintiffs' counsel are adequate class counsel in that they have no known conflicts of interest with Plaintiffs or absent class members, are experienced in wage and hour class action litigation, and are dedicated to vigorously prosecuting this action on behalf of Plaintiffs and absent class members.

27. **Superiority:** A class action is vastly superior to other available means for fair and efficient adjudication of class members' claims and would be beneficial to the parties and the Court. Class action treatment will allow a number of similarly situated persons to be simultaneously and

efficiently prosecute their common claims in a single forum without the unnecessary duplication of effort and expense that numerous individual actions would entail. In addition, the monetary amounts due to many individual class members are likely to be relatively small and would therefore make it difficult, if not impossible, for individual class members to both seek and obtain relief. Moreover, a class action will serve an important public interest by permitting class members to effectively pursue the recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

PAGA REPRESENTATIVE DEFINITION

28. Plaintiffs are seeking to represent PAGA aggrieved employees who are defined as follows: “All California resident truck driver employees who worked for what is now known as Dedicated West or Expedited Solutions during the period from December 3, 2018 through February 29, 2024.”

GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

29. Plaintiffs LEUZINGER, JENSEN, MATNEY-TATE, and AMEZCUA were employed by Defendants as hourly non-exempt employees during the applicable statutory periods.

30. Plaintiffs LEUZINGER, JENSEN, MATNEY-TATE, and AMEZCUA are no longer employed by Defendants.

31. Defendants had a common policy and/or practice of denying Plaintiffs and class members the opportunity to take meal periods, including second meal periods, in compliance with California law. During their employment with Defendants, Plaintiffs and the putative class regularly worked shifts of eight to twelve hours per day, without being afforded a meal break during the first five hours, and/or a second meal break after ten hours, as required by California law.

32. Plaintiffs and the putative class members were not provided with meal periods of at least thirty (30) minutes for each five (5) hour work period due to (1) Defendants’ policy of not scheduling each meal period as part of each work shift; (2) chronically understaffing each work shift with not enough workers; (3) imposing so much work on each employee such that it made it unlikely that an employee would be able to take their breaks if they wanted to finish their work on time; (4) interrupting employees with calls and texts during breaks; (5) requiring Plaintiffs and putative class

1 members to remain on call during their meal and rest periods; and (6) no formal written meal and
2 rest period policy that encouraged employees to take their meal and rest periods.

3 33. Additionally, and as discussed below, Plaintiffs and class members experienced
4 compensable, but unpaid, time having to wait for their time clock system to boot up, thus prohibiting
5 them from taking the timely meal periods and rest breaks to which they were entitled.

6 34. As a result of Defendants' policy, Plaintiffs and the putative class were regularly not
7 provided with uninterrupted meal periods of at least thirty (30) minutes for each five (5) hours
8 worked due to complying with Defendants' productivity requirements that required Plaintiffs and
9 the putative class to work through their meal periods in order to complete their assignments on time.

10 35. Plaintiffs and the putative class members were not provided with rest periods of at
11 least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1)
12 Defendants' policy of not scheduling each meal period as part of each work shift; (2) chronically
13 understaffing each work shift with not enough workers; (3) imposing so much work on each
14 employee such that it made it unlikely that an employee would be able to take their breaks if they
15 wanted to finish their work on time; (4) interrupting employees with calls and texts during breaks;
16 (5) requiring Plaintiffs and putative class members to remain on call during their meal and rest
17 periods; and (6) no formal written meal and rest period policy that encouraged employees to take
18 their meal and rest periods.

19 36. As a result of Defendants' policies, Plaintiffs and the putative class were regularly
20 not provided with uninterrupted rest periods of at least ten (10) minutes for each four (4) hours
21 worked due to complying with Defendants' productivity requirements that required Plaintiffs and
22 the putative class to work through their rest periods in order to complete their assignments on time.

23 37. Defendants had a common policy and practice of denying Plaintiffs and class
24 members minimum wages. Specifically, Plaintiffs and class members were required to work off-the-
25 clock for which they were not paid wages. Plaintiffs and class members were required to respond to
26 calls and text messages from Defendant before and after their shifts. Additionally, Plaintiffs and
27 class members were required to respond to calls and text messages during their unpaid meal periods
28 which they were systemically denied. Furthermore, Plaintiffs and class members were experienced

1 compensable, but unpaid, time in waiting for the time clock system to boot up. Plaintiffs and class
2 members were never paid wages for the off-the-clock work performed. Plaintiffs and class members
3 also were not compensated for all time worked because Defendants rounded their time worked down
4 more than they rounded up. Defendants' uneven rounding resulted in the non-payment of minimum
5 wages for all time worked, as well as the non-payment of overtime wages to Plaintiffs and class
6 members.

7 38. As Plaintiffs and class members were regularly, consistently, and frequently
8 scheduled to work, and actually worked, eight (8), ten (10), and sixteen (16) hours a day, for a
9 substantial portion of their shifts. The accrued and unpaid time discussed herein caused Plaintiffs
10 and class members to work in excess of eight (8), ten (10), and sixteen (16) hours a day, entitling
11 them to overtime and double-time wages which they were systemically denied.

12 39. Defendants had a common policy and practice of failing to pay Plaintiffs and class
13 members proper overtime and double-time wages. Plaintiffs and class members consistently worked
14 in excess of ten (10) and up to sixteen (16) hours a day. However, Plaintiffs and class members were
15 only paid overtime wages for hours worked in excess of forty (40) hours a week. Additionally, the
16 uncompensated hours discussed above caused Plaintiffs and class members to work in excess of
17 eight (8) hours day and/or forty (40) hours a week, entitling Plaintiffs and class members to overtime
18 and double-time wages which they were systemically denied.

19 40. Further, Plaintiffs and class members received non-discretionary and performance-
20 based bonuses in the same pay periods in which Plaintiffs and class members were regularly,
21 consistently, and frequently scheduled to work, and actually worked, in excess eight (8), ten (10), and
22 sixteen (16) hours a day. Additionally, Plaintiffs are informed and believe, and thereon allege that,
23 during the relevant time frame, Defendants also compensated Plaintiffs and the class members with
24 shift differentials in pay periods where class members worked in excess eight (8), ten (10), and sixteen
25 (16) hours a day. However, Defendants failed to upwardly adjust Plaintiffs' and class members
26 regular rates of pay by failing to incorporate the value of the bonuses and shift differentials when
27 calculating the overtime and double-time rates of pay. As such, Plaintiff and class members were not
28 properly for overtime and double-time hours worked, and the correct rates of pay.

