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

JOEL ZELAYA, an Individual;
DEMETRIO MONTES, an Individual;

Plaintiffs,

vs.

COMMERCIAL LUMBER & PALLET
CO., INC., a California Corporation;
RAYMOND GUTIERREZ, an
Individual; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: 22PSCV00340

Related Case: 22STCV03643

*Reassigned for all purposes to Hon. Stuart M.
Rice, Dept. 1*

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

DATE: August 18, 2023
TIME: 10.30 a.m.
DEPT: 1 (Spring Street)

Complaint filed: April 6, 2022
Trial Date: *Not yet set*

1 **TO THE HONORABLE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF**
2 **RECORD:**

3 **PLEASE TAKE NOTICE** that on August 18, 2023, at 10:30 p.m., or as soon thereafter
4 as the matter may be heard before the Honorable Stuart M. Rice in Department 1 of the Los
5 Angeles County Superior Court – Spring Street Courthouse, located at 312 North Spring Street,
6 Los Angeles California 90012, Plaintiff Joel Zelaya, Plaintiff Demetrio Montes and Plaintiff
7 Pedro Negrete (hereinafter “Plaintiffs”) will, and hereby do, move for an order:

8 • Granting preliminary approval of the proposed class action settlement described
9 herein and as will be set forth in the parties’ Joint Stipulation of Class Action Settlement
10 (hereinafter “Settlement,” “Agreement,” or “Settlement Agreement”), attached as “Exhibit B” to
11 the Declaration of Heather K. Cox, including, but not limited to, the means of allocation and
12 distribution of funds, attorneys’ fees and litigation costs and expenses to Class Counsel, the
13 enhancement award, the Private Attorney General Action payment; and settlement administration
14 fees;

15 • Certifying the proposed Class for settlement purposes;

16 • Appointing Plaintiff Joel Zelaya, Plaintiff Demetrio Montes and Plaintiff Pedro
17 Negrete as the Class Representatives;

18 • Appointing the Barkhordarian Law Firm, PLC and the Wilshire Law Group as
19 Class Counsel;

20 • Approving the proposed Notice of Settlement of Class Action Lawsuit (“Notice”),
21 attached as “Exhibit A” to the Settlement Agreement attached as “Exhibit B” to the Declaration
22 of Heather K. Cox;

23 • Directing the mailing of the Notice to the Class Members;

24 • Approving the proposed deadlines for the notice and settlement administration
25 process;

26 • Approving CPT Group, Inc. as the Settlement Administrator; and

27 • Scheduling a hearing to consider whether to grant final approval of the Settlement,
28 at which time the Court will also consider whether to grant final approval of the requests and

1 allocations for an award of attorneys' fees and reimbursement of litigation costs and expenses to
2 Class Counsel, the enhancement award to the Class Representative, and the settlement
3 administration fees.

4 This motion is based upon the following memorandum of points and authorities, the
5 Settlement Agreement, the Declaration of Proposed Class Counsel in support thereof, Declaration
6 of Plaintiffs in support thereof, as well as the pleadings and other records on file with the Court
7 in this matter, and such evidence and oral argument as may be presented at the hearing on this
8 motion.

9
10 DATED: August 11, 2023

BARKHORDARIAN LAW FIRM, PLC

11 */s/Heather K Cox*

12 By: _____

13 Gregory P. Wong

14 Heather K. Cox

15 Attorneys for Plaintiffs Joel Zelaya and

16 Demetrio Montes, on behalf of themselves and
17 all others similarly situated
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Joel Zelaya, Demetrio Montes and Pedro Negrete (collectively hereinafter
4 “Plaintiffs”) seek preliminary approval of the Stipulation of Class Action Settlement (hereinafter
5 “Settlement,” “Agreement,” or “Settlement Stipulation”) entered into by and between Plaintiffs,
6 individually and on behalf of all others similarly situated, on the one hand, and Defendant
7 Commercial Lumber & Pallet Co. Inc. and Defendant Raymond Gutierrez (collectively hereinafter
8 “Defendants”), on the other hand (collectively, Plaintiffs and Defendants are referred to as
9 “Parties”).

10 Defendant Commercial Lumber & Pallet Co. Inc. is a California Corporation with its
11 primary place of business located in the City of Industry, California. Defendant is a pallet
12 manufacturer that offers pallets, recycled pallets, crates, industrial lumber, and pallet recycling.
13 Individual Defendant Raymond Gutierrez is an owner and manager of Defendant Commercial
14 Lumber & Pallet Co. Inc. *See* Declaration of Heather K Cox (hereinafter “Cox Decl.”) at ¶3.

15 Plaintiff Zelaya began working for Defendants on or about May 16, 2012 until
16 approximately December 27, 2022. *See* Cox Decl. at ¶4. Plaintiff Montes began working for
17 Defendants in or about March 1990 until approximately December 27, 2022. *See* Cox Decl. at
18 ¶4. Plaintiffs were classified as non-exempt employees. *See* Cox Decl. at ¶4. At all times during
19 Plaintiffs’ employment, Defendants maintained certain standard policies and practices. *See* Cox
20 Decl. at ¶4.

21 Plaintiffs alleges in this action that they and the Class Members were not properly provided
22 their lawful rest and meal breaks, were not paid all their wages and not reimbursed for all business
23 expenses. *See* Cox Decl. at ¶8.

24 Defendants deny all substantive allegations and denies that class certification is warranted
25 in this action.

26 In order to resolve this dispute and subject to court approval, Plaintiffs and Defendants
27 have agreed to settle this lawsuit for a Gross Settlement Amount of \$756,465.00. *See* Cox Decl.
28 Exhibit B at ¶13, (hereinafter “Settlement” “Agreement” or “Settlement Stipulation”). The Gross

1 Settlement Amount includes the following: (1) Settlement Administration Costs of no more than
2 Fifteen-Thousand Dollars (\$15,000); (2) attorneys' fees, of \$264,762.75 subject to Court approval
3 and not to exceed thirty-five percent of the Maximum Settlement Amount; (3) actual litigation
4 costs, not to exceed \$40,000.00, subject to Court approval; (4) Service Payment to the Class
5 Representatives not to exceed a total of Thirty Thousand Dollars (\$30,000.00) or \$10,000.00 each;
6 (5) Private Attorney General Action (hereinafter "PAGA") payment of Fifty Thousand Dollars
7 (\$50,000.00) from which \$37,500.00 will be paid to the California Labor Workforce Development
8 Agency and \$12,500.00 to Settlement Class members by having that 25% amount flow through
9 to the Net Settlement; and (6) a remaining Net Settlement Fund of approximately Three Hundred
10 Fifty-six Thousand, Seven Hundred and Two Dollars and Twenty-Five cents (\$356,702.25).

11 Plaintiffs also seeks to provisionally certify the following class, set forth in the Settlement
12 at ¶8, for settlement purposes only, which Defendants do not oppose:

13 **[A]ll current or former hourly non-exempt employees of Defendants within**
14 **California at any time during the class period.**

15 "Class Period" means the period from January 17, 2018, through the date that a
16 preliminary approval order is entered. *See* Settlement at ¶9. Class Members who do not timely
17 opt out of the Settlement (hereinafter "Participating Class Members") will receive a proportionate
18 share of the Net Settlement Fund equal to the Participating Class Member's workweeks. *See*
19 Settlement at ¶38. The Net Settlement Amount refers to the net amount that is available for
20 payment to the settlement class members after deducting from the Gross Settlement Amount the
21 Court-approved amounts for Class Counsels' attorneys' fees and litigation costs and
22 administrative expenses, settlement administration fees, PAGA Settlement, and the enhancement
23 award. *See* Settlement at ¶15. This proposed Settlement resolves the Released Claims of Plaintiffs
24 and the Settlement Class Members. *See* Settlement at ¶¶26-27 and 61-62.

25 Plaintiffs submit that the proposed settlement, arrived at after substantial investigation and
26 analysis of the claims and through arms' length bargaining, provides a substantial benefit to a
27 class. As set forth below, Plaintiffs submit that the settlement terms are fair and warrant
28 preliminary approval.

II. FACTS AND PROCEDURE

Plaintiff Joel Zelaya and Plaintiff Demetrio Montes (collectively hereinafter the “Zelaya Plaintiffs”) initially filed this matter on April 6, 2022. *See* Cox Decl. at ¶6. Thereafter the Zelaya Plaintiffs submitted their Second Amended Complaint, which was filed on February 8, 2023 and alleges claims for: (1) Failure to Provide Required Rest Periods; (2) Failure to Provide Required Meal Periods; (3) Failure to Pay Overtime Wages; (4) Failure to Pay Minimum Wages; (5) Failure to Pay Timely Wages; (6) Failure to Pay All Wages Due to Discharged and Quitting Employees; (7) Failure to Maintain Required Records; (8) Failure to Furnish Accurate Itemized Wage Statements; (9) Unlawful Discount and Deduction of Entitled Wages; (10) Unlawful Assignment of Wages; (11) Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties; (12) Unfair and Unlawful Business Practices; and (13) Civil Penalties Pursuant to California Private Attorneys General Act (Labor Code §2698, et seq.) (the “Operative Complaint”). *See* Cox Decl. at ¶8.

In the course of litigation, Class Counsel has conducted an in-depth investigation of the claims, including the analysis of timekeeping data, payroll data, labor agreements, and various other documents related to the Plaintiffs’ claims. *See* Cox Decl. at ¶¶12-14. This analysis included review and quantitative analysis of timekeeping and payroll data. *See* Cox Decl. at ¶¶12-14. After Class Counsel’s extensive review and analysis of the timekeeping and payroll data and after completion of a full risk analysis, the Parties participated in a full-day mediation on October 11, 2022 utilizing the services of the Michael Young, a respected mediator with extensive experience and knowledge in the area of wage and hour class action mediation. *See* Cox Decl. at ¶7. At mediation, the Parties engaged in arms’ length negotiations to try to come to a resolution of this dispute. *See* Cox Decl. at ¶7. Through good-faith and arms-length negotiations at mediation, each Party, represented by their respective counsel, recognized the substantial risk of an adverse result of the case and agreed to settle the matter and all other matters covered by this Settlement. *See* Cox Decl. at ¶7. Thereafter, this matter was related to the case *Pedro Negrete v Commercial Lumber & Pallet Co. Inc.*, Los Angeles Superior Court case number 22STCV03643. *See* Cox Decl. at ¶10.

1 Subsequently, counsel for Plaintiff Pedro Negrete, counsel for the Zelaya Plaintiff, and
2 counsel for Defendants (herein after collectively the “Parties”) drafted and agreed to the terms of
3 settlement. *See* Cox Decl. at ¶11 and Exhibit B attached thereto.

4 III. SUMMARY OF SETTLEMENT TERMS

5 Under the terms of the proposed Settlement, Defendants will pay a Gross Settlement
6 Amount of \$756,465.00 with an increase to the Gross Settlement Amount should the total number
7 of workweeks exceed 10% of 50,431. *See* Settlement Stipulation at ¶13 & ¶54. The Net
8 Settlement Fund will be calculated by deducting the following amounts from the Gross Settlement
9 Fund: (1) reasonable attorneys’ fees and costs as awarded by the Court for Class Counsel
10 (attorneys’ fees not to exceed thirty-five percent of the Gross Settlement Amount (\$264,762.75);
11 (2) reimbursement of litigation costs and expenses to Class Counsel in an amount of up to
12 \$40,000.00; (3) Class Representative Service Enhancement Payment to Plaintiffs in an amount of
13 up to \$10,000.00 each (\$30,000.00 total); and (4) settlement administration fees in an amount of
14 up to \$15,000.00. *See* Settlement Stipulation at ¶13 & ¶15. The Parties have agreed to retain CPT
15 Group (hereinafter, “CPT” or “Settlement Administrator”) to handle the notice and settlement
16 administration process.

17 The Parties have agreed that the Settlement Administrator will calculate the gross
18 estimated payment that each Class Member is eligible to receive as his or her portion of the Net
19 Settlement Fund (hereinafter “Individual Settlement Payment”). *See* Settlement Stipulation at
20 ¶¶38-40. The Individual Settlement Payment paid to Class Members shall be allocated as follows:
21 100% of each PAGA Group Members’ pro-rata share of the \$12,500 allocated for PAGA penalties
22 shall be allocated as penalties; 15% of each Individual Settlement Payment will be considered
23 wages; and 85% of each Individual Settlement Payment will be considered interest and penalties
24 *See* Settlement Stipulation at ¶56. The portion allocated to wages shall be reported on an IRS
25 Form W-2 and the portions allocated to interest and penalties shall be reported on an IRS form
26 1099 by the Claims Administrator. *Id.*

27 All Individual Settlement Payment checks issued to the settlement class members will
28 remain valid and negotiable for one hundred and eighty (180) days from the date of issuance. *See*

1 Settlement Stipulation at ¶53. If the check remains uncashed after 180 days, the amount of such
2 Individual Settlement Payment shall be transferred to the California State Controller's Office
3 Unclaimed Property Fund, under the unclaimed property laws in the name of the Class Member.
4 *Id.*

5 Any Class Member who wishes to "opt-out" of and be excluded from the Settlement may
6 do so by submitting a timely and valid written Request for Exclusion to the Settlement
7 Administrator however this does not exclude the class member from the PAGA payment *See*
8 Settlement Stipulation at ¶47. To be timely, any such request for exclusion must bear a post-mark
9 date that is no later than the Response Deadline (as defined in Settlement Stipulation at ¶31). *Id.*

10 A Class Member may object to the Settlement by submitting a Request for Exclusion and
11 may mail a valid Notice of Objection to the Claims Administrator by the Response Deadline. *See*
12 Settlement Stipulation at ¶16 & ¶50. The Notice of Objection must be signed by the Class
13 Member and contain (i) the objector's full name, signature, address, and telephone number; and
14 (ii) a written statement of all grounds for the objection accompanied by any legal support for such
15 objection. *Id.*

16 **IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION** 17 **SETTLEMENTS**

18 The settlement of a class action requires court approval. *Dunk v. Ford Motor Co.* 48
19 Cal.App.4th 1794, 1800 (1996); Code Civ. Proc. § 1781(f). California courts look to federal
20 authority for guidance with class action settlements. *Dunk, supra*, 48 Cal.App.4th at p. 1801, n.7
21 (citing *Vasquez v. Superior Court* 4 Cal.3d 800, 821 (1971)). The decision to approve or reject a
22 proposed settlement is within the court's discretion. *Wershba v. Apple Computer, Inc.* 91
23 Cal.App.4th 224, 234-35 (2001) ("In general, questions whether a settlement was fair and
24 reasonable, whether certification of the class was proper, and whether the attorney fee award was
25 proper are matters addressed to the trial court's broad discretion."). Accordingly, a court's
26 decision to approve a class action settlement may be reversed only upon a strong showing of "clear
27 abuse of discretion." *Hanlon v. Chrysler Corp.* 150 F.3d 1011, 1026 (9th Cir. 1998); *Class*
28 *Plaintiffs v. City of Seattle*) 955 F.2d 1268, 1276 (9th Cir. 1982).

1 Courts review class action settlements in a two-step process: (1) an earlier conditional
2 review by the court; and (2) a later detailed review after the period during which notice is
3 distributed to class members for their comment or objections. Conte & Newberg, *Newberg on*
4 *Class Actions* § 11.24 (4th ed. 2002). Both federal and state courts commonly utilize this
5 procedure, which assures class members of the protection of procedural due process safeguards
6 and enables the court to fulfill its role as the guardian of the interest of the class.

7 Accordingly, preliminary approval does not require a court to make a final determination
8 that the settlement is fair, reasonable, and adequate. Rather, that decision is made only at the final
9 approval stage, after notice of the settlement has been given to the class members and they have
10 had an opportunity to voice their views of the settlement or to exclude themselves from the
11 settlement. See Cal. R. Ct. 3.769(g). In considering a potential class settlement, the court need
12 not reach any ultimate conclusions on the issues of fact and law that underlie the merits of the
13 dispute (see *City of Detroit v. Grinnell Corporation* 495 F.2d 448, 456 (2d Cir. 1974)), and need
14 not engage in a trial on the merits. See *Officers for Justice v. Civil Service Commission of City*
15 *and County of San Francisco* 688 F.2d 615, 625 (9th Cir. 1982). Neither formal notice nor a
16 hearing is required for the trial court to grant provisional class certification and preliminary
17 approval; the court may grant such relief upon an informal application by the settling parties and
18 may conduct any necessary hearing in court or in chambers, at the court's discretion. *Newberg*, §
19 11.25.

20 V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

21 To grant preliminary approval of a class action settlement, the trial court must determine
22 whether the settlement is fundamentally fair, adequate, and reasonable. *Dunk, supra*, 48
23 Cal.App.4th at p. 1800. The trial court has broad powers to determine whether a proposed
24 settlement is fair under the circumstances of the case. *Id.* at p. 1801. To make this fairness
25 determination, courts must consider several relevant factors, including “the strength of the
26 plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of
27 maintaining class action status through trial, the amount offered in settlement, the extent of
28 discovery completed by plaintiff, the experience and view of counsel, the presence of a

1 governmental participant, and the reaction of the class members to the proposed settlement.”
2 *Dunk, supra*, 48 Cal.App.4th at p. 1801. “The list of factors is not exclusive and the court is free
3 to engage in a balancing and weighing of the factors depending on the circumstances of each
4 case.” *Wershba, supra*, 91 Cal.App.4th at p. 245. Furthermore, courts give “proper deference to
5 the private consensual decision of the parties.” *Hanlon, supra*, 150 F.3d at p. 1027 (citation
6 omitted).

7 The proponent of the settlement has the burden to show that it is fair and reasonable.
8 *Wershba, supra*, 91 Cal.App.4th at p. 245. “A presumption of fairness exists where: (1) the
9 settlement is reached through arm’s-length bargaining; (2) investigation and discovery are
10 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
11 litigation; and (4) the percentage of objectors is small.” *Id.*; *Dunk, supra*, 48 Cal.App.4th at p.
12 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* 85 Cal.App.4th 1135, 1151
13 (2000).

14 **A. The Proposed Settlement Resulted from Arm’s-Length Negotiations Based**
15 **Upon Extensive Investigation.**

16 Throughout the litigation of this case and in preparation for mediation, Class Counsel
17 conducted a thorough investigation of both the factual and legal issues affecting the strengths and
18 weaknesses of Plaintiffs’ claims, the potential class recovery. Class Counsel reviewed and
19 analyzed the relevant employer policies and labor agreements. *See* Cox Decl. at ¶12. Defendants
20 provided Class Counsel with time and payroll data in advance of mediation. *See* Cox Decl. at ¶13.
21 This allowed Class Counsel to analyze the viability of the break claims, unpaid wages due to
22 overtime and unpaid wages due to minimum wage allegations on a granular level that provided
23 insight not just into the overall potential violation rate, but also class certification issues such as
24 the distribution and character of the potential violations. *See* Cox Decl. at ¶¶14-35. Class
25 Counsel’s extensive factual investigation gave invaluable insight into the nature and extent of the
26 class claims and the reasonable range of settlement. Due to Defendants’ broad production of
27 payroll and timekeeping data in advance of mediation, Class Counsel was able to undertake a
28 thorough investigation and analysis of the core claims in this litigation.

1 Arriving at a settlement that was acceptable to both Parties was not easy. Defendants and
2 their counsel felt strongly about their ability to prevail on the merits and at certification, and
3 Plaintiffs and Class Counsel believed that they would be able to obtain class certification and
4 prevail at trial. In particular, among other defenses, Defendants' position is that Plaintiffs would
5 be unable to obtain class certification not only because the putative class was limited in size, but
6 also because the core legal issue underlying Plaintiffs' combined break claims and disputed points
7 of law. After conducting investigations, as well as informal discovery efforts and settlement
8 negotiations, the Parties have agreed that this case is well-suited for settlement given the legal
9 issues relating to Plaintiffs' principal claims, as well as the costs and risks to both sides that would
10 attend further litigation.

11 The proposed Settlement takes into account the strengths and weaknesses of each side's
12 position and the uncertainty of how the case might have concluded at certification and/or trial.
13 The parties reached the proposed Settlement based on this large volume of facts, evidence, and
14 investigation. In addition, Class Counsel has extensive experience in employment class actions,
15 including significant experience in California wage-and-hour litigation. *See Cox Decl. at ¶¶ 37-*
16 *45.*

17 **B. The Proposed Settlement Is Fair, Reasonable, and Adequate.**

18 The Gross Settlement Fund of \$756,465.00 represents a fair, adequate, and reasonable
19 resolution of this case. The proposed Settlement was calculated using the information and data
20 uncovered during the litigation, informal and confirmatory discovery, case investigation, as well
21 as the exchange of information in the context of settlement negotiations. The proposed Settlement
22 considers the potential risks and rewards inherent in any case and, in particular, with this case.
23 Moreover, considering all of the facts and circumstances of this case, the proposed Settlement
24 represents a substantial global recovery for the Class.

25 Assuming that all of the fees, costs, and payments are approved and awarded in the full
26 amounts provided for by the proposed Settlement, the Net Settlement Fund is currently estimated
27 to be approximately \$356,702.25 with an additional \$50,000.00 being allocated to the PAGA
28 settlement. Settlement Class Members who do not opt out will receive a Settlement Award that

1 is calculated on a *pro rata* basis, based upon their respective number of weeks worked during the
2 Settlement Period. There is no reason to doubt the fairness of the proposed plan of allocation of
3 the settlement funds for purposes of preliminary approval. Even at the final approval stage, “[a]n
4 allocation formula need only have a reasonable, rational basis [to warrant approval], particularly
5 if recommended by experienced and competent class counsel.” *In re American Bank Note*
6 *Holographics, Inc., Securities Litigation* 127 F.Supp.2d 418, 429-430 (S.D.N.Y. 2001).

7 In light of the above considerations, Class Counsel believe that the proposed Settlement
8 as a whole is fair, reasonable, and adequate, and is in the best interest of the Class. Although the
9 recommendations of Class Counsel are not conclusive, the Court can properly take the
10 recommendations into account, particularly if Class Counsel appears to be competent, has
11 experience with this type of litigation, and significant discovery and investigation have been
12 completed. *Newberg*, §11.47.

13 **C. The Settlement Is of Significant Value.**

14 Pursuant to *Kullar v. Foot Locker Retail, Inc.* 168 Cal.App.4th 116 (2008), Class Counsel
15 conducted significant informal discovery, including extensive review and analysis of a volume of
16 documents and data, including, but not limited to the relevant time and pay records. The class
17 data and information obtained in this case allowed Class Counsel to develop a damages/valuation
18 model and complete evaluation of the claims and Defendants’ defenses thereto. As outlined in
19 the Declaration of Heather K. Cox, prior to entering into the proposed Settlement, Class Counsel
20 performed an extensive analysis of each claim pursuant to *Kullar*, based on a volume of documents
21 and data produced by Defendants and obtained through other sources, including Plaintiff. *See*
22 *Cox Decl.* at ¶ 12-35. The results of the Kullar analysis returned a “Risk-Adjusted” Range of
23 Recovery of \$251,445.06 to \$1,888,946.80. The total settlement value achieved in this case of
24 \$756,465.00 is reasonably within this range. *See Cox Decl.* at ¶¶ 14-35.

25 **VI. CERTIFICATION OF THE PROPOSED CLASS IS APPROPRIATE**

26 For settlement purposes, the requisites for establishing class certification are met, and the
27 Parties have stipulated to certification of the Class for settlement purposes only. California Code
28 of Civil Procedure section 382 “authorizes class actions when the question is one of a common or

1 general interest, of many persons, or when the parties are numerous, and it is impracticable to
2 bring them all before the court.” Cal. Code Civ. Proc. § 382; *Sav-On Drug Stores, Inc. v. Superior*
3 *Court* 34 Cal.4th 319, 326 (2004). California courts certify class actions where the plaintiff
4 identifies “both [1] an ascertainable class and [2] a well-defined community of interest among
5 class members.” *Id.*

6 The Class is ascertainable and numerous as to make it impracticable to join all Class
7 Members, and there are common questions of law and fact that predominate over any questions
8 affecting any individual Class Member. Further, Plaintiffs’ claims are typical of the claims of the
9 Class Members, and Class Counsel will fairly and adequately protect the interests of the Class.
10 Finally, prosecution of separate actions by individual Class Members would create the risk of
11 inconsistent or varying adjudications, and a class action is superior to other available means for
12 the fair and efficient adjudication of the case. The Class is amenable to class certification for
13 settlement purposes, as discussed below.

14 **A. The Proposed Class Is Ascertainable and Sufficiently Numerous.**

15 “Ascertainability is required in order to give notice to putative class members as to whom
16 the judgment in the action will be res judicata.” *Hicks v. Kaufman & Broad Home Corp.* (2001)
17 89 Cal.App.4th 908, 914. “A class is ascertainable if it identifies a group of unnamed plaintiffs
18 by describing a set of common characteristics sufficient to allow a member of that group to
19 identify himself or herself as having a right to recover based on the description.” *Bartold v.*
20 *Glendale Federal Bank* 81 Cal.App.4th 816, 828 (2000). The proposed class must also be
21 sufficiently numerous. *Linder v. Thrifty Oil Co.* 23 Cal.4th 429, 435 (2000).

22 This action involves no fewer than 248 Class Members. While established case law
23 provides that there is no prescribed minimum number of aggrieved persons required to meet the
24 numerosity requirement, Plaintiff submits that a proposed class of nearly 300 is sufficiently
25 numerous to merit class treatment. *See Hebbard v. Colgrove*, 28 Cal.App.3d 1017, 1030 (1972)
26 (“there is no set number required as a matter of law for the maintenance of a class action”). All
27 Class Members can and will be identified by Defendants to the Settlement Administrator through
28 a review of Defendants’ employment records regarding its non-exempt employees employed in

1 the State of California during the Settlement Class Period. As such, the proposed Class is
2 ascertainable and sufficiently numerous.

3 **B. The Class Members Share a Well-Defined Community of Interest.**

4 The community of interest requirement “embodies three factors: (1) predominant common
5 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and
6 (3) class representatives who can adequately represent the class.” *Sav-On*, supra, 34 Cal.4th at p.
7 326. “[T]he community of interest requirement for certification does not mandate that class
8 members have uniform or identical claims.” *Capitol People First v. Department of*
9 *Developmental Services* 155 Cal.App.4th 676, 692 (2007) (emphasis in original). Rather, courts
10 focus on the defendant’s internal policies and “pattern and practice . . . in order to assess whether
11 that common behavior toward similarly situated plaintiffs renders class certification appropriate.”
12 *Id.* (citing *Sav-On*, supra, 34 Cal.4th at p. 333).

13 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory
14 of recovery’ is likely to prove compatible with class treatment.” *Id.* at p. 690 (citing *Sav-On*,
15 supra, 34 Cal.4th at p. 327). Furthermore, the commonality inquiry centers on the
16 “reasonableness” of the defendant’s labor policies as applied to the potential class. *Ghazaryan v.*
17 *Diva Limousine, Ltd.*, 169 Cal.App.4th 1524, 1534 (2008).

18 Here, Plaintiffs maintain that common issues of fact and law predominate as to each of the
19 claims alleged by Plaintiffs, for settlement purposes. Plaintiffs seek to represent a class comprised
20 entirely of non-exempt employees who performed duties that were similar to each other or who
21 were subjected to the same unlawful practices. Plaintiffs allege in this Action that Defendants
22 maintained several policies and practices that resulted in uniform and consistent violations of
23 California’s wage and hour laws. These violations, which Defendants deny, fall into several broad
24 categories as follows:

25 **Failure to Provide Rest Breaks:** Plaintiffs allege that they and other Class
26 Members did not receive all of their rest breaks as required by the Labor Code by requiring
27 only one twenty-minute break instead of two ten minute breaks.

28 **Failure to Provide Meal Breaks:** Plaintiffs allege that they and other Class

Members did not receive all of their meal break as required by the Labor Code as Defendants required them to take less than 30-minutes or to work through the meal period..

Failure to Pay Wages: Throughout the relevant time period, Defendants failed to provide compliant meal and rest periods which resulted in off-the-clock work. As a result, Defendants failed to pay for all wages including the proper overtime rate and minimum wage for time worked off the clock.

Derivative Penalties: In addition to the principal claims advanced by Plaintiff on behalf of the class, the operative Complaint seeks recovery for derivative waiting time penalties, wage statement penalties, PAGA penalties, and penalties for failure to maintain business records and unlawful deduction of wages.

Plaintiffs also assert that Defendants' recordkeeping practices with respect to Plaintiffs and the Class Members were substantially the same during the Class Period. Thus, Plaintiffs maintains that the outcome of this litigation would be determined by Defendants' uniform operations and employment policies, practices, and procedures that applied across its non-exempt employees within the State of California during the Class Period. Accordingly, the Court should certify the Class for settlement purposes only.

VII. ALLOCATION FOR ATTORNEYS' FEES AND COSTS

Class Counsel's application for attorneys' fees in light of the facts and circumstances surrounding this lawsuit is well within the range of reasonableness. The proposed Settlement establishes a Gross Settlement Fund of \$756,465.00 and provides for Class Counsel to apply to the Court for an award of attorneys' fees in an amount of up to thirty-five percent of the Gross Settlement Fund (\$264,762.75) plus reimbursement of litigation costs and expenses up to forty thousand dollars (\$40,000.00). The attorneys' fees requested are commensurate with (1) the risk the Class Counsel took in bringing and litigating this case, (2) the time, effort, and expense dedicated to the case, (3) the skill and determination Class Counsel has shown, (4) the results Class Counsel has achieved throughout the litigation, (5) the value of the Settlement that Class Counsel has achieved for the Settlement Class, and (6) the other cases Class Counsel had to turn down in order to devote their time and efforts to this matter. The proposed Class Notice provides

1 the Class Members with information about the amount allocated toward attorneys' fees and
2 litigation costs and expenses, and that an attorneys' fee award will be sought, as provided for by
3 the Settlement.

4 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their
5 decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v.*
6 *Beneficial Cal., Inc.* 82 Cal.App.4th 19, 41 (2000). Indeed, it is long settled that the "experienced
7 trial judge is the best judge of the value of professional services rendered in his court." *Ketchum*
8 *v. Moses* 24 Cal. 4th 1122, 1132 (2001). California law provides that attorney fee awards should
9 be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk
10 incurred. *Laffitte v. Robert Half Int'l, Inc.* 1 Cal.5th 480, 503 (2016) (citing *Lealao, supra*, 82
11 Cal.App.4th at p. 48-49). In *Lealao*, the court held that when an action leads to a recovery that
12 can be "monetized" with a reasonable degree of certainty, the trial court should "ensure that the
13 fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable
14 litigation." *Lealao, supra*, 82 Cal.App.4th at p. 50.

15 The propriety of calculating and awarding attorneys' fees as a percentage of a monetary
16 fund that has, by litigation, been preserved or recovered for the benefit of others, has recently been
17 confirmed by the California Supreme Court. *Laffitte, supra*, 1 Cal.5th 480 at pp. 486 & 506. The
18 California Supreme Court has taken the position that "[t]rial courts have discretion to conduct a
19 lodestar cross-check on a percentage fee," "they also retain the discretion to forgo a lodestar cross-
20 check and use other means to evaluate the reasonableness of a requested percentage fee[.]" and
21 "[t]he percentage of fund method survives in California." *Id.* (internal quotation marks omitted).

22 Historically, courts have awarded fees as high as fifty percent (50%) of the common fund,
23 depending on the circumstances of the case. *Newberg*, § 14.03; *see also In re Ampicillin Antitrust*
24 *Litig.* 526 F.Supp.494 (D.D.C. 1981) (awarding attorneys' fees in the amount of 45% of the \$7.3
25 million settlement fund); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* 480 F.Supp.
26 1195 (S.D.N.Y. 1979) (awarding approximately 53% of the settlement fund as attorney fees).
27 California Courts routinely approve class action attorneys' fee awards "averag[ing] around one-
28 third of the recovery." *Chavez v. Netflix, Inc.* 162 Cal.App.4th 43, 66 n.11 (2008) (lower court

1 found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions);
2 see also *Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court Case No.
3 BC262247 (May 2005) (wage and hour); *Moore v. IKEA*, Los Angeles Superior Court Case No.
4 BC263646 (Sept. 2006) (wage and hour).