1 41. Defendants further failed to incorporate all bonuses earned and other remunerations
2 into Plaintiffs' and class member's regular rates of pay when calculating meal and rest period
3 premiums.

4 42. Defendants failed to properly calculate Plaintiffs' and the class members' regular rate
5 of pay and failed to properly pay overtime and double-time wages because Defendants failed to
6 include all forms of compensation in the regular rate including bonuses, incentives, differentials,
7 commissions, and other compensation in the applicable overtime and double-time rates of pay.

8 43. As such, Plaintiffs and class members were required to work overtime and double-
9 time hours each pay period but were not paid their proper overtime and double-time wages for each
10 respective pay period. (*See Landers v. Quality Commun., Inc.*, 771 F.3d 638, 645 (9th Cir. 2014), *as*
11 *amended* (Jan. 26, 2015).)

12 44. Defendants also had a common policy and/or practice of failing to reimburse Plaintiffs
13 and class members for necessary business expenditures incurred in executing their duties under
14 Defendants' employ. Plaintiffs and the putative class members were required to utilize their own
15 personal phones to perform their job duties, specifically to communicate with their supervisors and
16 dispatchers throughout their shift. Plaintiffs and class members were also required to purchase strap
17 rollers, and other tools, as part of their work-related duties, for which they were never reimbursed.

18 45. Plaintiffs and the putative class members were not reimbursed for these business
19 expenses incurred in maintaining their equipment and cell phone use for business purposes, including
20 text messages and minutes.

21 46. Defendants failed to reimburse Plaintiffs and the putative class for such necessary
22 business expenses incurred by them.

23 47. Plaintiffs and the putative class accrued vacation wages during their employment with
24 Defendants.

25 48. Under California law, vacation wages are considered a form of wages under Labor
26 Code section 200. Vested vacation pay and other similar forms of paid time off earned based on labor
27 performed are considered wages that cannot be subject to forfeiture without compensation for
28 forfeited days at the applicable rates required by law.

49. At all relevant times, Defendants maintained policies that provide for the unlawful forfeiture of vested vacation pay in violation of Labor Code section 227.3 and *Suastez v. Plastic Dress-Up Co.*, (1982) 31 Cal. 3d 774.

50. Plaintiffs and the putative class are entitled to vacation accrued during their employment with Defendants. However, upon termination or separation of employment, Defendants failed to pay Plaintiffs and the putative class for all accrued vacation pay. As such, Plaintiffs and class members were both entitled to vested vacation wages and were denied vested vacation wages in violation of Labor Code § 227. (See *Whitehead v. Pacifica Senior Living Mgt. LLC*, 21-15035, 2022 WL 313844, at *3 (9th Cir. Feb. 2, 2022).

51. Plaintiffs and the putative class were not provided with accurate wage statements as mandated by law pursuant to Labor Code section 226.

52. Defendants failed to comply with Labor Code section 226(a)(1) as “gross wages earned” were not accurately reflected in that: all hours worked, including overtime, were not included.

53. Defendants failed to comply with Labor Code section 226(a)(2) as “total hours worked by the employee” were not accurately reflected in that: all hours worked, including overtime, were not included.

54. Defendants failed to comply with Labor Code section 226(a)(5) as “net wages earned” were not accurately reflected in that: all hours worked, including overtime, were not included.

55. Defendants failed to comply with Labor Code section 226(a)(9) as “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee” were not accurately reflected in that: all hours worked, including overtime, were not included.

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Lab. Code §§ 223, 226.7, 512 and 1198)

56. Plaintiffs incorporate by reference the preceding paragraphs of the Complaint as if fully alleged herein.

57. At all relevant times, Plaintiffs and the class members have been non-exempt

1 employees of Defendants entitled to the full meal period protections of both the Labor Code and the
2 applicable Industrial Welfare Commission Wage Order.

3 58. Labor Code section 512 and Section 11 of the applicable Industrial Welfare
4 Commission Wage Order impose an affirmative obligation on employers to provide non-exempt
5 employees with uninterrupted, duty-free meal periods of at least thirty minutes for each work period
6 of five hours, and to provide them with two uninterrupted, duty-free meal periods of at least thirty
7 minutes for each work period of ten hours.

8 59. Labor Code section 226.7 and Section 11 of the applicable Industrial Welfare
9 Commission Wage Order (“Wage Order”) both prohibit employers from requiring employees to work
10 during required meal periods and require employers to pay non-exempt employees an hour of
11 premium wages on each workday that the employee is not provided with the required meal period.

12 60. Compensation for missed meal periods constitutes wages within the meaning of Labor
13 Code section 200.

14 61. Labor Code section 1198 makes it unlawful to employ a person under conditions that
15 violate the applicable Wage Order.

16 62. Section 11 of the applicable Wage Order states:

17 No employer shall employ any person for a work period of more than five (5) hours
18 without a meal period of not less than 30 minutes, except that when a work period of
19 not more than six (6) hours will complete the day’s work the meal period may be
20 waived by mutual consent of the employer and employee. Unless the employee is
21 relieved of all duty during a 30 minute meal period, the meal period shall be considered
22 an ‘on duty’ meal period and counted as time worked. An ‘on duty’ meal period shall
23 be permitted only when the nature of the work prevents an employee from being
24 relieved of all duty and when by written agreement between the parties an on-the-job
25 paid meal period is agreed to. The written agreement shall state that the employee may,
26 in writing, revoke the agreement at any time.

27 63. At all relevant times, Plaintiffs were not subject to a valid on-duty meal period
28 agreement. Plaintiffs are informed and believe that, at all relevant times, class members were not
subject to valid on-duty meal period agreements with Defendants.

64. Plaintiffs allege that, at all relevant times during the applicable limitations period,
Defendants maintained a policy or practice of not providing Plaintiffs and class members with
uninterrupted, duty-free meal periods for at least thirty (30) minutes for each five (5) hour work

1 period, as required by Labor Code section 512 and the applicable Wage Order.

2 65. Plaintiffs allege that, at all relevant times during the applicable limitations period,
3 Defendants maintained a policy or practice of failing to pay premium wages to class members when
4 they worked five (5) hours without clocking out for any meal period.

5 66. Plaintiffs allege that, at all relevant times during the applicable limitations period,
6 Defendants maintained a policy or practice of not providing Plaintiffs and class members with a
7 second meal period when they worked shifts of ten or more hours and failed to pay them premium
8 wages as required by Labor Code 512 and the applicable Wage Order.