5 Class Counsel has litigated this case aggressively since its inception and have conducted
6 significant investigation and analysis of the facts and issues. The ongoing work has been
7 extensive, demanding, and ultimately successful in achieving a substantial settlement resolution.
8 Class Counsel conducted informal discovery¹ and investigation into the facts of the case. Class
9 Counsel engaged in multiple interviews and strategy sessions with Plaintiffs, met and conferred
10 with defense counsel, reviewed, and analyzed all data and documents provided by Defendants and
11 prepared a valuation/damages model for settlement negotiations, among other tasks.

12 Class Counsel is well-experienced in wage-and-hour class action litigation and used that
13 experience to obtain a great result for the Class. Class Counsel has borne all of the risks and costs
14 of litigation and will not receive any compensation until recovery is obtained. Class Counsel will
15 provide extensive evidence as to the time worked, litigation efforts, and further argument at the
16 time of filing Plaintiffs' motion for final approval of the proposed Settlement and the requests for
17 an award of attorneys' fees and reimbursement of litigation costs and expenses, enhancement
18 awards, and the settlement administration fees to be heard at the Final Approval Hearing. The
19 fees and costs provided for by the Settlement are reasonable, considering the amounts at issue, the
20 work performed, the risks incurred, and the results achieved, and as such, should be awarded.

21 **VIII. THE PROPOSED NOTICE IS ADEQUATE**

22 California statutory and case law vests the Court with broad discretion in fashioning
23 appropriate class notice. See Code Civ. Proc. § 1781; *Cartt v. Superior Court* 50 Cal.App.3d 960,
24 973-74 (1975). A class notice is adequate if it "present[s] a fair recital of the subject matter and
25
26

27 ¹ Although discovery in this matter was on an informal basis, the breadth of information obtained through informal
28 efforts actually exceeded the amount normally produced in pre-certification discovery as Defendants turned over
spreadsheets of timekeeping and payroll data for a representative sample set of class members.

1 proposed terms” of the Settlement. *Mendoza v. United States* 623 F.2d 1338, 1351 (9th Cir. 1980)
2 (quoting *Marshall v. Holiday Magic* (9th Cir. 1977) 550 F.2d 1173, 1177).

3 The proposed Notice provides information on, among other things, the meaning and nature
4 of the proposed Class; the terms and provisions of the proposed Settlement; the relief that the
5 proposed Settlement will provide to the Settlement Class Members; the allocations for an award
6 of attorneys’ fees, reimbursement of litigation costs and expenses, service enhancement award,
7 the PAGA payment, and settlement administration fees; and the date, time, and place of the Final
8 Approval Hearing. The proposed Notice also set forth the procedures and deadlines for submitting
9 a Request for Exclusion to the Settlement Administrator and filing a written objection with the
10 Court and serving it upon counsel for the parties. The proposed Notice will be mailed to the Class
11 Members at the addresses that Defendants will provide to the Settlement Administrator. *See*
12 Exhibit A to the Settlement Stipulation.

13 The notice procedure provided by the proposed Settlement fulfills the requirement of
14 neutrality in class notices. “Sufficient information about the case should be provided to enable
15 class members to make an informed decision about their participation.” *Manual for Complex*
16 *Litigation* (4th ed. 2004) § 21.311. Here, the proposed Notice recognizes that the Court has not
17 yet granted final approval and states the parties’ respective positions with respect to the
18 Settlement. The proposed Notice also appries the Class Members of, *inter alia*, how to object to
19 the proposed Settlement, how to request exclusion from the proposed Settlement, how Class
20 Members’ Settlement Awards are calculated, what their estimated monetary recovery will be, and
21 how to dispute the information provided on the Class Notice.

22 The Notice complies with the standards of fairness, completeness, and neutrality. Fed. R.
23 Civ. P. 23 (c)(2) & (e); *Newberg*, §§ 8.21, 8.39; *Manual*, §§ 21.311, 21.312; see *Cartt, supra*, 50
24 Cal.App.3d at p. 960 (“The essentials of due process of law in class suits would appear to be
25 afforded by fair representation in the assertion of claims of class members against the opposing
26 parties in any lawsuit, and notice of the pending suit.”). The proposed notice procedure satisfies
27 all due process requirements and is consistent with notice procedures approved by numerous state
28 and federal courts. Accordingly, the Court should approve the proposed Notice.

1 **IX. APPOINTMENT OF CPT GROUP AS THE SETTLEMENT ADMINISTRATOR**

2 The Parties have selected CPT Group as the Settlement Administrator to administer the
3 proposed Settlement. The parties estimate that the proposed Class is comprised of two hundred
4 eighty-three (283) individuals.

5 The Settlement Administrator will mail the Notice to each Class Member by regular First-
6 Class U.S. Mail and re-mail any returned Notices after conducting a skip-trace if no forwarding
7 address is provided. *See* Settlement Stipulation at ¶¶44-46. The Settlement Administrator will
8 receive, review, and process Requests for Exclusion, and any written disputes and supporting
9 documentation as to the validity of the information regarding the number of workweeks. *See*
10 Settlement Stipulation at ¶47. The Settlement Administrator will maintain the Gross Settlement
11 Fund and handle inquiries regarding the proposed Settlement; calculate the Class Members’
12 estimated Settlement Awards; withhold applicable employment and payroll taxes; transmit the
13 payments provided by the Settlement; provide necessary declarations; and perform other usual
14 and customary duties for administering a class action settlement. *See* Settlement Stipulation at
15 ¶¶36,,

16 Under the Settlement Agreement, the settlement administration fees, in an amount of up
17 to \$15,000.00 shall be paid out of the Gross Settlement Fund to the Settlement Administrator. *See*
18 the Settlement Agreement at ¶4 and ¶36. Accordingly, the Court is respectfully requested to
19 appoint CPT Group as the Settlement Administrator and direct the mailing of the Notice Packet,
20 as well as the distribution of any cure letters and a reminder postcard to Class Members, in the
21 manner outlined and based on the proposed deadlines as forth in the Settlement Agreement.

22 **X. PROPOSED DEADLINES FOR THE NOTICE AND SETTLEMENT**
23 **ADMINISTRATION PROCESS**

24 At this preliminary approval stage, Plaintiffs also seek approval of the proposed deadlines
25 for the notice process as forth in the Settlement Agreement. *Newberg*, at § 11.26. The notice
26 process entails mailing of the Notice Packet, in the form approved by the Court, to all known and
27 reasonably ascertainable Class Members based on Defendants’ records. The Settlement
28 Administrator will perform an address search using the National Change of Address Database to

1 update the Class Data with more current addresses for the Class Members, if any.

2 Within twenty-one (21) calendar days of the Court's Preliminary Approval order,
3 Defendants will provide the Settlement Administrator with a list of the last known addresses,
4 social security numbers or taxpayer IDs, and dates of employment for each Class Member in a
5 Covered Position during the Settlement Period. *See* the Settlement Agreement at ¶7. Within ten
6 (10) calendar days of receipt of the class data, the Settlement Administrator will mail the Notice
7 Packet to all Class Members via First-Class U.S. Mail. *See* the Settlement Agreement at ¶44.

8 Class Members will have forty-five (45) calendar days from the date of mailing of the
9 Notice to return Requests for Exclusion and written objections. *See* the Settlement Agreement at
10 ¶31. If any Notice is returned to the Settlement Administrator as undeliverable, the Settlement
11 Administrator will promptly perform a single re-mailing of the Notice to a forwarding address, if
12 available, or to any newly identified address obtained by way of skip-tracing. *See* the Settlement
13 Agreement at ¶45.

14 Defendants shall the Gross Settlement Fund within twenty-one (21) calendar days of the
15 date upon which the Court grants final approval of the Settlement Stipulation. *See* the Settlement
16 Agreement at ¶33. Within five (5) calendars days following receipt of the Settlement funds from
17 Defendant, the Settlement Administrator shall issue payment to (1) Participating Class Members
18 and PAGA Group Members; (2) Plaintiffs; (3) Class Counsel; and (4) State of California portion
19 of the PAGA Settlement. *See* the Settlement Agreement at ¶52. Also, within the same 5-day
20 period, the Settlement Administrator shall deduct its Administrative Costs from the Settlement
21 Amount.. *Id.*

22 Settlement class members shall have one hundred and eighty (180) days from the date their
23 Individual Settlement Payment checks are dated to cash their checks. *See* the Settlement
24 Agreement at ¶53. If the check remains uncashed after 180 days, the amount of such Individual
25 Settlement Payment shall be transferred to the California State Controller's Office Unclaimed
26 Property Fund, under the unclaimed property laws in the name of the Class Member. *Id.*

27 **XI. APPOINTMENT OF CLASS REPRESENTATIVES AND APPROVAL OF THE**
28 **ENHANCEMENT AWARDS**

1 Plaintiffs respectfully request that the Court appoint them as the Class Representatives and
2 approve enhancement awards in the amount of up to \$30,000.00 or \$10,000.00 to each named
3 plaintiff as provided for by the Settlement. It is within the Court's discretion to award payment
4 to the Class Representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D.
5 Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation award to a single class
6 representative). The factors that courts may consider in determining whether to make an incentive
7 award include: (1) the risk to the class representatives in commencing suit, both financial and
8 otherwise; (2) the notoriety and personal difficulties encountered by the class representatives; (3)
9 the amount of time and effort spent by the class representatives; (4) the duration of the litigation;
10 and (5) the personal benefit (or lack thereof) enjoyed by the class representatives as a result of the
11 litigation. *Id.*

12 The enhancement awards provided for by the Settlement is fair and appropriate. Plaintiffs
13 have spent considerable time and effort to produce relevant documents and past employment
14 records, and to provide the facts and evidence necessary to prove the allegations. Plaintiffs were
15 available whenever Class Counsel needed them and actively tried to obtain information that would
16 benefit the Class. Accordingly, it is appropriate and just for Plaintiffs to receive a reasonable
17 enhancement award as an incentive payment, in addition to their Settlement Awards, for their
18 services on behalf of the Class.

19 XII. CONCLUSION

20 For the foregoing reasons, Plaintiffs respectfully requests that the Court grant preliminary
21 approval of the proposed Settlement; certify the proposed Class for settlement purposes; appoint
22 and designate the Barkhordarian Law Firm, PLC and the Wilshire Law Firm PLC as Class
23 Counsel; appoint and designate Plaintiff Joel Zelaya, Plaintiff Demetrio Montes, and Plaintiff
24 Pedro Negrete as the Class Representatives; appoint CPT Group as the Settlement Administrator;
25 preliminarily approve the allocations for attorneys' fees and reimbursement of litigation costs and
26 expenses to Class Counsel, enhancement award to Plaintiffs, the PAGA payment, settlement
27 administration fees; approve the proposed Notice Packet; direct the Settlement Administrator to
28 undertake the notice and settlement administration process in conformity with the deadlines

1 provided by the Settlement Agreement; and schedule a Settlement Fairness Final Approval
2 Hearing.

3
4 Respectfully Submitted,

5 DATED: August 11, 2023

BARKHORDARIAN LAW FIRM, PLC

/s/Heather K Cox

By: _____

Gregory P. Wong

Heather K. Cox

Attorneys for Plaintiffs Joel Zelaya and

Demetrio Montes, on behalf of themselves and
all others similarly situated

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Joel Zelaya and Demetrio Montes

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

JOEL ZELAYA, an Individual;
DEMETRIO MONTES, an Individual;

Plaintiffs,

vs.

COMMERCIAL LUMBER & PALLET
CO., INC., a California Corporation;
RAYMOND GUTIERREZ, an Individual;
and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 22PSCV00340

Related Case: 22STCV03643

*Reassigned for all purposes to Hon. Stuart M. Rice,
Dept. 1*

**DECLARATION OF HEATHER K. COX IN
SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

DATE: August 18, 2023
TIME: 10.30 a.m.
DEPT: 1 (Spring Street)

Complaint filed: April 6, 2022
Trial Date: *Not yet set*

DECLARATION OF HEATHER K. COX

I, Heather K. Cox, declare and state as follows:

1. I am an attorney employed by the Barkhordarian Law Firm, PLC, counsel for Plaintiff Joel Zelaya (“Plaintiff Zelaya”) and Plaintiff Demetrio Montes (“Plaintiff Montes” and collectively hereinafter with Plaintiff Zelaya “Plaintiffs”) in the above-captioned matter. I am one of the attorneys responsible for the representation of Plaintiffs in the above-captioned action. I have personal knowledge of the facts set forth below, except for those which I have described as being based on information and belief, and, if called as a witness, I could and would competently testify thereto.

2. I am making this declaration in support of the Motion for Preliminary Approval of Class Settlement filed in this action.

Procedural History

3. Defendant Commercial Lumber & Pallet Co. Inc. is a California Corporation with its primary place of business located in the City of Industry, California. Defendant is a pallet manufacturer that offers pallets, recycled pallets, crates, industrial lumber, and pallet recycling. Individual Defendant Raymond Gutierrez is an owner and manager of Defendant Commercial Lumber & Pallet Co. Inc. Defendant Commercial Lumber & Pallet Co., Inc. and Defendant Raymond Gutierrez hereinafter are collectively referred to as “Defendants.”

4. Plaintiff Zelaya began working for Defendants on or about May 16, 2012 until approximately December 27, 2022. At all times during Plaintiff Zelaya’s employment, he was classified as a non-exempt hourly employee. Plaintiff Montes began working for Defendants in or about March 1990 until approximately December 27, 2022. At all times during Plaintiff Montes’ employment, he was classified as a non-exempt hourly employee. Defendants maintained certain standard policies and practices throughout Plaintiffs’ employment.

5. On January 17, 2022, Plaintiffs filed a notice with the California Labor and Workforce Development Agency (“LWDA”) alleging various labor code violations committed by Defendants.

1 6. On April 6, 2022, Plaintiffs filed a complaint for (1) individual claims of failure to
2 provide rest breaks and (2) for penalties pursuant to the Private Attorney General Act (“PAGA”).
3 In the complaint, Plaintiffs allege that Defendants only allowed employees to take one twenty-
4 minute break instead of two separate ten-minute rest breaks as required by the California Labor
5 Code and Industrial Wage Orders. Thereafter, counsel for Plaintiffs and Defendants met and
6 conferred and Plaintiffs filed a First Amended Complaint (“FAC”) on May 16, 2022. Defendants
7 filed their answer on June 17, 2022.

8 7. Shortly thereafter, Plaintiffs and Defendants agreed to private mediation utilizing
9 the services of Michael Young, a respected mediator with extensive experience and knowledge in
10 the area of wage and hour PAGA and class action mediation. Prior to the mediation, Defendants
11 produced information to analyze the allegations as well as additional information beyond the scope
12 of the FAC to analyze additional claims and the potential of expanding the case to include class
13 allegations. The full-day remote mediation was conducted via zoom on October 11, 2022. With
14 the assistance of Mr. Young, the Plaintiffs and Defendants reached agreement on a proposed class
15 settlement.

16 8. On February 8, 2023, Plaintiffs filed an amended notice with the LWDA alleging
17 additional various labor code violations committed by Defendants. On February 17, 2023,
18 Plaintiffs filed a Second Amended Complaint (“SAC”) asserting the following causes of actions:
19 (1) Failure to Provide Required Rest Periods; (2) Failure to Provide Required Meal Periods; (3)
20 Failure to Pay Overtime Wages; (4) Failure to Pay Minimum Wages; (5) Failure to Pay Timely
21 Wages; (6) Failure to Pay All Wages Due to Discharged and Quitting Employees; (7) Failure to
22 Maintain Required Records; (8) Failure to Furnish Accurate Itemized Wage Statements; (9)
23 Unlawful Discount and Deduction of Entitled Wages; (10) Unlawful Assignment of Wages; (11)
24 Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties; (12)
25 Unfair and Unlawful Business Practices; and (13) Civil Penalties Pursuant to California Private
26 Attorneys General Act (Labor Code §2698, et seq.). Attached hereto as **Exhibit A** is a true and
27 complete copy of the Complaint filed by Plaintiffs on February 8, 2023 in Los Angeles County
28 Superior Court.

1 9. Defendants filed their answer to the SAC on March 21, 2023.

2 10. On February 27, 2023, this matter was deemed related to case *Pedro Negrete v*
3 *Commercial Lumber & Pallet Co. Inc.*, Los Angeles Superior Court case number 22STCV03643
4 and was reassigned to the current department.

5 11. Subsequently, counsel for Plaintiff Pedro Negrete, counsel for Plaintiffs Zelaya and
6 Montes, and counsel for Defendants (herein after collectively the “Parties”) drafted and agreed to
7 the terms of settlement set forth in the Joint Stipulation of Settlement, attached hereto as Exhibit
8 B. The Parties also agreed to the form of Class Notice, attached as Exhibit A to the Joint
9 Stipulation of Settlement, attached hereto as Exhibit B.

10 **Investigation of Claims**

11 12. My co-counsel Gregory P. Wong, my legal assistants, and I conducted multiple
12 interviews with Plaintiffs and reviewed a substantial amount of relevant documents, including
13 written discovery responses, detailed payroll and time records, labor agreements, Defendants’
14 relevant employment policies, and Plaintiffs’ personnel files. The Plaintiffs and Defendants
15 engaged in substantial formal and informal discovery, including exhaustive analysis of time
16 records including raw data in excel and in .txt files for Plaintiffs and the putative class prior to
17 mediation.

18 13. In advance of mediation, Defendants produced a sample of payroll and timeclock
19 data including in a raw format which provided enough information for counsel for Plaintiffs to
20 perform a detailed analysis to evaluate the core unpaid wage claims alleged in the SAC, including
21 employee identifier, dates worked, and recorded hours worked and rates of pay. Defendants also
22 provided policies relevant to the allegations set forth in this litigation. With this information,
23 counsel for Plaintiffs determined the potential overtime worked, and meal and rest periods taken
24 or missed.

25 **Damage Assessment & Valuation**

26 14. Class Counsel reviewed the payroll records and other information provided by
27 Defendants as well as applicable labor agreements, and determined that the average rate of pay for
28

1 all class members during the Class Period was approximately \$16.51 per hour. Additionally,
2 Defendants employed employees who worked piece rate.

3 15. Based on information provided by counsel for Defendant at mediation, Class
4 Counsel determined that there were 248 class members with approximately 170 who worked
5 during the PAGA period at the time of mediation. Based on the data and information provided,
6 Class Counsel also estimated: (1) the number of employees who separated employment during the
7 three year statute of limitations period relevant to Plaintiffs' waiting time penalties claim which
8 covers the COVID-19 pandemic (estimated about 78); (2) the estimated total number of shifts
9 worked in the class period (approximately 45,725); and (3) the estimated total number of pay
10 periods in the one-year statute of limitations worked by all class members (approximately 15,800).

11 16. Using the base statistics set forth above, Class Counsel developed a damages model
12 for purposes of mediation that evaluated the maximum potential recovery for all claims alleged in
13 the Action.

14 17. Class Counsel calculated total potential Meal Break and Rest break claims of
15 **\$3,019,679.00** each based on an assumption of a 100% violation rate for all shifts worked by class
16 members and the average hourly rate for all employees.

17 18. In evaluating Plaintiff's Failure to Pay All Wages, Class Counsel calculated total
18 potential lost wages due to: (1) unpaid overtime due to working off the clock of \$471,824.84 based
19 on an assumption of 2.50 hours of unpaid "off the clock" work per week; and (2) unpaid minimum
20 wage for hours worked due to working off the clock of \$885,921.88 based on an assumption of
21 2.50 hours of unpaid "off the clock" work per week.

22 19. Class Counsel calculated total potential Waiting Time Penalties of **\$309,067.20**
23 based on the average hourly rate for all employees in the waiting time sub-class.

24 20. Class Counsel calculated total potential Wage Statement Penalties of **\$680,000.00**
25 based on an assumption of a \$4,000.00 penalty for every class member who worked during the one
26 year limitations period.

27 21. Class counsel calculated potential maximum recovery for unreimbursed business
28 expenses at **\$49,600.00** based on alleged failure to reimburse expenses based on an assumption of

\$200.00 in unreimbursed business expenses relating to tools and other equipment for all class members.

22. Class counsel calculated the maximum potential recordkeeping violations penalties in the amount of **\$85,000.00**.

23. Class counsel calculated the maximum potential PAGA penalties in the amount of **\$3,143,000.00** based on the “default” penalty of \$100 per aggrieved employee for each initial pay period in the PAGA limitations period and \$200 per PAGA sub-class member for each subsequent pay period in the PAGA limitations period.

24. The results of Class Counsel’s analysis of the claims asserted in this Action are summarized below:

Claim	Maximum Potential Recovery
Rest Break Penalties	\$3,019,679.00
Meal Break Penalties	\$3,019,679.00
Unpaid OT	\$471,824.84
Unpaid Min. Wage	\$885,921.88
Waiting Time Penalties	\$309,067.20
Wage Statement Penalties	\$680,000.00
Reimbursement (tools)	\$49,600.00
Record Keeping Penalty	\$85,000.00
PAGA	\$3,143,000.00
Total	\$11,663,771.92

25. In order to evaluate the range of potential outcomes and the fairness of a proposed settlement, Class Counsel also evaluated the “risk-adjusted” potential class recovery factoring in Defendants’ potential defenses.

26. In order to calculate the “risk-adjusted” rest break violation claim, Class Counsel evaluated Plaintiffs’ odds of prevailing on class certification with respect to this cause of action at 25% to 50%. Class Counsel also considered the rate of rest break violations which class members actually experienced and suffered from the alleged Labor Code violations at 25% to 50%. Based on these calculations, the “risk-adjusted” value of the wage statement claim was **\$188,729.94 to \$754,919.75**.

1 27. In order to calculate the “risk-adjusted” meal break violation claim, Class Counsel
2 evaluated Plaintiffs’ odds of prevailing on class certification with respect to this cause of action at
3 25% to 50%. Class Counsel also considered the rate of meal break violations which class members
4 actually experienced and suffered from the alleged Labor Code violations at 25% to 50%. Class
5 Counsel also accounted for a 25% to 75% discounted chance of Defendants successfully raising a
6 merits based defense to the meal break violation claim such as a legitimate waiver of the meal
7 break. Further, the extent the class members took a meal break and/or meal breaks were provided
8 was accounted for with a discount at 25% to 75%. Based on these calculations, the “risk-adjusted”
9 value of the wage statement claim was **\$11,795.62 to \$424,642.36**.

10 28. In order to calculate the “risk-adjusted” unpaid wages claim due to unpaid overtime,
11 Class Counsel evaluated Plaintiffs’ odds of prevailing on class certification with respect to this
12 cause of action at 20% to 50%. Class Counsel also accounted for the fact that not all shifts were
13 over eight (8) hours which entitled the employee to overtime premium pay at 10% to 25%. Based
14 on these calculations, the “risk-adjusted” value of the unpaid wages claim due to unpaid overtime
15 is **\$3,774.60 to \$70,773.73**.

16 29. In order to calculate the “risk-adjusted” unpaid minimum wages claim, Class
17 Counsel evaluated Plaintiffs’ odds of prevailing on class certification with respect to this cause of
18 action at 20% to 50%. Class Counsel also accounted for the fact that not all shifts included off the
19 clock work which entitled the employee to minimum wage pay at 10% to 25%. . Based on these
20 calculations, the “risk-adjusted” value of the unpaid minimum wages claim is **\$7,087.38 to**
21 **\$132,888.28**.

22 30. In order to calculate the “risk-adjusted” waiting time claim, Class Counsel
23 evaluated Plaintiffs’ odds of prevailing on class certification with respect to this cause of action at
24 25% to 50%. Class Counsel also accounted for a 25% to 75% chance of Defendants successfully
25 raising a merits based defense to the waiting time claim, such as failure to prove a willful violation
26 of the statute. Further, Class Counsel also considered that not all class members were entitled to
27 additional wages at a 75% to 90% discount. Based on these calculations, the “risk-adjusted” value
28 of the waiting time claim was **\$14,487.53 to \$104,310.18**

1 31. In order to calculate the “risk-adjusted” wage statement claim, Class Counsel
2 evaluated Plaintiffs’ odds of prevailing on class certification with respect to this cause of action at
3 25% to 50%. Class Counsel also accounted for a 25% to 75% chance of Defendants successfully
4 raising a merits based defense to the wage statement claim. Class Counsel also considered the rate
5 at which class members were actually affected by the alleged Labor Code violations at 25% to
6 75%. Based on these calculations, the “risk-adjusted” value of the wage statement claim was
7 **\$10,625.00 to \$191,250.00.**

8 32. In order to calculate the “risk-adjusted” reimbursement claim, Class Counsel
9 evaluated Plaintiffs’ odds of prevailing on class certification with respect to this cause of action at
10 20% to 50%. Class Counsel also considered that not all class members were required to use tools
11 requiring reimbursement at 10% to 25%. Based on these calculations, the “risk-adjusted” value of
12 the reimbursement claim was **\$248.00 to \$3,100.00.**

13 33. In order to calculate the “risk-adjusted” recordkeeping violations claim, Class
14 Counsel evaluated Plaintiffs’ odds of prevailing on class certification with respect to this cause of
15 action at 25% to 50%. Class Counsel also considered the rate at which class members were
16 actually affected by the alleged Labor Code violations at 10% to 25%. Based on these calculations,
17 the “risk-adjusted” value of the reimbursement claim was **\$2,125.00 to \$10,625.00.**

18 34. In order to calculate the “risk-adjusted” PAGA violations claim, Class Counsel
19 accounted for a 20% to 50% chance that a class member suffered from a Labor Code violation
20 during that pay period. Class Counsel also accounted for a 20% to 50% chance that not all class
21 members suffered from a Labor Code violation during that pay period. Finally, Class Counsel
22 considered a reduction of 10% to 25% that the Court would use its discretion to reduce the penalty
23 amount. Based on these calculations, the “risk-adjusted” value of the reimbursement claim was
24 **\$251,445.06 to \$1,888,945.80.**

25 35. The overall results of Class Counsel’s exposure and risk analysis for this matter are
26 summarized in the following table:
27
28

Claim	Max	High "Risk Adjusted" Recovery	Low "Risk Adjusted" Recovery
Rest Break Penalties	\$3,019,679.00	\$754,919.75	\$188,729.94
Meal Break Penalties	\$3,019,679.00	\$424,642.36	\$11,795.62
Unpaid OT	\$471,824.84	\$70,773.73	\$3,774.60
Unpaid Min. Wage	\$885,921.88	\$132,888.28	\$7,087.38
Waiting Time Penalties	\$309,067.20	\$104,310.18	\$14,487.53
Wage Statement Penalties	\$680,000.00	\$191,250.00	\$10,625.00
Reimbursement (tools)	\$49,600.00	\$3,100.00	\$248.00
Record Keeping Penalty	\$85,000.00	\$10,625.00	\$2,125.00
PAGA	\$3,143,000.00	\$196,437.50	\$12,572.00
Total	\$11,663,771.92	\$1,888,946.80	\$251,445.06

36. On August 11, 2023 I provided notice to the California Labor Workforce Development Agency through the website portal of this settlement agreement which includes a PAGA payment. Attached hereto is a true and correct copy of my submission as **Exhibit C**.

Class Counsel Qualifications

37. I received my law degree from The University of San Francisco and was admitted to the California bar in 2011. I have practiced labor and employment law almost exclusively throughout my career. Between 2012 and 2013, I worked at Initiative Legal Group and then Capstone Law Group as an associate and my job duties included obtaining class data and class member declarations to support motions for class certifications. Between 2014 and 2019, I was an associate with the labor and employment law firm Carlin and Buchsbaum, LLP and continued to work on class actions and expanded my practice to include individual labor and employment claims and representative actions, including the Private Attorney General Action matters.

38. While employed at Carlin and Buchsbaum, LLP I served as named co-counsel on approximately 15 class and/or representative actions in both state and federal court. I gained substantial experience in various phases of litigating wage and hour class action matters. This includes developing case strategy, participating in and overseeing discovery, and participating in mediations.

1 39. I joined the Barkhordarian Law Firm in April 2020. My practice has continued to
2 focus on the representation of workers in employment law matters. The representative matters for
3 which I have been approved as class counsel for settlement and/or class certification purposes
4 include but are not limited to: *Hatfield v. Hota Productions LLC*, LASC Case No. 19STCV30328
5 and *Romero v. Rocker Bros. Meat & Provisions Inc.*, LASC Case No. 20TRCV00802 (PAGA
6 only).

7 40. I am informed and believe and based thereon allege that Gregory Wong received
8 his law degree from The University of California – Berkeley Law (Boalt Hall) and was admitted
9 to the California bar in 1999. He has practiced labor and employment law exclusively throughout
10 my career. Between 1999 and 2004 he was an associate with the international labor and
11 employment law specialty firm Littler Mendelson, PC. In 2004 he joined the labor and
12 employment group of Greenberg Traurig, LLP, where he was elevated to shareholder in 2009.
13 Mr. Wong rejoined Littler Mendelson in 2010 as a shareholder and worked there until founding
14 Adept Employment Law, APC in June of 2014.

15 41. Mr. Wong’s professional accolades include being named a Super Lawyers
16 Magazine Rising Star (2008, 2009, 2012) and a Southern California Super Lawyer (2022, 2023).
17 In 2015, Mr. Wong was one of only 29 labor and employment attorneys in the industry named as
18 a BTI Client Service All-Stars based on BTI Consulting Group's annual survey of General Counsel
19 and Legal Decision Makers at large and Fortune 1000 companies.

20 42. As a management-side attorney with Littler Mendelson and Greenberg Traurig, Mr.
21 Wong gained substantial experience in all phases of litigating wage and hour class action matters.
22 This includes developing case strategy, participating in and overseeing discovery, drafting and
23 arguing motions for class certification, and participating in class action trial teams. Between 2010
24 and 2014, his litigation practice consisted almost entirely of class action litigation. Specifically,
25 Mr. Wong specialized in class action exposure evaluation and data-related case strategy.

26 43. Mr. Wong founded Adept Employment Law, APC in 2014 to expand his practice
27 to include advocacy for workers’ rights on an individual and class or representative basis. Through
28

1 Adept Employment Law, APC, Mr. Wong served as lead counsel or co-lead counsel on twenty-
2 three (23) class and/or representative actions in both state and federal court.

3 44. Mr. Wong joined the Barkhordarian Law Firm in January of 2019. His practice has
4 continued to focus on the representation of workers in employment law matters. Since joining the
5 Barkhordarian Law Firm, Mr. Wong has filed more than seventy (70) class and/or representative
6 actions in both state and federal court

7 45. The representative matters for which Mr. Wong has been approved as class counsel
8 for settlement and/or class certification purposes include but are not limited to:

- 9 a. *Bernal v. Serco, Inc.*, Case No. 30-2020-01150203-CU-OE-CXC, Orange
10 County Superior Court;
- 11 b. *Pagh v. Wyndham*, Case No.: 89:19-cv-00812, United States Federal District
12 Court for the Central District of California;
- 13 c. *Hatfield v. Hota Productions*, Case No. 19STCV30328, Los Angeles County
14 Superior Court;
- 15 d. *O'Braza v. Dignity Health* Case No.: 34-2018-00240446, Sacramento County
16 Superior Court;
- 17 e. *Rodriguez v. Golden Leaf* , Case No. 20STCV05547, Los Angeles County
18 Superior Court;
- 19 f. *Balajadia v. ECOLA*, Case No. 20CHCV00657, Los Angeles County Superior
20 Court;
- 21 g. *Valle v. Earthbar, LLC* Case No. BC575277, Los Angeles Superior Court;
- 22 h. *Rodriguez v. National Retail Transportation* Case No. BC594139, Los Angeles
23 County Superior Court;
- 24 i. *Nunes v. California Dinner Entertainment, LLC*, Case No. 30-2014-00741912-
25 CU-OE-CXC. Orange County Superior Court;
- 26 j. *McGuire, et al. v. GRID Alternatives*, 19STCV28671, Los Angeles County
27 Superior Court;
- 28

1 k. *Colvin v. Graphics Packaging International, Inc.*, Case No. 2015-00781730-
2 CU-OE-CXC, Orange County Superior Court ; and

3 l. *Williams v. Western Express*, Case No. 5:15-CV-00402-JBG-SPx, United States
4 Federal District Court for the Central District of California.