9 67. Moreover, Defendants' written policies do not provide that employees must take their
10 first meal period before the end of the fifth hour of work, that they are entitled to a second meal period
11 if they work a shift of over ten hours, or that the second meal period must commence before the end
12 of the tenth hour of work, unless waived.

13 68. During their employment with Defendants, Plaintiffs and the class members regularly
14 worked shifts of eight to twelve hours per day, without being afforded a meal break during the first
15 five hours, and/or a second meal break after ten hours, as required by California law.

16 69. Plaintiffs and the class members were not provided with meal periods of at least thirty
17 (30) minutes for each five (5) hour work period due to (1) Defendants' policy of not scheduling each
18 meal period as part of each work shift; (2) chronically understaffing each work shift with not enough
19 workers; (3) imposing so much work on each employee such that it made it unlikely that an employee
20 would be able to take their breaks if they wanted to finish their work on time; (4) interrupting
21 employees with calls and texts during breaks; (5) requiring Plaintiffs and class members to remain
22 on call during their meal and rest periods; and (6) no formal written meal and rest period policy that
23 encouraged employees to take their meal and rest periods.

24 70. Additionally, and as discussed above, Plaintiffs and class members experienced
25 compensable, but unpaid, time having to wait for their time clock system to boot up, thus prohibiting
26 them from taking the timely meal periods and rest breaks to which they were entitled.

27 71. As a result of Defendants' policy, Plaintiffs and the class members were regularly not
28 provided with uninterrupted meal periods of at least thirty (30) minutes for each five (5) hours

1 worked due to complying with Defendants' productivity requirements that required Plaintiffs and
2 the class members to work through their meal periods in order to complete their assignments on time.

3 72. At all relevant times, Defendants failed to pay Plaintiffs and the class members
4 additional premium wages, and/or were not paid premium wages at the employees' regular rates of
5 pay when required meal periods were not provided.

6 73. Pursuant to Labor Code section 218.6 and 226.7, Plaintiffs, on behalf of themselves
7 and the class members, seek to recover unpaid premium wages, interest thereon, and costs of suit.

8 74. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
9 substantial benefit doctrine, and/or the common fund doctrine, Plaintiffs, on behalf of themselves and
10 the class members, seek to recover reasonable attorneys' fees.

11 **SECOND CAUSE OF ACTION**

12 **FAILURE TO PROVIDE REST PERIODS**

13 **(Lab. Code §§ 223, 226.7 and 1198)**

14 75. Plaintiffs incorporate the preceding paragraphs of the Complaint as if fully alleged
15 herein.

16 76. At all relevant times, Plaintiffs and the class members have been non-exempt
17 employees of Defendants entitled to the full rest period protections of both the Labor Code and the
18 applicable Wage Order.

19 77. Section 12 of the applicable Wage Order imposes an affirmative obligation on
20 employers to permit and authorize employees to take required rest periods at a rate of no less than ten
21 minutes of net rest time for each four-hour work period, or major fraction thereof, that must be in the
22 middle of each work period insofar as practicable.

23 78. Labor Code section 226.7 and Section 12 of the applicable Wage Order both prohibit
24 employers from requiring employees to work during required rest periods and require employers to
25 pay non-exempt employees an hour of premium wages at the employees' regular rates of pay, on each
26 workday that the employee is not provided with the required rest period(s).

27 79. Compensation for missed rest periods constitutes wages within the meaning of Labor
28 Code section 200.

1 80. Labor Code section 1198 makes it unlawful to employ a person under conditions that
2 violate the Wage Order.

3 81. Plaintiffs alleges that, at all relevant times during the applicable limitations period,
4 Defendants maintained a policy or practice of not providing class members of the with net rest period
5 of at least ten minutes for each four-hour work period, or major fraction thereof, as required by the
6 applicable Wage Order.

7 82. Plaintiffs and the class members were not provided with rest periods of at least ten
8 (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1) Defendants'
9 policy of not scheduling each meal period as part of each work shift; (2) chronically understaffing
10 each work shift with not enough workers; (3) imposing so much work on each employee such that it
11 made it unlikely that an employee would be able to take their breaks if they wanted to finish their
12 work on time; (4) interrupting employees with calls and texts during breaks; (5) requiring Plaintiffs
13 and the class members to remain on call during their meal and rest periods; and (6) no formal written
14 meal and rest period policy that encouraged employees to take their meal and rest periods.

15 83. As a result of Defendants' policies, Plaintiffs and the class members were regularly
16 not provided with uninterrupted rest periods of at least ten (10) minutes for each four (4) hours
17 worked due to complying with Defendants' productivity requirements that required Plaintiffs and
18 the class members to work through their rest periods in order to complete their assignments on time.

19 84. At all relevant times, Defendants failed to pay Plaintiffs and the class members
20 additional premium wages when required rest periods were not provided.

21 85. Pursuant to Labor Code section 204, 218.6 and 226.7, Plaintiffs, on behalf of
22 themselves and the class members, seek to recover unpaid premium wages, interest thereon, and costs
23 of suit.

24 86. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
25 substantial benefit doctrine, and/or the common fund doctrine, Plaintiffs, on behalf of themselves and
26 class members, seek to recover reasonable attorneys' fees.

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THIRD CAUSE OF ACTION

FAILURE TO PAY HOURLY AND OVERTIME WAGES

(Lab. Code §§ 223, 510, 1194, 1197 and 1198)

87. Plaintiffs incorporate the preceding paragraphs of the Complaint as if fully alleged herein.

88. At all relevant times, Plaintiffs and the class members are or have been non-exempt employees of Defendants entitled to the full protections of the Labor Code and the applicable Wage Order.

89. Section 2 of the applicable Wage Order defines “hours worked” as “the time during which an employee is subject to the control of the employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.”

90. Section 4 of the applicable Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consist of all hours that an employer has actual or constructive knowledge that employees are working.

91. Labor Code section 1194 invalidates any agreement between an employer and an employee to work for less than the minimum or overtime wage required under the applicable Wage Order.

92. Labor Code section 1194.2 entitles non-exempt employees to recover liquidated damages in amounts equal to the amounts of unpaid minimum wages and interest thereon in addition to the underlying unpaid minimum wages and interest thereon.

93. Labor Code section 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Order for all hours worked during a payroll period.

94. Labor Code section 1197.1 provides that it is unlawful for any employer or any other person acting either individually or as an officer, agent, or employee of another person, to pay an employee, or cause an employee to be paid, less than the applicable minimum wage.