5
6 I declare under penalty of perjury under the laws of the State of California that all the
7 foregoing is true and correct. Executed on August 11, 2023 in Culver City, California.

8 /s/ Heather K. Cox
9 By: _____
10 HEATHER K. COX
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EXHIBIT A

GREGORY P. WONG (SBN: 204502)
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Attorneys for Plaintiffs
Joel Zelaya and Demetrio Montes

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – POMONA COURTHOUSE

JOEL ZELAYA, an Individual; DEMETRIO
MONTES, an Individual;

Plaintiffs,

vs.

COMMERCIAL LUMBER & PALLET CO.,
INC., a California Corporation; RAYMOND
GUTIERREZ, an Individual; and DOES 1
through 100, inclusive,

Defendants.

CASE NO.: 21STCV30941

SECOND AMENDED COMPLAINT FOR:

- 1. Failure to Provide Required Rest Periods;**
- 2. Failure to Provide Required Meal Periods;**
- 3. Failure to Pay Overtime Wages;**
- 4. Failure to Pay Minimum Wages;**
- 5. Failure to Pay Timely Wages;**
- 6. Failure to Pay All Wages Due to Discharged and Quitting Employees;**
- 7. Failure to Maintain Required Records;**
- 8. Failure to Furnish Accurate Itemized Wage Statements;**
- 9. Unlawful Discount and Deduction of Entitled Wages;**
- 10. Unlawful Assignment of Wages;**
- 11. Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties;**
- 12. Unfair and Unlawful Business Practices; and**
- 13. Civil Penalties Pursuant to California Private Attorneys General Act (Labor Code §2698, et seq.)**

**UNLIMITED CIVIL
DEMAND FOR JURY TRIAL**

1 Plaintiffs JOEL ZELAYA and DEMETRIO MONTES (hereinafter collectively referred as
2 “PLAINTIFFS”) on behalf of themselves and other persons similarly situated, allege and state as
3 follows:

4 **PARTIES**

5 1. Plaintiff JOEL ZELAYA, at all times relevant herein, was, and is, an individual
6 residing in the City of La Puente, County of Los Angeles, State of California.

7 2. Plaintiff DEMETRIO MONTES, at all times relevant herein, was, and is, an
8 individual residing in the City of Monrovia, County of Los Angeles, State of California.

9 3. Defendant COMMERCIAL LUMBER & PALLET CO., INC. (“CLPC”) a
10 California Corporation doing business in City of Industry, California and across the state of
11 California. PLAINTIFFS are informed and believe, and thereon allege, that Defendant regularly
12 employed five or more persons at all relevant times to this action.

13 4. Defendant, RAYMOND GUTIERREZ (“GUTIERREZ”), is an individual doing
14 business in City of Industry, California. PLAINTIFFS are informed and believe, and thereon allege,
15 that RODRIGUEZ is an owner and manager of COMMERCIAL LUMBER & PALLET CO., INC.,
16 who is also liable under Labor Code Section 558.1. Defendant COMMERCIAL LUMBER &
17 PALLET CO., INC., and RAYMOND GUTIERREZ are collectively referred as
18 “DEFENDANTS.”

19 5. PLAINTIFFS, on behalf of themselves and other similarly situated current and
20 former non-exempt employees of DEFENDANTS in the State of California at any time during the
21 four years preceding the filing of this action, and continuing while this action is pending, brings
22 this class action to recover, among other things, wages and penalties from unpaid wages earned and
23 due, including but not limited to unpaid minimum wages, unpaid and illegally calculated overtime
24 compensation, illegal meal and rest period policies, failure to pay all wages due to discharged and
25 quitting employees, failure to indemnify employees for necessary expenditures and/or losses
26 incurred in discharging their duties, failure to provide accurate itemized wage statements, unlawful
27 discount and deduction of wages. failure to maintain required records, and interest, attorneys’ fees,
28 costs, and expenses.

6. PLAINTIFFS bring this action on behalf of themselves, and the following similarly situated class of individuals (“CLASS MEMBERS”): all current and former non-exempt employees of DEFENDANTS in the State of California at any time within the period beginning four (4) years prior to the filing of this action and ending at the time this action settles or proceeds to final judgment (the “CLASS PERIOD”). PLAINTIFFS reserve the right to name additional class representatives.

7. PLAINTIFFS also bring this action on behalf of all other AGGRIEVED EMPLOYEES (“AGGRIEVED EMPLOYEES”): all nonexempt employees who have suffered a Labor Code violation within the PAGA PERIOD. On January 17, 2022, PLAINTIFFS submitted a letter to the California Labor and Workforce Development Agency (“LWDA”) alleging certain violations against DEFENDANTS. On February 8, 2023, PLAINTIFFS submitted an amended letter to the LWDA. The PAGA PERIOD is understood to mean January 17, 2021, through the date this action settles or proceeds to final judgment (“PAGA PERIOD”).

8. PLAINTIFFS are ignorant of the true names and capacities, whether individual, corporate, associate or otherwise, of the Defendants sued herein under fictitious names Does 1 through 100, inclusive, and for that reason sues said Defendants, and each of them, by such fictitious names. PLAINTIFFS are informed, believe, and thereupon allege that each of the Defendants Does 1 through 100, inclusive, is and was in some manner responsible for, participated in, or contributed to the matters and things of which PLAINTIFFS complain herein, and in some fashion, has legal responsibility, therefore. When PLAINTIFFS ascertain the names and capacities of the fictitiously named Defendants Does 1 through 100, inclusive, PLAINTIFFS will seek leave to amend this Complaint to set forth such facts.

9. PLAINTIFFS are informed, believe, and there upon allege that each Defendants is, and at all times relevant herein was, the agent of his, her, or its co-Defendants, and in committing the acts alleged herein, was acting within the scope of his, her, or its authority as such agent, and with the knowledge, permission, and consent of his, her, or its co-Defendants.

JURISDICTION AND VENUE

10. This class action is brought pursuant to California Code of Civil Procedure section

1 382. The monetary damages and restitution sought by PLAINTIFFS exceed the minimal
2 jurisdiction limits of the Superior Court and will be established according to proof at trial. The
3 amount in controversy for each class representative, including claims for compensatory damages
4 and pro rata share of attorneys' fees is less than \$75,000.00. It is believed that the total sum owed
5 to the Class alleged herein is less than \$5,000,000.00, based upon the anticipated size of the Class
6 and the amount in controversy for each member of the Class.

7 11. This Court has jurisdiction over this action and the matters alleged herein pursuant
8 to the grant of original jurisdiction set forth in Article VI, Section 10 of the California Constitution.
9 The statutes under which this action is brought do not specify any other basis for jurisdiction.

10 12. This Court has jurisdiction over Defendant because, upon information and belief,
11 each Defendant is either a citizen of California, has sufficient minimum contracts in California, or
12 otherwise intentionally avails itself of the California market so as to render the exercise of
13 jurisdiction over it by this Court consistent with traditional notions of fair play and substantial
14 justice.

15 13. Venue is proper in this Court, because, upon information and belief, one or more of
16 the named Defendants resides, transacts business, or has offices in this county and the acts or
17 omissions alleged herein took place in this county.

18 14. On January 17, 2022, and on February 8, 2023, PLAINTIFFS provided notice to
19 the LWDA of their intent to file a lawsuit against Defendant pursuant to the Private Attorneys
20 General Act for violations of Labor Code section 226.7 and the relevant industrial wage orders.
21 This matter has been assigned case number LWDA-CM-863103-22 by the LWDA. As of the
22 date of filing of this Complaint, the LWDA has not provided any notice that it intends to
23 investigate the alleged violations. Accordingly, upon stipulation of the parties and with leave
24 from the Court, PLAINTIFFS now file this Complaint pursuant to California Labor Code section
25 2699.3(c), which authorizes a plaintiff to amend an existing civil complaint within 60 days of the
26 relevant event giving rise to a complaining employee's right to proceed in a civil action brought
27 under the California Private Attorneys General Act (California Labor Code section 2698, et seq.)

28 15. PLAINTIFFS hereby demand a trial by jury on their claims, excluding the Private

1 Attorneys General Act claims in alignment with the recent decision in *LaFace v. Ralphs Grocery*
2 *Co.*, 75 Cal.App.5th 388 (2022). Should that decision be overruled and/or legislature further amend
3 PAGA to allow for a jury trial, PLAINTIFFS reserve the right to demand trial by jury for their
4 PAGA claims.

5 **FACTS COMMON TO ALL CAUSES OF ACTION**

6 16. Defendant COMMERCIAL LUMBER & PALLET CO., INC. is a California based
7 pallet manufacturer that offers pallets, recycled pallets, crates, industrial lumber, and pallet
8 recycling. Its primary place of business is located in the City of Industry, California. Throughout
9 the relevant time-period, DEFENDANTS employed PLAINTIFFS and other CLASS MEMBERS
10 and other aggrieved workers in the State of California.

11 17. Plaintiff, JOEL ZELAYA was hired by DEFENDANTS on or about May 16, 2012,
12 as a warehouse worker, a non-exempt hourly position. Plaintiff DEMETRIO MONTES was hired
13 in or about March 1990 and his currently position is an operator, a non-exempt hourly position.

14 18. PLAINTIFFS allege that DEFENDANTS did not allow PLAINTIFFS, CLASS
15 MEMBERS and AGGRIEVED EMPLOYEES to take their mandated rest breaks as required by
16 the California Labor Code by requiring PLAINTIFFS, CLASS MEMBERS and AGGRIEVED
17 EMPLOYEES to take one twenty-minute break.

18 19. During all times relevant to this action, DEFENDANTS maintained uniform
19 timekeeping and payroll processes and procedures for all non-exempt employees. PLAINTIFFS are
20 informed and believe and thereon allege that DEFENDANTS also maintained uniform work rules
21 and procedures for all of its non-exempt employees.

22 20. At all times relevant to this action, DEFENDANTS failed to properly compile,
23 account for, and pay PLAINTIFFS and other non-exempt employees for the hours they worked due
24 to the following uniform practices: PLAINTIFFS allege that these uniform and consistent policies
25 and practices have resulted in the systematic violation of the labor code sections alleged below.

26 21. At all times relevant to this action, PLAINTIFFS, CLASS MEMBERS and
27 AGGRIEVED EMPLOYEES were not provided with mandatory meal periods and rest breaks.
28 Furthermore, DEFENDANTS did not pay meal or rest break premiums when these breaks were not

1 provided.

2 22. At all times relevant to this action, DEFENDANTS did not record or maintain
3 records of meal periods taken by PLAINTIFFS, CLASS MEMBERS and AGGRIEVED
4 EMPLOYEES.

5 23. At all times relevant to this action, PLAINTIFFS, CLASS MEMBERS and
6 AGGRIEVED EMPLOYEES received an earnings statement with each pay check. These earning
7 statements, however, did not accurately reflect the hours actually worked during the pay period or
8 the wages earned. PLAINTIFFS are informed and believe that all non-exempt hourly employees
9 in California received wage statements that lacked these accurate mandatory categories of
10 information.

11 24. PLAINTIFFS are informed and believe, and based thereon alleges, that at all times
12 relevant to this action, DEFENDANTS implemented a series of willful, systematic, and deliberate
13 policies and practices that suppressed operating costs at the expense of employee rights set forth
14 under the California Labor Code and the Industrial Welfare Commission (hereinafter "IWC") Wage
15 Orders.

16 25. Throughout the PLAINTIFFS, CLASS MEMBERS, and the AGGRIEVED
17 EMPLOYEES' employment, DEFENDANTS failed to pay for all hours worked (including
18 minimum, straight time, and overtime wages), failed to provide PLAINTIFFS, CLASS
19 MEMBERS, and the AGGRIEVED EMPLOYEES with legally compliant meal periods, failed to
20 authorize and permit PLAINTIFFS, CLASS MEMBERS, and the AGGRIEVED EMPLOYEES to
21 take rest periods, failed to timely pay all final wages to PLAINTIFFS, CLASS MEMBERS, and
22 the AGGRIEVED EMPLOYEES when DEFENDANTS terminated their employment, failed to
23 furnish accurate wage statements to PLAINTIFFS, CLASS MEMBERS, and the AGGRIEVED
24 EMPLOYEES, and failed to reimburse PLAINTIFFS, CLASS MEMBERS, and the AGGRIEVED
25 EMPLOYEES for all business related expenses or losses incurred during their employment.

26 26. DEFENDANTS unlawful conduct includes, but is not limited to:

27 (a) Failing to pay employees for all hours worked at either their regular rate of
28 pay or the applicable minimum wage;

- (b) Failing to pay mandatory overtime and/or double time wages;
- (c) Failing to provide employees with mandatory meal periods;
- (d) Failing to provide employees with mandatory rest breaks;
- (e) Failing to pay one (1) hour of wages to employees who are not provided with legally compliant meal periods and rest breaks;
- (f) Failing to provide employees with accurate and complete wage statements;
- (g) Failing to reimburse employees for their reasonable business expenses;
- (h) Failing to maintain full, complete, and accurate payroll records, including an accurate accounting of meal periods and/or all hours worked.

27. PLAINTIFFS are informed and believe, and based thereon allege that, during the relevant period, DEFENDANTS conduct resulted in systematic and class-wide violations of California Labor Code sections 201-203, 204, 210, 221, 223, 224, 226, 226.3, 226.7, 300, 510, 512, 558, 558.1, 1174, 1174.5 1194, 1194.2 1197, 1197.1, 1198, 2802, and the respective provisions of the applicable Wage Order.

CLASS ALLEGATIONS

28. PLAINTIFFS bring this action individually, as well as on behalf of each and all persons similarly situated, and thus, seek class certification under California Code of Civil Procedure Section 382.

29. All claims alleged herein arise under California law for which PLAINTIFFS seek relief authorized under California law.

30. PLAINTIFFS seek to represent a class of all of DEFENDANTS current and former non-exempt employees, who fall into any of the following sub-classes composed of and defined as follows:

(a) **Failure To Pay All Wages Earned Sub-class:** All current and former non-exempt employees, who worked for DEFENDANTS in the State of California at any time during the period commencing four (4) years prior to the filing of this Complaint and ending at the time this action settles or proceeds to final judgment and were not compensated for all hours worked due to DEFENDANTS policy and practices;

1 (b) **Unpaid Wages (Minimum Wage) Sub-Class:** All current and former non-
2 exempt employees who worked for DEFENDANTS in the State of California at any time during
3 the period commencing four (4) years prior to the filing of this Complaint and ending at the time
4 this action settles or proceeds to final judgment and were not paid at least the applicable minimum
5 wage for all hours worked;

6 (c) **Unpaid Wages (Overtime/Double Time) Sub-class:** All current and
7 former non-exempt employees who worked for DEFENDANTS in the State of California at any
8 time during the period commencing four (4) years prior to the filing of this Complaint and ending
9 at the time this action settles or proceeds to final judgment and were not paid all overtime and/or
10 double time wages earned;

11 (d) **Meal Period Sub-class:** All current and former non-exempt employees who
12 worked for DEFENDANTS in the State of California at any time during the period commencing
13 four (4) years prior to the filing of this Complaint and ending at the time this action settles or
14 proceeds to final judgment and were not provided legally compliant initial meal periods for a work
15 period of five (5) or more hours and/or subsequent meal periods for a work period of ten (10) or
16 more hours;

17 (e) **Rest Break Sub-class:** All current and former non-exempt employees who
18 worked for DEFENDANTS in the State of California at any time during the period commencing
19 four (4) years prior to the filing of this Complaint and ending at the time this action settles or
20 proceeds to final judgment and were not authorized and permitted to take all legally required rest
21 breaks;

22 (f) **Wage Statement Sub-class:** All current and former non-exempt employees
23 who worked for DEFENDANTS in the State of California during the period commencing one (1)
24 year prior to the filing of this Complaint and ending at the time this action settles or proceeds to
25 final judgment and were not furnished accurate, itemized wage statements as required by California
26 Labor Code section 226(a);

27 (g) **Waiting Time Sub-class:** all former non-exempt employees who worked
28 for DEFENDANTS in the State of California during the period commencing three (3) years prior

1 to the filing of this Complaint and ending at the time this action settles or proceeds to final judgment
2 and were not paid all wages owed at the time of voluntary or involuntary separation from
3 employment.

4 (h) **UCL Sub-class:** All current and former non-exempt employees who worked
5 for DEFENDANTS in the State of California at any time during the period commencing four (4)
6 years prior to the filing of this Complaint and ending at the time this action settles or proceeds to
7 final judgment and are entitled to restitution for DEFENDANTS unlawful business practices,
8 including, but not limited to, failure to pay all wages earned, failure to pay minimum wages, failure
9 to pay overtime and/or double time wages, improper deductions from wages, failure to provide
10 lawful meal periods, failure to authorize and permit lawful rest breaks.

11 31. The members of the proposed Class and Sub-classes, and each of them, are so
12 numerous that joinder of all members would be unfeasible and not practicable. The membership
13 of the entire Class is unknown to PLAINTIFFS at this time; however, the class is estimated to be
14 greater than one hundred (100) individuals and the identity of the class membership is readily
15 ascertainable by inspection of DEFENDANTS payroll and personnel records.

16 32. PLAINTIFFS have been, at all material times, a member of the Class and each Sub-
17 Class. PLAINTIFFS are qualified to, and will, fairly and adequately represent the interests of each
18 Class Member with whom there is a shared, well-defined, community of interests. PLAINTIFFS
19 claims are typical of all CLASS MEMBERS claims as they arise out of the same course of conduct
20 and are predicated on the same violations of law.

21 33. There are questions of law and fact as to the class and sub-classes which
22 predominate over questions affecting only individual members including, without limitation:

23 (a) Whether DEFENDANTS failed to pay CLASS MEMBERS for all hours
24 worked at either their regular rate of pay or the applicable minimum wage;

25 (b) Whether DEFENDANTS failed to pay CLASS MEMBERS all overtime
26 and/or double time wages owed under the California Labor Code and the California Industrial
27 Welfare Commission's Wage Orders, and all other applicable employment laws and regulations;

28 (c) Whether DEFENDANTS complied with wage reporting as required by the

1 California Labor Code, including, but not limited to, California Labor Code section 226(a);

2 (d) Whether DEFENDANTS conduct was willful or reckless;

3 (e) Whether DEFENDANTS engaged in unfair business practices in violation
4 of California Business and Professions Code section 17200, et seq.; and

5 (f) The appropriate amount of damages, restitution, and/or monetary penalties
6 resulting from DEFENDANTS violations of California law.

7 34. The Court should permit this action to be maintained as a class action pursuant to
8 California Code of Civil Procedure section 382, because:

9 (a) Questions of law and fact common to the Class predominate over any
10 questions affecting individual members;

11 (b) The Class Action mechanism is superior to any other available method for
12 the fair and efficient adjudication of the claims of the members of the Class;

13 (c) The members of the Class are so numerous that it is impractical to bring all
14 members of the Class before the Court;

15 (d) PLAINTIFFS, and the other members of the Class, will not be able to obtain
16 effective and economic legal redress unless the action is maintained as a class action;

17 (e) There is a community of interest in obtaining appropriate legal and equitable
18 relief for the statutory violations, and in obtaining adequate compensation for the damages and
19 injuries for which DEFENDANTS is responsible in an amount sufficient to adequately compensate
20 the members of the Class for the injuries sustained;

21 (f) Without Class Certification, the prosecution of separate actions by
22 individual members of the Class would create a risk of:

23 (i) Inconsistent or varying adjudications with respect to individual
24 members of the Class which would establish incompatible standards of conduct for
25 DEFENDANTS; and/or

26 (ii) Adjudications with respect to the individual members which would,
27 as a practical matter, be dispositive of the interests of other members not parties to the adjudications,
28 or would substantially impair or impede their ability to protect their interests, including, but not

1 limited to, the potential for exhausting the funds available from those parties who are, or may be,
2 responsible for DEFENDANTS; and

3 (g) DEFENDANTS has acted or refused to act on grounds generally applicable
4 to the Class, thereby making final injunctive relief appropriate with respect to the Class and each
5 Sub-class as a whole.

6 **FIRST CAUSE OF ACTION**

7 **(Failure to Provide Required Rest Periods – Against all Defendants)**

8 35. PLAINTIFFS refer to and incorporates herein by reference the above paragraphs as
9 though fully set forth herein.

10 36. At all times relevant herein, the applicable IWC Wage Order and California Labor
11 Code section 226.7 was applicable to PLAINTIFFS and CLASS MEMBERS.

12 37. At all times set forth herein, California Labor Code section 226.7 provided and
13 provides that employers may not require their employees to work during a legally mandated rest
14 period.

15 38. At all times set forth herein, the applicable IWC Wage Order required and requires
16 every employer subject to the Wage Orders to authorize and permit rest periods at the rate of ten
17 (10) minutes net rest time per four (4) hours or major fraction thereof.

18 39. California Labor Code section 226.7 further provides that if an employer fails to
19 provide an employee with a legally mandated rest period, the employer shall pay the employee one
20 (1) additional hour of pay at the employee's regular rate of compensation for each workday that the
21 rest period is not provided.

22 40. At all times relevant herein, PLAINTIFFS and CLASS MEMBERS have regularly
23 worked shifts of a length of four (4) hours or a major fraction thereof or longer.

24 41. DEFENDANTS failed to authorize and permit PLAINTIFFS and CLASS
25 MEMBERS to take rest periods as required by law and failed to compensate employees for paid
26 rest breaks.

27 42. During the relevant time period, DEFENDANTS failed to pay PLAINTIFFS and
28 CLASS MEMBERS the full rest period premium due pursuant to California Labor Code section

1 226.7.

2 43. DEFENDANTS conduct violates California Labor Code section 226.7 and IWC
3 Wage Order No. 1-2001, § 12.

4 44. Pursuant to California Labor Code section 226.7, PLAINTIFFS and CLASS
5 MEMBERS are entitled to recover from DEFENDANTS one (1) additional hour of pay at the
6 employees' regular hourly rate of compensation for each workday that a rest period was not
7 provided.

8 45. As a proximate cause of the aforementioned violations, PLAINTIFFS and CLASS
9 MEMBERS have been damaged in an amount to be determined at trial, but in an amount in excess
10 of the jurisdiction of this Court. PLAINTIFFS are entitled to recover the unpaid balance of wages
11 owed, penalties, including penalties available pursuant to California Labor Code sections 226.7 and
12 558, plus interest and costs of suit.

13 **SECOND CAUSE OF ACTION**

14 **(Failure to Provide Meal Periods – Against all Defendants)**

15 46. PLAINTIFFS refer to and incorporates herein by reference the above paragraphs as
16 though fully set forth herein.

17 47. At all times relevant herein, the applicable IWC Wage Order and California Labor
18 Code sections 226.7 and 512(a) were applicable to PLAINTIFFS and CLASS MEMBERS.

19 48. At all times set forth herein, California Labor Code section 226.7 provided and
20 provides that no employer shall require an employee to work during any lawfully mandated meal
21 period.

22 49. At all times set forth herein, California Labor Code section 512(a) provided and
23 provides that an employer may not require, cause, or permit an employee to work for a period of
24 more than five (5) hours per day without providing the employee with an uninterrupted meal period
25 of not less than thirty (30) minutes, except that if the total work period per day is not more than six
26 (6) hours, the meal period may be waived by mutual consent of both the employer and the
27 employee.

28 50. At all times set forth herein, California Labor Code section 512(a) further provided

1 and provides that an employer may not employ an employee for a work period of more than ten
2 (10) hours per day without providing the employee with a second meal period of not less than thirty
3 (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second
4 meal period may be waived by mutual consent of the employer and the employee, only if the first
5 meal period was not waived.

6 51. At all times relevant herein, PLAINTIFFS and CLASS MEMBERS have worked
7 more than five (5) hours in a workday.

8 52. At all times relevant herein, PLAINTIFFS and CLASS MEMBERS have worked
9 more than ten (10) hours in a workday.

10 53. DEFENDANTS failed to provide PLAINTIFFS and CLASS MEMBERS with
11 uninterrupted, work-free, thirty (30) minute meal periods for shifts in excess of five (5) hours
12 worked per day and failed to compensate employees for missed initial meal periods as required by
13 law.

14 54. DEFENDANTS failed to provide PLAINTIFFS and CLASS MEMBERS with a
15 second uninterrupted, work-free, thirty (30) minute meal period for shifts in excess of ten (10) hours
16 worked per day and failed to compensate them for missed subsequent meal periods as required by
17 law.

18 55. DEFENDANTS further violated California Labor Code §§ 226.7, 510, 1194, 1197,
19 and IWC Wage Order No. 1-2001 by failing to compensate PLAINTIFFS and CLASS MEMBERS
20 for all hours worked during their meal periods.

21 56. During the relevant time period, Defendant willfully required PLAINTIFFS and
22 CLASS MEMBERS to work during meal periods and failed to compensate Plaintiff and the Class
23 for work performed during meal periods.

24 57. During the relevant time period, DEFENDANTS failed to pay PLAINTIFFS and
25 CLASS MEMBERS the full meal period premium due pursuant to California Labor Code Section
26 226.7.

27 58. DEFENDANTS conduct violates California Labor Code sections 226.7 and 512(a).

28 59. Pursuant to California Labor Code Section 226.7, PLAINTIFFS and CLASS

1 MEMBERS are entitled to recover from DEFENDANTS one (1) additional hour of pay at the
2 employees' regular hourly rate of compensation for each work day that the meal period was not
3 provided.

4 60. As a proximate cause of the aforementioned violations, PLAINTIFFS and CLASS
5 MEMBERS have been damaged in an amount to be determined at trial, but in an amount in excess
6 of the jurisdiction of this Court.

7 61. As a proximate cause of the aforementioned violations, PLAINTIFFS and CLASS
8 MEMBERS have been damaged in an amount to be determined at trial, but in an amount in excess
9 of the jurisdiction of this Court. PLAINTIFFS and CLASS MEMBERS are entitled to recover the
10 unpaid balance of wages owed, penalties, including penalties available pursuant to California Labor
11 Code sections 226.7 and 558, plus interest and cost of suit.

12 **THIRD CAUSE OF ACTION**

13 **(Failure to Pay Overtime Wages – Against all Defendants)**

14 62. PLAINTIFFS refer to and incorporates herein by reference the above paragraphs as
15 though fully set forth herein.

16 63. California Labor Code section 510 requires an employer to compensate its
17 employees at a rate of no less than one and one-half (1.5) times their regular rate of pay for any
18 work: in excess of eight (8) hours in one (1) workday, in excess of forty (40) hours in any one (1)
19 workweek, and during the first eight (8) hours worked on the seventh (7th) day of work in any one
20 (1) workweek.

21 64. California Labor Code section 510 requires an employer to compensate its
22 employees at a rate of no less than two (2) times their regular rate of pay for any work: in excess of
23 twelve (12) hours in one (1) workday, and in excess of eight (8) hours on the seventh (7th) day of
24 work in any one (1) workweek.

25 65. At all times relevant herein, PLAINTIFFS and CLASS MEMBERS worked hours
26 in excess of eight (8) hours in one (1) workday, in excess of forty (40) hours in any one (1)
27 workweek, and/or during the first eight (8) hours worked on the seventh (7th) day of work in any
28 one (1) workweek, without receiving compensation at a rate of no less than one and one-half (1.5)

1 times their regular rate of pay.

2 66. At all times relevant herein, PLAINTIFFS and CLASS MEMBERS worked hours
3 in excess of twelve (12) hours in one (1) workday and in excess of eight (8) hours on the seventh
4 (7th) day of work in any one (1) workweek, without receiving compensation at a rate of no less than
5 two (2) times their regular rate of pay.

6 67. In violation of California law, DEFENDANTS have knowingly and willfully
7 refused to perform their obligations to compensate PLAINTIFFS and CLASS MEMBERS for all
8 wages earned and all hours worked. As a proximate result, PLAINTIFFS and CLASS MEMBERS
9 have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such
10 wages, lost interest on such wages, and expenses and attorneys' fees in seeking to compel
11 DEFENDANTS to fully perform their obligations under state law, all to their respective damages
12 in amounts according to proof at time of trial, and within the jurisdiction of this Court.

13 68. DEFENDANTS' conduct described herein violates California Labor Code §§ 510,
14 1194, 1198 and IWC Wage Order No. 1-2001, § 3. Therefore, pursuant to California Labor Code
15 §§ 200, 203, 226, 558, 1194, 1197.1, and other applicable provisions under the California Labor
16 Code and IWC Wage Orders, and as a proximate cause of the aforementioned violations,
17 PLAINTIFFS and CLASS MEMBERS have been damaged in an amount according to proof at time
18 of trial, but in an amount in excess of the jurisdiction of this Court. PLAINTIFFS and CLASS
19 MEMBERS are entitled to recover the unpaid balance of wages owed, penalties, including penalties
20 available pursuant to California Labor Code section 558, plus interest, and reasonable attorneys'
21 fees and costs of suit according to California Labor Code section 1194, et seq.

22 **FOURTH CAUSE OF ACTION**

23 **(Failure to Pay Minimum Wage – Against all Defendants)**

24 69. PLAINTIFFS refer to and incorporates herein by reference the above paragraphs as
25 though fully set forth herein.

26 70. California Labor Code section 1194 authorizes employees who received less than
27 the legal minimum wage to recover the unpaid balance of minimum wages owed, interest,
28 reasonable attorney's fees, and costs of suit.

71. At all times relevant to this action, DEFENDANTS failed to pay at least the applicable minimum wage for all hours worked as a result of requiring, permitting or suffering PLAINTIFFS and CLASS MEMBERS to work off the clock; requiring, permitting or suffering PLAINTIFFS and CLASS MEMBERS to work through meal and rest breaks; illegally and inaccurately recording time in which PLAINTIFFS and CLASS MEMBERS worked; failing to properly maintain PLAINTIFFS' and CLASS MEMBERS' records; failing to provide accurate itemized wage statements to PLAINTIFFS and CLASS MEMBERS for each pay period; and other methods to be discovered.

72. DEFENDANTS acted intentionally, oppressively, and maliciously toward PLAINTIFFS and CLASS MEMBERS, with a conscious disregard of their rights, or the consequences to them, with the intent of depriving them of property and legal rights and otherwise causing them injury.

73. DEFENDANTS' conduct described herein violates California Labor Code §§ 1194, 1197, and IWC Wage Order No. 1-2001, § 4. As a proximate cause of the aforementioned violations, PLAINTIFFS and CLASS MEMBERS have been damaged in an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this Court. Therefore, pursuant to California Labor Code §§ 200, 203, 226, 558, 1194, 1197.1, and other applicable provisions under the Labor Code and IWC Wage Orders, PLAINTIFFS and CLASS MEMBERS are entitled to recover the unpaid balance of wages owed, penalties, including penalties available pursuant to California Labor Code sections 558 and 1197.1(a)(1–2), liquidated damages pursuant to California Labor Code section 1194.2(a), plus interest, and reasonable attorneys' fees and costs of suit according to California Labor Code section 1194, et seq.

FIFTH CAUSE OF ACTION

(Failure to Timely Pay All Wages Earned for All Hours Worked – Against all Defendants)

74. PLAINTIFFS refer to and incorporates herein by reference the above paragraphs as though fully set forth herein.

75. California Labor Code section 204(a) provides that all wages earned by any person in any employment are due and payable twice during each calendar month, on days designated in

1 advance by the employer as the regular paydays.