95. Labor Code section 1198 makes it unlawful for employers to employ employees under conditions that violate the applicable Wage Order.

1 96. Labor Code section 204 requires employers to pay non-exempt employees their earned
2 wages for the normal work period at least twice during each calendar month on days the employer
3 designates in advance and to pay non-exempt employees their earned wages for labor performed in
4 excess of the normal work period by no later than the next regular payday.

5 97. Labor Code section 223 makes it unlawful for employers to pay their employees lower
6 wages than required by contract or statute while purporting to pay them legal wages.

7 98. Labor Code section 510 and Section 3 of the applicable Wage Order require employees
8 to pay non-exempt employees overtime wages of no less than one and one-half times their respective
9 regular rates of pay for all hours worked in excess of eight hours in one workday, all hours worked in
10 excess of forty hours in one workweek, and/or for the first eight hours worked on the seventh
11 consecutive day of one workweek.

12 99. Labor Code section 510 and Section 3 of the applicable Wage Order also require
13 employers to pay non-exempt employees overtime wages of no less than two times their respective
14 regular rates of pay for all hours worked in excess of twelve hours in one workday and for all hours
15 worked in excess of eight hours on a seventh consecutive workday during the workweek.

16 100. Plaintiffs are informed and believe that, at all relevant times, Defendants have applied
17 centrally devised policies and practices to him and the class members with respect to working
18 conditions and compensation arrangements.

19 101. At all relevant times, Defendants failed to pay hourly wages to Plaintiffs and the class
20 members for all time worked, including but not limited to, overtime hours at statutory and/or agreed
21 rates.

22 102. Section 9 of the applicable Wage Order states:

23 When uniforms are required by the employer to be worn by the employee as a condition
24 of employment, such uniforms shall be provided and maintained by the employer. The
term “uniform” includes wearing apparel and accessories of distinctive design or color.

25 103. If the employer does not choose to maintain employees’ uniforms itself where it is
26 required to do so, the Division of Labor Standards Enforcement (“DLSE”) takes the position that the
27 employer may pay each affected employee a weekly maintenance allowance of an hour’s pay at the
28 state minimum wage rate in lieu of maintaining the uniforms, assuming that an hour is a realistic

1 estimate of the time involved in maintaining the uniform.

2 104. At all relevant times during the applicable limitations period, and in violation of the
3 above-referenced sections of the Labor Code and the applicable Wage Order, Defendants failed to
4 compensate Plaintiffs with minimum and/or overtime wages for all hours they worked.

5 105. Plaintiffs are informed and believe that, at all relevant times, and in violation of the
6 above-referenced sections of the Labor Code and the applicable Wage Order, Defendants failed to
7 compensate the class members with minimum and/or overtime wages for all hours they worked as a
8 result of its failures to maintain employee uniforms and/or pay them a weekly maintenance allowance.

9 106. During the relevant time period, Defendants failed to pay Plaintiffs and the class
10 members all earned wages every pay period at the correct rates, including overtime rates, because
11 Defendants directed, permitted or otherwise encouraged Plaintiffs and the class members to perform
12 off-the-clock work.

13 107. Defendants had a common policy and practice of denying Plaintiffs and the class
14 members minimum wages. Specifically, Plaintiffs and the class members were required to work off-
15 the-clock for which they were not paid wages. Plaintiffs and the class members were required to
16 respond to calls and text messages from Defendants before and after their shifts. Additionally,
17 Plaintiffs and the class members were required to respond to calls and text messages during their
18 unpaid meal periods which they were systemically denied. Plaintiffs and the class members were
19 never paid wages for the off-the-clock work performed.

20 108. Additionally, Plaintiffs and the class members experienced compensable, but unpaid,
21 time having to wait for their time clock system to boot up, thus prohibiting them from taking the
22 timely meal periods and rest breaks to which they were entitled.

23 109. Further, Plaintiffs and the class members received bonuses in the same pay periods in
24 which Plaintiffs and the class members received overtime pay. However, Defendants failed to adjust
25 Plaintiffs' and the class members' regular rates of pay by failing to incorporate the value of the bonus
26 when calculating the overtime pay.

27 110. Plaintiffs and the class members also were not compensated for all time worked
28 because Defendants rounded their time worked down more than they rounded up. Defendants' uneven

1 rounding resulted in the non-payment of minimum wages for all time worked, as well as the non-
2 payment of overtime wages to Plaintiffs and the class members.

3 111. Defendants further failed to incorporate all bonuses earned and other remunerations
4 into Plaintiffs' and the class member's regular rates of pay when calculating meal and rest period
5 premiums.

6 112. Plaintiffs are informed and believe, and thereon allege that, during the relevant time
7 frame, Defendants also compensated Plaintiffs and the class members with shift differentials, but
8 failed to incorporate the shift differentials into the regular rate of pay for overtime calculation
9 purposes and therefore were provided inaccurate overtime pay.

10 113. Defendants failed to properly calculate Plaintiffs' and the class members' regular rate
11 of pay because Defendants failed to include all forms of compensation in the regular rate including
12 bonuses, incentives, differentials, commissions, and other compensation.

13 114. Defendants had a common policy and practice of failing to pay Plaintiffs and the class
14 members proper overtime and double-time wages. Plaintiffs and the class members consistently
15 worked in excess of ten (10) and up to sixteen (16) hours a day. However, Plaintiffs and the class
16 members were only paid overtime wages for hours worked in excess of forty (40) hours a week.
17 Additionally, the uncompensated hours discussed above caused Plaintiffs and the class members to
18 work in excess of eight (8) hours day and/or forty (40) hours a week, entitling Plaintiffs and the class
19 members to overtime and double-time wages which they were systemically denied.

20 115. Plaintiffs and the class members were regularly, consistently, and frequently
21 scheduled to work, and actually worked, eight (8), ten (10), and sixteen (16) hours a day, for a
22 substantial portion of their shifts. The accrued and unpaid time discussed herein caused Plaintiffs
23 and the class members to work in excess of eight (8), ten (10), and sixteen (16) hours a day, entitling
24 them to overtime and double-time wages which they were systemically denied.

25 116. As such, Plaintiffs and class members were required to work overtime and double-
26 time hours each pay period, but were not paid their proper overtime and double-time wages for each
27 respective pay period. (*See Landers v. Quality Commun., Inc.*, 771 F.3d 638, 645 (9th Cir. 2014), as
28 amended (Jan. 26, 2015).)