2 76. Pursuant to Labor Code Section 201, an employer may not fail to pay the wages of
3 each employee.

4 77. At all times relevant to this action, DEFENDANTS violated California Labor Code
5 sections 201- 204 by failing to compensate PLAINTIFFS and CLASS MEMBERS for all hours
6 worked as a result of Defendant's practices and policies.

7 78. DEFENDANTS acted intentionally, oppressively, and maliciously toward P
8 PLAINTIFFS and CLASS MEMBERS, with a conscious disregard of their rights, or the
9 consequences to them, with the intent of depriving them of property and legal rights and otherwise
10 causing them injury.

11 79. As a proximate cause of the aforementioned violations, PLAINTIFFS and CLASS
12 MEMBERS have been damaged in an amount according to proof at time of trial, but in an amount
13 in excess of the jurisdiction of this Court. PLAINTIFFS and CLASS MEMBERS are entitled to
14 recover the unpaid balance of wages owed, penalties, including penalties available pursuant to
15 California Labor Code section 558, plus interest, and reasonable attorneys' fees and costs of suit
16 according to California Labor Code section 218.5.

17 **SIXTH CAUSE OF ACTION**

18 **(Failure to Pay All Wages Upon Termination – Against all Defendants)**

19 80. PLAINTIFFS refer to and incorporates herein by reference the above paragraphs as
20 though fully set forth herein.

21 81. Pursuant to California Labor Code sections 201 through 203, if an employer
22 discharges an employee, the wages earned and unpaid at the time of discharge are due and payable
23 immediately.

24 82. Pursuant to California Labor Code sections 201, 202, and 203, DEFENDANTS are
25 required to pay all earned and unpaid wages to an employee who is discharged. California Labor
26 Code section 201 mandates that if an employer discharges an employee, the employee's wages
27 accrued and unpaid at the time of discharge are due and payable immediately.

28 83. Furthermore, pursuant to California Labor Code section 202, DEFENDANTS are

1 required to pay all accrued wages due to an employee no later than 72 hours after the employee
2 quits his or her employment, unless the employee provided 72 hours previous notice of his or her
3 intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

4 84. California Labor Code section 203 provides that if an employer willfully fails to
5 pay, in accordance with California Labor Code sections 201 and 202, any wages of an employee
6 who is discharged or who quits, the employer is liable for waiting time penalties in the form of
7 continued compensation to the employee at the same rate for up to 30 workdays.

8 85. PLAINTIFFS and CLASS MEMBERS resigned or were terminated from their
9 employment with DEFENDANTS and have not received compensation for all wages owed at the
10 time of termination.

11 86. DEFENDANTS, however, willfully failed to pay PLAINTIFFS and CLASS
12 MEMBERS all wages that were due and owed within the time limits set forth in California Labor
13 Code sections 201 through 203.

14 87. Therefore, PLAINTIFFS and CLASS MEMBERS are entitled to restitution and
15 penalties as provided by California Labor Code section 203.

16 88. In addition, on the occasions that DEFENDANTS did pay waiting time penalties to
17 PLAINTIFFS and CLASS MEMBERS, Defendant failed to properly calculate waiting time
18 penalties using the employees' regular rate of compensation for the payment of the penalties. As
19 such, PLAINTIFFS and CLASS MEMBERS are entitled to receive the full amount of waiting time
20 penalties required by law.

21 89. As a proximate result of DEFENDANTS' unlawful actions and omissions,
22 PLAINTIFFS and CLASS MEMBERS have been deprived of compensation in an amount
23 according to proof at the time of trial, but in excess of the jurisdiction of this Court, and are entitled
24 to recovery of such amounts, plus interest thereon, and attorneys' fees and costs, pursuant to
25 California Labor Code §§ 1194 and 2699.

26 **SEVENTH CAUSE OF ACTION**

27 **(Failure to Maintain Records – Against All Defendants)**

28 90. PLAINTIFFS refer to and incorporates herein by reference the above paragraphs as

1 though fully set forth herein.

2 91. California Labor Code section 1174(d) provides that every employer shall keep,
3 for no less than three (3) years, payroll records showing meal periods, the accurate hours worked
4 daily by and the wages paid to employees.

5 92. PLAINTIFFS and CLASS MEMBERS was employed by DEFENDANTS as a
6 non-exempt employee.

7 93. However, throughout this time period, DEFENDANTS repeatedly failed, and
8 continues to fail, to maintain full, complete, and accurate payroll records showing the hours that
9 PLAINTIFFS and CLASS MEMBERS actually worked, meal periods, and the total wages that
10 they were paid.

11 94. During the CLASS PERIOD, as part of DEFENDANTS' illegal payroll policies
12 and practices to deprive PLAINTIFFS and CLASS MEMBERS of all wages earned and due,
13 DEFENDANTS knowingly and intentionally failed to maintain records as required under
14 California Labor Code sections 226, 1174, and IWC Wage Order No. 1-2001, § 7, including but
15 not limited to the following records: total daily hours worked by each employee; applicable rates
16 of pay; all deductions; meal periods; time records showing when each employee begins and ends
17 each work period; and accurate itemized statements.

18 95. As a proximate result of DEFENDANTS' unlawful actions and omissions,
19 PLAINTIFFS and CLASS MEMBERS have been damaged in an amount according to proof at
20 trial, and are entitled to all wages earned and due, plus interest thereon. Additionally,
21 PLAINTIFFS and CLASS MEMBERS are entitled to all available statutory penalties, including
22 but not limited to civil penalties pursuant to California Labor Code sections 226(e), 226.3, and
23 1174.5, and an award of costs, expenses, and reasonable attorneys' fees, including but not limited
24 to those provided in California Labor Code section 226(e), as well as other available remedies.

25 **EIGHTH CAUSE OF ACTION**

26 **(Failure to Provide Accurate, Itemized Wage Statements – Against all Defendants)**

27 96. PLAINTIFFS refer to and incorporates herein by reference the above paragraphs
28 as though fully set forth herein.

1 97. California Labor Code section 226(a) provides that every employer shall, semi-
2 monthly or at the time of each payment of wages, furnish each of his or her employees, either as a
3 detachable part of the check, draft, or voucher paying the employee's wages, or separately when
4 wages are paid by personal check or cash, an accurate itemized statement in writing showing gross
5 wages earned.

6 98. During the CLASS PERIOD, DEFENDANTS routinely failed to provide
7 PLAINTIFFS and CLASS MEMBERS with timely, accurate, and itemized wage statements in
8 writing showing each employee's gross wages earned, total hours worked, all deductions made, net
9 wages earned, the name and address of the legal entity or entities employing PLAINTIFFS and
10 CLASS MEMBERS, and all applicable hourly rates in effect during each pay period and the
11 corresponding number of hours worked at each hourly rate, in violation of California Labor Code
12 § 226 and IWC Wage Order No. 1-2001, § 7.

13 99. During the CLASS PERIOD, DEFENDANTS knowingly and intentionally failed to
14 provide PLAINTIFFS and CLASS MEMBERS with timely, accurate, and itemized wage
15 statements in accordance with California Labor Code § 226(a).

16 100. As a result of DEFENDANTS' conduct, PLAINTIFFS and CLASS MEMBERS
17 have been damaged and are entitled to recover, for each member of the Class, the greater of actual
18 damages or \$50.00 for the initial pay period in which a violation occurred and \$100.00 for each
19 violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000.00, in an amount
20 to be determined at trial.

21 101. In addition, as a direct result of the conduct of DEFENDANTS, and each of them,
22 as set forth above, PLAINTIFFS and CLASS MEMBERS were forced to incur substantial
23 attorney's fees and costs which are recoverable under California Labor Code section 226(e) in an
24 amount to be determined at trial plus interest thereon. Additionally, PLAINTIFFS and CLASS
25 MEMBERS are entitled to all available statutory penalties, including but not limited to civil
26 penalties pursuant to California Labor Code sections 226(e), 226.3, and 1174.5, and an award of
27 costs, expenses, and reasonable attorneys' fees, including but not limited to those provided in
28 California Labor Code section 226(e), as well as other available remedies.

1 **NINTH CAUSE OF ACTION**

2 **(Unlawful Discount and Deduction of Entitled Wages – Against All Defendants)**

3 102. PLAINTIFFS incorporate herein by specific reference, as though fully set forth,
4 the allegations in the foregoing paragraphs.

5 103. PLAINTIFFS and CLASS MEMBERS were non-exempt employees of
6 DEFENDANTS. In the course of their employment, PLAINTIFFS and CLASS MEMBERS were
7 subject to unlawful deductions of their entitled wages during the course of the CLASS PERIOD
8 and employment with DEFENDANTS.

9 104. At all times herein mentioned DEFENDANTS were subject to Labor Code
10 Sections 221 and 224 which makes deducting or discounting an employees' wages unlawful.

11 105. As a proximate result of DEFENDANTS' policies in violation of Labor Code
12 Sections 221 and 224, PLAINTIFFS and CLASS MEMBERS suffered damages in sums, which
13 will be shown to proof at the time of trial.

14 106. PLAINTIFFS are entitled to expenses, attorney's fees interest, and costs of suit.

15 **TENTH CAUSE OF ACTION**

16 **(Unlawful Assignment of Wages – Against All Defendants)**

17 107. PLAINTIFFS incorporate herein by specific reference, as though fully set forth,
18 the allegations in the foregoing paragraphs.

19 108. PLAINTIFFS and CLASS MEMBERS were non-exempt employees of
20 DEFENDANTS. In the course of their employment, PLAINTIFFS and CLASS MEMBERS were
21 subject to unlawful assignment of their wages during the course of the CLASS PERIOD and
22 employment with DEFENDANTS.

23 109. At all times herein mentioned DEFENDANTS were subject to Labor Code Section
24 300 which makes deducting or discounting an employees' wages unlawful.

25 110. As a proximate result of DEFENDANTS' policies in violation of Labor Code
26 Section 300, PLAINTIFFS and CLASS MEMBERS suffered damages in sums, which will be
27 shown to proof at the time of trial.

28 111. PLAINTIFFS are entitled to expenses, attorney's fees interest, and costs of suit.

1 **ELEVENTH CAUSE OF ACTION**

2 **(Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of**
3 **Duties - Against all Defendants)**

4 112. PLAINTIFFS incorporates herein by specific reference, as though fully set forth,
5 the allegations in the foregoing paragraphs.

6 113. California Labor Code section 2802(a) requires an employer to indemnify an
7 employee for all necessary expenditures or losses incurred by the employee in direct consequence
8 of the discharge of his or her duties, or of his or her obedience to the directions of the employer.

9 114. During the CLASS PERIOD, DEFENDANTS knowingly and willfully failed to
10 indemnify PLAINTIFFS and CLASS MEMBERS for all business expenses and/or losses
11 incurred direct consequence of the discharge of their duties while working under the direction of
12 DEFENDANTS, including but not limited to expenses for uniforms and specialized clothing,
13 gloves, shoes, cell phones, car insurance, mileage, and other employment-related expenses, in
14 violation of California Labor Code section 2802.

15 115. As a proximate result of DEFENDANTS' unlawful actions and omissions,
16 PLAINTIFFS and CLASS MEMBERS have been damaged in an amount according to proof at
17 trial, and seek reimbursement of all necessary expenditures, plus interest thereon pursuant to
18 California Labor Code section 2802(b). Additionally, PLAINTIFFS and CLASS MEMBERS are
19 entitled to all available statutory penalties and an award of costs, expenses, and reasonable
20 attorneys' fees, including those provided in California Labor Code section 2802(c), as well as
21 other available remedies.

22 **TWELFTH CAUSE OF ACTION**

23 **(Violation of California Business and Professions Code Section 17200**

24 **Unfair Business Practice – Against All Defendants)**

25 116. PLAINTIFFS refer to and incorporates herein by reference the above paragraphs as
26 though fully set forth herein.

27 117. California Business and Professions Code section 17200, et seq., prohibits acts of
28 unfair competition which means and includes "any unlawful, unfair, or fraudulent business act or

1 practice.”

2 118. Within the four (4) years preceding the filing of this action, DEFENDANTS have
3 engaged in unlawful, unfair, and/or fraudulent business acts and/or practices by engaging in the
4 conduct set forth above. These business acts and practices violated numerous provisions of the
5 law, including, but not limited to, the California Labor Code, California Wage Orders, and
6 California public policy. PLAINTIFFS reserves the right to identify additional violations of law
7 as further investigation warrants.

8 119. DEFENDANTS’ acts and practices, as detailed above, constitute acts of unfair
9 competition. DEFENDANTS has engaged in an unlawful, unfair, and/or fraudulent business act
10 and/or practices within the meaning of California Business and Professions Code section 17200, et
11 seq.

12 120. Each and every one of DEFENDANTS’ acts and omissions in violation of the
13 California Labor Code and/or the applicable IWC Wage Order as alleged herein, including but not
14 limited to DEFENDANTS’ failure and refusal to provide required meal periods, DEFENDANTS’
15 failure and refusal to provide required rest periods, DEFENDANTS’ failure and refusal to pay
16 overtime compensation, DEFENDANTS’ failure and refusal to pay minimum wages,
17 DEFENDANTS’ failure and refusal to pay all wages due to discharged or quitting employees,
18 DEFENDANTS’ failure and refusal to furnish accurate itemized wage statements;
19 DEFENDANTS’ unlawful assignment of wages; DEFENDANTS’ failure and refusal to maintain
20 required records, DEFENDANTS’ failure and refusal to indemnify PLAINTIFFS and CLASS
21 MEMBERS for necessary expenditures and/or losses incurring in discharging their duties,
22 constitutes an unfair and unlawful business practice under California Business and Professions
23 Code § 17200 et seq.

24 121. DEFENDANTS’ violations of California wage and hour laws constitute a business
25 practice because DEFENDANTS’ aforementioned acts and omissions were done repeatedly over a
26 significant period of time, and in a systematic manner, to the detriment of PLAINTIFFS and
27 CLASS MEMBERS.

28 122. DEFENDANTS have avoided payment of wages, overtime wages, meal periods,

1 rest periods, and other benefits as required by the California Labor Code, the California Code of
2 Regulations, and the applicable IWC Wage Order. Further, DEFENDANTS have failed to record,
3 report, and pay the correct sums of assessment to the state authorities under the California Labor
4 Code and other applicable regulations.

5 123. By reason of DEFENDANTS' fraudulent, deceptive, unfair, and other wrongful
6 conduct, as alleged herein, Defendant has violated California Business and Professions Code
7 section 17200, et seq., by consummating an unlawful, unfair, and fraudulent business practice
8 designed to deprive PLAINTIFFS and CLASS MEMBERS, and members of the general public of
9 their legal rights.

10 124. Such conduct is ongoing and continues to this date.

11 125. By reason of the foregoing, PLAINTIFFS and CLASS MEMBERS, and members
12 of the general public have suffered, and continue to suffer, damages, and are therefore entitled to
13 the relief available under California Business and Professions Code section 17200, et seq.,
14 including, but not limited to, restitution, disgorgement, and injunctive relief.

15 126. As such, PLAINTIFFS and CLASS MEMBERS, and the general public, seeks a
16 temporary, preliminary, and/or permanent order from this Court prohibiting DEFENDANTS from
17 continuing to engage in the unlawful, unfair, and/or fraudulent business acts or practices set forth
18 in this Complaint, in addition to disgorgement and restitution by DEFENDANTS to all persons
19 with a vested interest therein who have been adversely affected by the practices at issue.

20 127. As a result of DEFENDANTS' unfair and unlawful business practices,
21 DEFENDANTS have reaped unfair and illegal profits during the CLASS PERIOD at the expense
22 of PLAINTIFFS, CLASS MEMBERS, and members of the public. DEFENDANTS should be
23 made to disgorge their ill-gotten gains and to restore them to PLAINTIFFS and CLASS
24 MEMBERS.