117. As a result of Defendants' unlawful conduct, Plaintiffs and the class members have suffered damages in an amount, subject to proof, to the extent they were not paid the full amount of wages earned during each pay period during the applicable limitations period, including overtime wages.

118. Pursuant to Labor Code sections 218.6, 223, 510, 1194 and 1194.2, Plaintiffs, on behalf of themselves and the class members, seeks to recover unpaid straight time and overtime wages, interest thereon and costs of suit.

119. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the substantial benefit doctrine, and/or the common fund doctrine, Plaintiffs, on behalf of themselves and the class members, seek to recover reasonable attorneys' fees.

FOURTH CAUSE OF ACTION

FAILURE TO PAY VACATION WAGES

(Lab. Code § 227.3)

120. Plaintiffs incorporate the preceding paragraphs of the Complaint as if fully alleged herein.

121. California Labor Code section 227.3 provides:

Unless otherwise provided by a collective-bargaining agreement, whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination. The Labor Commissioner or a designated representative, in the resolution of any dispute with regard to vested vacation time, shall apply the principles of equity and fairness.

122. At all relevant times during the applicable limitations period, Plaintiffs and class members accrued vacation time during their employment with Defendants.

123. As a result of their vacation policies and practices, Plaintiffs are informed and believe and thereon allege that Defendants failed to pay them and the class members for all accrued or vested vacation wages.

///

124. Plaintiffs and the class members are entitled to vacation accrued during their employment with Defendants. However, upon termination or separation of employment, Defendants failed to pay Plaintiffs and the class members for all accrued vacation pay. As such, Plaintiffs and the class members were both entitled to vested vacation wages, and were denied vested vacation wages in violation of Labor Code § 227. (*See Whitehead v. Pacifica Senior Living Mgt. LLC*, 21-15035, 2022 WL 313844, at *3 (9th Cir. Feb. 2, 2022)).

125. By reason of the above, Plaintiffs and the class members are entitled to restitution for all unpaid amounts due and owing to within four years (4) of the date of the filing of the Complaint until the date of entry of judgment.

126. Plaintiffs, on behalf of themselves and the class members, seek interest thereon pursuant to California Labor Code section 218.6, costs pursuant to California Labor Code section 218.6, and reasonable attorneys' fees pursuant to California Code of Civil Procedure section 1021.5.

FIFTH CAUSE OF ACTION

FAILURE TO INDEMNIFY

(Lab. Code § 2802)

127. Plaintiffs incorporate the preceding paragraphs of the Complaint as if fully alleged herein.

128. Labor Code section 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, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

129. At all relevant times during the applicable limitations period, Plaintiffs and the class members incurred necessary business-related expenses and costs, including but not limited to, personal cell phone bills, including call minutes and messaging rates, and the purchase price of gloves in order to execute their duties under Defendants' employ.

130. Plaintiffs are informed and believe, and thereupon allege that Defendants failed to indemnify Plaintiffs and the class members for all necessary expenses incurred in the discharge of their duties.

131. Pursuant to Labor Code section 452, an employer is authorized to prescribe the weight, color, quality, texture, style, form and make of uniforms required to be worn by their employees.

132. Section 9 of the applicable Wage Order states:

When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer. The term “uniform” includes wearing apparel and accessories of distinctive design or color.

133. At all relevant times during the applicable limitations period, Defendants required Plaintiffs and the class members to pay for expenses and/or losses caused by Defendants' want of ordinary care.

134. Plaintiffs are informed and believe that, during the applicable limitations period, Defendants maintained a policy or practice of not reimbursing Plaintiffs and the class members for these necessary business expenses.

135. Accordingly, Plaintiffs and the class members are entitled to restitution for all unpaid amounts due and owing to within four years of the date of the filing of the Complaint and until the date of entry of judgment.

136. Plaintiffs, on behalf of themselves, and the class members, seek interest thereon and costs pursuant to Labor Code section 218.6, and reasonable attorneys' fees pursuant to Code of Civil Procedure section 1021.5.

SIXTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS

(Lab. Code § 226)

137. Plaintiffs incorporate the preceding paragraphs of the Complaint as if fully alleged herein.

138. Labor Code section 226(a) states:

An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid,

(7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. For purposes of this subdivision, 'copy' includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by this subdivision.

139. The Division of Labor Standards Enforcement ("DLSE") has sought to harmonize the "detachable part of the check" provision and the "accurate itemized statement in writing" provision of Labor Code section 226(a) by allowing for electronic wage statements so long as each employee retains the right to elect to receive a written paper stub or record and that those who are provided with electronic wage statements retain the ability to easily access the information and convert the electronic statements into hard copies at no expense to the employee. (DLSE Opinion Letter July 6, 2006).

140. Plaintiffs are informed and believe that, at all relevant times during the applicable limitations period, Defendants have failed to provide the class members with written wage statements as described above.

141. Plaintiffs are informed and believe that Defendants' failure to provide him and the class members with accurate written wage statements were intentional in that Defendants have the ability to provide them with accurate wage statements but have intentionally provided them with written wage statements that Defendants have known do not comply with Labor Code section 226(a).

142. Plaintiffs and the class members have suffered injuries, in that Defendants have violated their legal rights to receive accurate wage statements and have misled them about their actual rates of pay and wages earned. In addition, inaccurate information on their wage statements have prevented immediate challenges to Defendants' unlawful pay practices, has required discovery and mathematical computations to determine the amount of wages owed, has caused difficulty and expense in attempting to reconstruct time and pay records, and/or has led to the submission of

1 inaccurate information about wages and deductions to federal and state government agencies.

2 143. Pursuant to Labor Code section 226(e), Plaintiffs, on behalf of themselves and the
3 class members, seek the greater of actual damages or \$50.00 for the initial pay period in which a
4 violation of Labor Code section 226(a) occurred, and \$100.00 for each subsequent pay period in
5 which a violation of Labor Code section 226(a) occurred, not to exceed an aggregate penalty of
6 \$4,000.00 per class member, as well as awards of reasonable attorneys' fees and costs.

7 **SEVENTH CAUSE OF ACTION**

8 **FAILURE TO TIMELY PAY ALL FINAL WAGES**

9 **(Lab. Code §§ 201-203)**

10 144. Plaintiffs incorporate the preceding paragraphs of the Complaint as if fully alleged
11 herein.

12 145. At all relevant times, Plaintiffs and the class members have been entitled, upon the end
13 of their employment with Defendants, to timely payment of all wages earned and unpaid before
14 termination or resignation.

15 146. At all relevant times, pursuant to Labor Code section 201, employees who have been
16 discharged have been entitled to payment of all final wages immediately upon termination.

17 147. At all relevant times, pursuant to Labor Code section 202, employees who have
18 resigned after giving less than seventy-two (72) hours' notice of resignation have been entitled to
19 payment of all final wages within seventy-two (72) hours of giving notice of resignation.

20 148. During the applicable limitations period, Defendants failed to pay Plaintiffs all of their
21 final wages in accordance with the Labor Code by failing to timely pay him all of his final wages.

22 149. Plaintiffs are informed and believe that, at all relevant time during the applicable
23 limitations period, Defendants have failed to timely pay the class members all of their final wages in
24 accordance with the Labor Code.

25 150. Plaintiffs are informed and believe that, at all relevant times during the applicable
26 limitations period, Defendants have maintained a policy or practice of paying the class members their
27 final wages without regard to the requirements of Labor Code sections 201 or 202 by failing to timely
28 pay them all final wages.

151. Plaintiffs are informed and believe and thereupon allege that Defendants' failure to timely pay all final wages to them and the class members have been willful in that Defendants have the ability to pay final wages in accordance with Labor Code sections 201 and/or 202 but have intentionally adopted policies or practices that are incompatible with those requirements.

152. Pursuant to Labor Code sections 203 and 218.6, Plaintiffs, on behalf of themselves and the class members, seek waiting time penalties from the dates that their final wages have first become due until paid, up to a maximum of thirty days, and interest thereon.

153. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine and/or the common fund doctrine, Plaintiffs, on behalf of themselves and the class members, seek awards of reasonable attorneys' fees and costs.

EIGHTH CAUSE OF ACTION

UNFAIR COMPETITION

(Bus. & Prof. Code §§ 17200 *et seq.*)

154. Plaintiffs incorporate the preceding paragraphs of the Complaint as if fully alleged herein.

155. Business and Professions Code section 17200 defines "unfair competition" to include any unlawful business practice.

156. California's Unfair Competition Law, Business and Professions Code sections 17203-17204 (UCL), allows a person who has lost money or property as a result of unfair competition to bring a class action in accordance with Code of Civil Procedure section 382 to recover money or property that may have been acquired from similarly situated persons by means of unfair competition.

157. California law requires employers to pay hourly, non-exempt employees for all hours they are permitted or suffered to work, including hours that the employer knows or reasonable should know that employees have worked.

158. Plaintiffs and the class members re-allege and incorporate the FIRST, SECOND, THIRD, FOURTH, FIFTH, and SIXTH causes of action herein.

159. Plaintiffs and the class members lost money or property as a result of the aforementioned unfair competition.

1 160. Defendants have or may have acquired money by means of unfair competition.

2 161. Plaintiffs are informed and believe and thereupon allege that by committing the Labor
3 Code violations described in this Complaint, Defendants violated Labor Code sections 212, 215, 216,
4 225, 226.6, 227.3, 354, 408, 553, 1175, 1199, and 2802, which make it a misdemeanor to commit the
5 Labor Code violations alleged herein.

6 162. Defendants have committed criminal conduct through their policies and practices of,
7 *inter alia*, failing to comport with their affirmative obligations as an employer to provide non-exempt
8 employees with uninterrupted, duty-free meal periods of at least thirty minutes for each work period
9 of five or more hours, provide non-exempt employees with uninterrupted, duty-free rest periods of at
10 least ten minutes for each work period of four or more hours, by failing to pay non-exempt employees
11 for all hours worked, failing to pay wage without discount, failing to pay vested vacation wages, and
12 by failing to reimburse them for all expenses.

13 163. At all relevant times, Plaintiffs and the class members have been non-exempt
14 employees and entitled to the full protections of both the Labor Code and the applicable Wage Order.

15 164. Defendants' unlawful conduct as alleged in this Complaint amounts to and constitutes
16 unfair competition within the meaning of Business and Professions Code section 17200 *et seq.*
17 Business and Professions Code sections 17200 *et seq.* protects against unfair competition and allows
18 a person who has suffered an injury-in-fact and has lost money or property as a result of an unfair,
19 unlawful or fraudulent business practice to seek restitution on his own behalf and on behalf of
20 similarly situated persons in a class action proceeding.

21 165. As a result of Defendants' violations of the Labor Code during the applicable
22 limitations period, Plaintiffs and the class members have suffered an injury-in-fact and have lost
23 money or property in the form of earned wages. Specifically, Plaintiffs have lost money or property
24 as a result of Defendants' conduct.

25 166. Plaintiffs are informed and believe that other similarly situated persons have been
26 subject to the same unlawful policies or practices of Defendants.

27 167. Due to the unfair and unlawful business practices in violation of the Labor Code,
28 Defendants have gained a competitive advantage over other comparable companies doing business in

the State of California that comply with their legal obligations.

168. California’s Unfair Competition Law (“UCL”) permits civil recovery and injunctive for “any unlawful, unfair or fraudulent business act or practice,” including if a practice or act violates or is considered unlawful under any other state or federal law.

169. Pursuant to Business and Professions Code section 17203, Plaintiffs on behalf of themselves and the class members, seek declaratory relief and restitution of all monies rightfully belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful and unfair business practices.

170. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine and/or the common fund doctrine, Plaintiffs and the class members are entitled to recover reasonable attorneys’ fees in connection with their unfair competition claims.

NINTH CAUSE OF ACTION

FAILURE TO PAY EMPLOYEES FOR ALL HOURS WORKED IN VIOLATION OF THE FEDERAL FAIR LABOR STANDARDS ACT (29 U.S.C. § 201, *et seq.*)

171. Plaintiffs incorporate the preceding paragraphs of the Complaint as though fully alleged herein.

172. At all material times herein, Plaintiffs and all similarly situated class members who submit “Consents to Become Party Plaintiffs” are or were employed by and engaged in providing services necessary by Defendant, and have been entitled to the rights, protections, and benefits provided under the FLSA, 29 U.S.C. §§ 201 *et seq.*

173. The FLSA requires, among other things, that employers pay employees the minimum wage for all time worked plus overtime. 29 U.S.C. §§ 206, 207, 215.

174. At all material times, the time spent compensable time waiting for the time clock to boot up, performed work related tasks, before and after their shifts, and performed work related duties during unpaid meal periods. These uncompensated hours were necessarily and directly related to the principal activities of the employee’s duties, and thus constitutes compensable time under the FLSA and is subject to the FLSA's overtime requirements. 29 C.F.R. § 785.38.

1 175. At all material times herein, Defendants have violated the FLSA by failing to pay
2 Plaintiffs for all hours worked and at the applicable rates of pay.

3 176. At all material times herein, Defendants have violated the FLSA by failing to pay class
4 members at one-and-one-half (1.5) times the regular rate of pay when working time causes an
5 employee's total hours worked to exceed forty (40) hours a week, and or eight (8), ten (10), twelve
6 (12), and sixteen (16) hours a day.

7 177. Defendants have also violated the FLSA by failing to keep required, accurate records
8 of all hours worked by class members in violation of 29 U.S.C. § 211(c).

9 178. Plaintiffs and all similarly situated employees are victims of a uniform and entity-wide
10 compensation policy. This uniform policy, in violation of the FLSA, has been applied to all
11 (employees) employed by Defendants.

12 179. As discussed above, Plaintiffs and the class members were regularly, consistently,
13 and frequently scheduled to work, and actually worked, eight (8), ten (10), and sixteen (16) hours a
14 day, for a substantial portion of their shifts. The accrued and unpaid time discussed herein caused
15 Plaintiffs and the class members to work in excess of eight (8), ten (10), and sixteen (16) hours a
16 day, entitling them to overtime and double-time wages which they were systemically denied.

17 180. Defendants had a common policy and practice of failing to pay Plaintiffs and the class
18 members proper overtime and double-time wages. Plaintiffs and class members consistently worked
19 in excess of ten (10) and up to sixteen (16) hours a day. However, Plaintiffs and the class members
20 were only paid overtime wages for hours worked in excess of forty (40) hours a week. Additionally,
21 the uncompensated hours discussed above caused Plaintiffs and class members to work in excess of
22 eight (8) hours day and/or forty (40) hours a week, entitling Plaintiffs and the class members to
23 overtime and double-time wages which they were systemically denied.

24 181. Additionally, Defendants failed to properly calculate Plaintiffs' and the class
25 members' regular rate of pay and failed to properly pay overtime and double-time wages because
26 Defendants failed to include all forms of compensation in the regular rate including bonuses,
27 incentives, differentials, commissions, and other compensation in the applicable overtime and double-
28 time rates of pay.

182. As such, Plaintiffs and the class members were required to work overtime and double-time hours each pay period, but were not paid their proper overtime and double-time wages for each respective pay period. (See *Landers v. Quality Commun., Inc.*, 771 F.3d 638, 645 (9th Cir. 2014), as amended (Jan. 26, 2015).)

183. Plaintiffs and all similarly situated individuals are entitled to damages equal to the mandated pay and overtime premium pay within the three (3) years preceding the filing of this Complaint, plus periods of equitable tolling, because Defendants acted willfully and knew or showed reckless disregard of whether their conduct was prohibited by the FLSA.

184. Defendants have acted neither in good faith nor with reasonable grounds to believe that their actions and omissions were not a violation of the FLSA. Plaintiffs and other similarly situated individuals are entitled to recover an award of liquidated damages in an amount equal to the amount of unpaid compensation, including overtime pay, and/or prejudgment interest at the applicable rate. 29 U.S.C. § 216(b).

185. As a result of violations of the FLSA's minimum wage and overtime pay provisions, Defendants have unlawfully withheld compensation from Plaintiffs and all similarly situated individuals. Defendants are liable for unpaid compensation, together with an amount equal as liquidated damages, attorneys' fees and costs of this action. 29 U.S.C. § 216(b).

TENTH CAUSE OF ACTION

CIVIL PENALTIES

THE PRIVATE ATTORNEYS GENERAL ACT OF 2004

(Lab. Code § 2698 *et seq.*)

186. Plaintiff incorporates by reference and re-alleges each and every allegation contained above, as though fully set forth herein.

187. On September 24, 2021 and April 12, 2024, Plaintiff Matney-Tate complied with notice requirements pursuant to Labor Code section 2699.3. A copy of the letters sent to the LWDA are attached hereto as **Exhibit A**, indicating that the LWDA and Defendants were put on notice of the claims alleged here and that the notice requirement has been satisfied. Sixty-five days have passed and the LWDA has not indicated intent to investigate the claims. Therefore, Plaintiff may proceed

1 with this action in a representative capacity. The substance and violations set forth in this Complaint
2 of which the LWDA was provided timely notice, Plaintiff has also sent a copy of this PAGA
3 Representative Action Complaint to the LWDA.

4 188. Plaintiff is an aggrieved employee as defined in Labor Code Section 2699(a). Plaintiff
5 brings this cause of action on behalf of all current and former California Non-Exempt Employees of
6 Defendants.

7 189. Pursuant to Labor Code section 2699(a) Plaintiff seek to recover civil penalties for
8 which Defendants are liable due to numerous Labor Code violations as set forth in this Complaint,
9 including without limitation Labor Code section 201-203, 510, 512, 558, 226, 226.3, 226.7, 1174,
10 1174.5, 1175, 1194, 1197, 1197.1, 1198, 2802, and 2698 *et seq.*, applicable IWC Wage Orders and
11 California Code of Regulations, Title 8, section 11000 *et. seq.*

12 190. At all times relevant, Plaintiff and all other aggrieved employees regularly performed
13 non-exempt work in excess of 50% of the time, and thus, were subject to the meal and rest break
14 requirements of the applicable IWC wage order and the Labor Code.

15 191. Defendants violated Labor Code section 200, 558, 1194, 1197, by failing to accurately
16 pay at least minimum wages due as a result of Defendants requiring Plaintiff and Aggrieved
17 Employees to perform work related tasks off the clock, both before they were on the clock and after
18 they were off the clock. Plaintiffs and class members also were not compensated for all time worked
19 because Defendants rounded their time worked down more than they rounded up. Defendants' uneven
20 rounding resulted in the non-payment of minimum wages for all time worked, as well as the non-
21 payment of overtime wages to Plaintiffs and class members.

22 192. Defendants violated Labor Code sections 510 and 1194 by failing to accurately pay
23 overtime wages owed as discussed above due to Defendants' failure to incorporate bonuses, shift
24 differentials and other forms of remuneration as described above into the regular rate of pay for
25 overtime calculation purposes. Therefore, Defendants violated section 510, and 1194 by not
26 compensating its Non-Exempt Employees for work performed in excess of eight hours (8) in a day
27 or forty hours in a work week (40). Section 510 of the Labor Code codifies the right to overtime
28 compensation at the rate of one and one-half times the regular rate of pay for all hours worked in

1 excess of eight (8) hours in a day or forty (40) hours in a work week and to overtime compensation
2 twice the regular rate of pay for hours worked in excess of twelve (12) hours in a day or in excess of
3 eight (8) hours in a day on the seventh day of work in a particular work week.

4 193. Defendants failed to provide Plaintiffs and all other aggrieved employees
5 uninterrupted duty-free meal periods of not less than thirty (30) minutes. Defendants implemented
6 and enforced policies of on duty meal period practices which required employees to work during their
7 meal periods, to forego their meal periods, and/or to return to work from meal periods prior to thirty
8 (30) uninterrupted minutes. As a proximate result of the aforementioned violations, Plaintiffs and all
9 other aggrieved employees have been damaged in an amount according to proof at time of trial.

10 194. Plaintiffs, and on information and belief, all aggrieved employees, were systematically
11 not permitted or authorized to take ten-minute rest periods for every four hours worked or major
12 fraction thereof, which is a violation of the Labor Code and IWC wage order. Plaintiffs and on
13 information and belief, aggrieved employees, were not compensated with one hour of wages for every
14 day in which a rest period was missed or untimely as a result of Defendants' policies, practices, or
15 work demands. By failing to authorize and permit a ten-minute rest period for every four hours or
16 major fraction thereof worked per day by its Non-Exempt Employees, and by failing to provide
17 compensation for such non-provided or shortened rest periods, as alleged above, Defendants willfully
18 violated the provisions of Labor Code sections 226.7, 512 and the applicable IWC Wage Order.

19 195. Defendants also willfully violated Labor Code sections 201-203 by failing to provide
20 all owed wages at separation from employment. Labor Code sections 201 and 202 require Defendants
21 to pay their employees all wages due either at time of firing, or within seventy-two (72) hours of
22 voluntary separation, if not sooner. Section 203 of the Labor Code provides that if an employer
23 willfully fails to timely pay such wages the employer must, as a penalty, continue to pay the subject
24 employee's wages until the back wages are paid in full or an action is commenced. The penalty cannot
25 exceed 30 days of wages.

26 196. Plaintiffs and all other aggrieved employees who were separated from employment
27 are entitled to compensation for all forms of wages earned, including but not limited to compensation
28 regular and overtime wages, and for non-provided meal and rest periods, but to date have not received

1 such compensation, therefore entitling them to penalties under PAGA for violations of Labor Code
2 sections 201-203.

3 197. On information and belief, Defendants willfully failed to pay all wages due and owing
4 upon separation from employment. These wages include regular and overtime wages, and meal and
5 rest period premiums.

6 198. On information and belief, Defendants failed to provide accurate itemized wage
7 statements which failed to include the rate of pay and total hours worked per pay period, failed to
8 account for all hours worked, including overtime, and lastly the accurate accounting of, the lawful
9 meal and rest period premiums due and owing to Plaintiffs and the aggrieved employees, pursuant to
10 Labor Code section 226(a).

11 199. Defendants have failed to provide Plaintiffs and Aggrieved Employees rates of pay
12 and the hours for which they worked for any given pay period.

13 200. Defendants have failed to accurately record all time worked.

14 201. Defendants have also failed to accurately record the meal and rest period premiums
15 owed and all wages owed per pay period.

16 202. Defendants also provided an incorrect name for the employer and did not accurately
17 reflect the rate for the shift differential. Also, on information and belief, Defendants changed the name
18 of their entity, but did not reflect this change on the wage statements.

19 203. Plaintiffs and Aggrieved Employees have been injured as they were unable to
20 determine whether they had been paid correctly for all hours worked per pay period, among other
21 things.

22 204. Pursuant to Labor Code section 226.3, any employer who violates subdivision (a) of
23 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
24 employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each
25 violation in a subsequent citation, for which the employer fails to provide the employee a wage
26 deduction statement or fails to keep the records required in subdivision (a) of Section 226.

27 205. On information and belief, Defendants failed to reimburse Plaintiffs and Aggrieved
28 Employees for business expenses incurred as described above. Labor Code section 2802 requires

Defendants to indemnify Plaintiffs and Aggrieved Employees for necessary expenditures incurred in direct consequences of the discharge of his or her duties. Despite these realities of the job, Defendants failed to provide reimbursements.

206. Labor Code section 2804 states in pertinent part: “Any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof is null and void, and this article shall not deprive any employee or his or her personal representative of any right or remedy to which he is entitled under the laws of this State.

207. Additionally, Defendants have no accurate records relating to aggrieved employees’ work periods, meal periods, total daily hours worked, total hours worked per payroll period and applicable pay rates, in violation of Wage Order. Similarly, Defendants failed to maintain accurate records relating to hours worked daily in violation of Labor Code sections 1174(d), 1174.5.

208. As a result of Defendants' unlawful conduct, Plaintiffs and Aggrieved employees are entitled to penalties to the extent they were not paid at the prevailing wage rate for all hours worked.

209. Plaintiffs and the Representative Aggrieved Employees are entitled to recover Penalties and attorneys’ fees and costs sunder Labor Code section 2698, *et. seq.*

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray for relief and judgment against Defendants for the following relief:

- A. An order that the action be certified as a class action;
- B. An order that Plaintiffs be appointed class representatives;
- C. An order that counsel for Plaintiffs be appointed class counsel;
- D. Unpaid wages;
- E. Actual damages;
- F. Liquidated Damages;
- G. Unpaid vacation wages;
- H. Unreimbursed expenses;
- I. Restitution;
- J. Declaratory relief;

- K. Pre-judgment interest;
- L. Statutory penalties;
- M. Costs of suit;
- N. Penalties according to proof, pursuant to Labor Code §§ 2698 et seq.
- O. Reasonable attorneys' fees; and
- P. Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs, on behalf of themselves, all others similarly situated, and the general public, hereby demand a jury trial on all issues so triable.

Dated: April 26, 2024

SETAREH LAW GROUP
JAMES HAWKINS APLC

JAMES HAWKINS
GREGORY MAURO

Attorneys for Plaintiffs

EXHIBIT 4

Jose Patino

From: DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
Sent: Tuesday, April 30, 2024 7:48 PM
To: Jose Patino
Subject: Thank you for your Proposed Settlement Submission

04/30/2024 07:47:18 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

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