25 128. DEFENDANTS' unfair and unlawful business practices entitle PLAINTIFFS and
26 CLASS MEMBERS to seek preliminary and permanent injunctive relief, including but not limited
27 to orders that DEFENDANTS account for, disgorge, and restore to PLAINTIFFS and CLASS
28 MEMBERS the wages and other compensation unlawfully withheld from them. PLAINTIFFS and

1 CLASS MEMBERS are entitled to restitution of all monies to be disgorged from DEFENDANTS
2 in an amount according to proof at the time of trial, but in excess of the jurisdiction of this Court.

3 **THIRTEENTH CAUSE OF ACTION**

4 **(Labor Code §2698, et seq. – PAGA - Against all Defendants)**

5 129. PLAINTIFFS refers to and incorporates herein by reference the above paragraphs
6 as though fully forth herein.

7 130. California Labor Code section 2698, et seq., the Private Attorneys General Act
8 (“PAGA”), allows an aggrieved employee to bring suit against an employer for violations of most
9 California Labor Code provisions, including, but not limited to, violations of California Labor Code
10 sections 226(a), 226.7, *et seq.* By virtue of DEFENDANTS numerous violations of the California
11 Labor Code as against PLAINTIFFS as described herein, PLAINTIFFS are aggrieved employees
12 as defined in California Labor Code section 2698, et seq. and are proper representatives to bring a
13 civil action on behalf of themselves and other current and former employees of DEFENDANTS
14 pursuant to the procedures specified in California Labor Code section 2699.3, because
15 PLAINTIFFS and AGGRIEVED EMPLOYEES were employed by DEFENDANTS and the
16 alleged violations of the California Labor Code were committed against PLAINTIFFS and the
17 AGGRIEVED EMPLOYEES.

18 131. DEFENDANTS acts constitute an ongoing unlawful activity prohibited by the
19 California Labor Code, and, therefore, these acts constitute violations of the PAGA.

20 132. Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”), Labor
21 Code sections 2698–2699.5, PLAINTIFFS and AGGRIEVED EMPLOYEES seek to recover civil
22 penalties, including but not limited to penalties under California Labor Code §§ 2699, 210, 226.3,
23 558, 1174.5, 1197.1, and IWC Wage Order No. 1-2001, § 20, from DEFENDANTS in a
24 representative action for the violations set forth above, including but not limited to violations of
25 California Labor Code sections 201-203, 204, 221, 223, 224, 226, 226.3, 226.7, 300, 510, 512, 558,
26 558.1, 1174, 1174.5 1194, 1194.2 1197, 1197.1, 1198 and 2802. PLAINTIFFS further seek civil
27 penalties based on DEFENDANTS violation of Labor Code sections 226, 432, 1198.5 and
28 Industrial Welfare Commission Order No. 1-2001, 7 (records) by failing to comply with a written

1 request for records PLAINTIFFS and AGGRIEVED EMPLOYEES are also entitled to an award
2 of reasonable attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1).

3 133. PLAINTIFFS provided notice of these violations pursuant to California Labor Code
4 section 2699.3 and has specifically asked the LWDA if it intends to investigate the alleged
5 violations. PLAINTIFFS did not receive a response back from the LWDA within the time limits
6 outlined in California Labor Code section 2699.3 with notification that it intends to investigate the
7 alleged violations, and thus, PLAINTIFFS are entitled to prosecute their PAGA claims under
8 California Labor Code section 2699, et seq.

9 134. The proper measure of damages and penalties under the PAGA is all aggrieved
10 employees, whether a party to this action or not. Further, this claim needs no certification to
11 proceed with class-wide recovery. See Arias v. Superior Court, 46 Cal. 4th 969, 970-975 (2009).

12 135. Therefore, PLAINTIFFS has complied with all of the requirements set forth in
13 California Labor Code section 2699.3 to commence a representative action under PAGA.

14 136. Further, as a direct and proximate result of the conduct of DEFENDANTS, as set
15 forth above, PLAINTIFFS were forced to incur substantial attorney's fees and costs which are
16 recoverable under California Labor Code Section 2699(g)(1).

17 137. Accordingly, PLAINTIFFS and all aggrieved employees respectfully request that
18 the Court award judgment and relief in their favor as described herein.

19
20 **PRAYER FOR DAMAGES**

21 **WHEREFORE**, PLAINTIFFS, individually and on behalf of all other persons similarly
22 situated, respectfully prays for relief against DEFENDANTS and DOES 1 through 50, inclusive,
23 and each of them, as follows:

- 24 1. For compensatory damages in an amount to be ascertained at trial;
25 2. For unpaid wages and such general and special damages as may be appropriate;
26 3. For restitution of all monies due to PLAINTIFFS, CLASS MEMBERS, and
27 AGGRIEVED EMPLOYEES as well as disgorged profits from DEFENDANTS' unfair and
28 unlawful business practices;

1 4. For meal and rest period compensation and premiums pursuant to California Labor
2 Code § 226.7 and IWC Wage Order No. 1-2001;

3 5. For liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1;

4 6. For preliminary and permanent injunctive relief enjoining DEFENDANTS from
5 violating the relevant provisions of the California Labor Code and the IWC Wage Orders, and
6 from engaging in the unlawful business practices complained of herein;

7 7. For waiting time penalties pursuant to California Labor Code § 203;

8 8. For statutory and civil penalties according to proof, including but not limited to all
9 penalties authorized by the California Labor Code §§ 226(e) and §§ 2698–2699.5;

10 9. For interest on the unpaid wages at 10% per annum pursuant to California Labor
11 Code §§ 218.6, 1194, 2802, California Civil Code §§ 3287, 3288, and/or any other applicable
12 provision providing for pre-judgment interest;

13 10. For reasonable attorneys’ fees and costs pursuant to California Labor Code §§
14 1194, 2699, 2802, California Civil Code § 1021.5, and any other applicable provisions providing
15 for attorneys’ fees and costs;

16 11. For declaratory relief;

17 12. For all actual, consequential, and incidental losses and damages according to
18 proof;

19 13. For an order requiring and certifying the First, Second, Third, Fourth, Fifth, Sixth,
20 Seventh, Eighth, Ninth, Tenth, Eleventh and Twelfth Causes of Action as a class action;

21 14. For an order appointing PLAINTIFFS as class representative, and PLAINTIFFS’
22 counsel as class counsel; and

23 ///

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15. For such further relief that the Court may deem just and proper.

DATED: February 17, 2023

Respectfully Submitted,
BARKHORDARIAN LAW FIRM, PLC

/s/ Heather K. Cox

Heather K. Cox
Attorney for Plaintiffs, Joel Zelaya
and Demetrio Montes

PROOF OF SERVICE
(CCP §§ 1013(A) AND 2015.5)

State of California,

Case No.: 22PSCV00340

County of Los Angeles

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and am not a party to the within action; my business address is 6047 Bristol Parkway, Culver City, CA 90230.

On February 17, 2023, I served the foregoing document described as:

Second Amended Complaint

on the interested parties in this action by placing same in a sealed envelope, as follows:

Robert Pepple
Jonathan Assia
Nixon Peabody, LLP
300 S. Grand Avenue, Suite 4100
Los Angeles, CA 90071

*Attorneys for Defendant Commercial Lumbar &
Pallet, Co., Inc.*
Email(s): Rpepple@nixonpeabody.com
Jassia@nixonpeabody.com

☐ **(BY MAIL)** – I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States mail in Culver City, California.

I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid at Costa Mesa, California, in the ordinary course of business. I am fully aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing an affidavit.

☒ **(BY E-MAIL)** – Based on a Court order or an agreement by the parties to accept service by e-mail or electronic transmission, I caused the documents described above to be sent by e-mail to the persons at the e-mail addresses listed above. I did not receive, within a reasonable amount of time after transmission, any electronic message or other indication that the transmission was unsuccessful.

☐ **(BY FACSIMILE)** – I caused the above described document(s) to be transmitted to the offices of the interested parties at the facsimile number(s) indicated on the attached Service List and the activity report(s) generated by facsimile number (310) 215.3416 indicating on all pages that they were transmitted.

☐ **(BY PERSONAL SERVICE)** – I caused such envelope(s) to be delivered by hand to Defendant.

☒ **(STATE)** – I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ **(FEDERAL)** – I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

/s/ Evelyn Monreal

EVELYN MONREAL

EXHIBIT B

Gregory P. Wong (SBN 204502)
Heather K. Cox (SBN 278898)
Heather@barklawfirm.com
BARKHORDARIAN LAW FIRM, PLC
6047 Bristol Parkway, Second Floor
Culver City, Ca 90230
Tel: 323-450-2777
Fax: 310-215-3416

Attorneys for Plaintiffs
JOEL ZELAYA and DEMETRIO MONTES

COUNSEL CONTINUED ON NEXT PAGE

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

JOEL ZELAYA, an individual; DEMETRIO
MONTES, an individual,

Plaintiffs,

vs.

COMMERCIAL LUMBER & PALLET CO.,
INC., a California Corporation; RAYMOND
GUTIERREZ, an Individual; and DOES 1
through 100, inclusive,

Defendants.

Case No. 22PSCV00340

Related Case No. 22STCV03643

Assigned for all purposes to Judge Stuart M.
Rice, Dept. 1

**JOINT STIPULATION FOR CLASS
ACTION SETTLEMENT**

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Tel: 213-629-6000
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Attorneys for Defendants
COMMERCIAL LUMBER & PALLET CO., INC. and RAYMOND GUTIERREZ

TO THE HONORABLE COURT:

This Joint Stipulation for Class Action Settlement (“Settlement Agreement”) is made and entered into by and between Joel Zelaya, Demetrio Montes, and Pedro Negrete, (“Plaintiffs”) individually and on behalf of all others similarly situated, and Commercial Lumber & Pallet Co., Inc. and Raymond Gutierrez (“Defendants”) (collectively, Defendants and Plaintiffs will be referred to as the “Parties”), and is subject to the terms and conditions below, and to the Court’s approval. The Parties expressly acknowledge that this Settlement Agreement is entered into solely for the purpose of compromising significantly disputed claims and that nothing in this Settlement Agreement is an admission of liability or wrongdoing by Defendants. If for any reason the Settlement Agreement is not approved, it will be of no force or effect, and the Parties will be returned to their respective positions immediately prior to and as if they had never executed this Settlement Agreement as more fully set forth below.

DEFINITIONS

The following definitions are applicable to this Settlement Agreement. Definitions contained elsewhere in this Settlement Agreement will also be effective:

1. “Zelaya Action” means *Joel Zelaya, et al. vs. Commercial Lumber & Pallet Co., et al.*, Los Angeles County Superior Court Case No. 22PSCV00340.
2. “Negrete Action” means *Pedro Negrete. vs. Commercial Lumber & Pallet Co., et al.*, Los Angeles County Superior Court Case No. 22STCV03643.
3. “Claims Administrator” means any third-party class action settlement claims administrator agreed to by the Parties and approved by the Court for the purposes of administering this Settlement. The Parties each represent that they do not have any financial interest in the Claims Administrator or otherwise have a relationship with the Claims Administrator that could create a conflict of interest.
4. “Claims Administration Expenses” means the costs payable to the Claims Administrator for administering this Settlement, including, but not limited to, printing, translating into Spanish, conducting a National Change of Address (“NCOA”) search,

1 distributing (including with appropriate postage), and tracking documents for this Settlement in
2 English and Spanish, any searches to locate any Class Members, tax reporting, distributing the
3 Individual Settlement Payments, Class Representatives Enhancement Payment, Class Counsel
4 Fees and Costs, and providing necessary certification of completion of notice, reports and
5 declarations, establishing and administering a qualified settlement fund account and other
6 responsibilities set forth in this Settlement Agreement and as requested by the Parties. The
7 Claims Administration Expenses are currently estimated to be not more than \$15,000.00.

8 5. “Class Counsel” means Gregory P. Wong, Esq. and Heather K. Cox, Esq. of
9 Barkhordarian Law Firm, PLC, and Justin F. Marquez, Esq., Christina M. Le, Esq. and Zachary
10 D. Greenberg, Esq of Wilshire Law Firm.

11 6. “Class Counsel Fees and Costs” means attorneys’ fees, costs, and expenses
12 approved by the Court for Class Counsel’s litigation and resolution of the Zelaya Action and the
13 Negrete Action, and all costs incurred and to be incurred by Class Counsel in the Zelaya Action
14 and the Negrete Action, including, but not limited to, costs associated with documenting the
15 Settlement, providing any notices required as part of the Settlement or Court Order, securing the
16 Court’s approval of the Settlement, administering the Settlement, and obtaining entry of the
17 Judgment terminating the Zelaya Action and the Negrete Action. Class Counsel will request
18 attorneys’ fees not to exceed thirty-five percent (35%) of the Gross Settlement Amount and
19 Defendants agree not to oppose a reasonable Attorneys’ Expenses request in an amount as
20 documented in Class Counsel’s billing statement and in an amount not to exceed \$40,000.00.
21 Defendants have agreed not to oppose Class Counsel’s request for Class Counsel Fees and Costs.

22 7. “Class List” means a complete list of all Class Members that Plaintiffs and
23 Defendants will diligently and in good faith compile from their records, and provide on a
24 confidential basis to the Claims Administrator within twenty-one (21) calendar days after the
25 Court’s entry of an order granting preliminary approval of this Settlement. The Class List will
26 be formatted in Microsoft Office Excel and Defendants will use their best efforts to include each
27 Class Member’s full name; most recent mailing address; last known telephone number if readily

1 available; dates of employment or number of workweeks worked during the Class Period; and
2 Social Security number.

3 8. “Class Member(s)” or “Settlement Class” means Plaintiffs and all current and
4 former hourly non-exempt employees of Defendants within California at any time during the
5 Class Period.

6 9. “Class Period” means the period from January 17, 2018, through the date that a
7 preliminary approval order is entered.

8 10. “Class Representative Enhancement Payment” means the amount to be paid from
9 the Gross Settlement Amount to the named Plaintiffs in exchange for executing a general release
10 and in recognition of their effort in prosecuting the Zelaya Action and the Negrete Action on
11 behalf of Class Members. Plaintiffs will request and Defendants will not oppose Plaintiffs’
12 application to the court for a payment of Ten Thousand Dollars (\$10,000) each (\$30,000 total)
13 for Plaintiffs for their willingness to serve as Class Representative.

14 11. “Court” means the Los Angeles County Superior Court, or any other court taking
15 jurisdiction of the Zelaya Action and the Negrete Action.

16 12. “Effective Date” means the date when the Final Approval Order becomes final,
17 and Defendants fully fund the Gross Settlement Amount. For purposes of this Paragraph, the
18 Final Approval Order “becomes final” upon the last to occur of the following: (a) if there are no
19 objections to the Settlement, the date the Court enters an order granting final approval of the
20 Settlement; (b) if there are objections to the Settlement, and if an appeal, review, or writ is not
21 sought from the Final Approval Order, the day after the time period to appeal the Settlement has
22 expired, i.e., 60 days from the date the Court enters an order granting final approval of the
23 Settlement; or (c) if there are objections to the Settlement, and an appeal, review, or writ is timely
24 sought from the Final Approval Order, the day after the Final Approval Order is affirmed or the
25 appeal, review, or writ is dismissed or denied, and the Final Approval Order is no longer subject
26 to further judicial review.

27 13. “Gross Settlement Amount” means the maximum settlement amount of \$756,465

1 (“Gross Settlement Amount”), which has been and/or will be paid by Defendants in full
2 satisfaction of all claims arising from the Zelaya Action and the Negrete Action. The Gross
3 Settlement Amount includes all Individual Settlement Payments to Participating Class Members,
4 the Class Representative Enhancement Payments, Claims Administration Expenses, Class
5 Counsel Fees and Cost, and PAGA penalties in the amount of Fifty Thousand Dollars (\$50,000)
6 of which 75% or Thirty-Seven Thousand Five Hundred Dollars (\$37,500) will be paid to the
7 Labor Workforce Development Agency (“LWDA”) and 25% or Twelve Thousand Five Hundred
8 Dollars (\$12,500) to PAGA Group Members. Defendants will pay the employer's share of
9 payroll taxes, as applicable, in addition to the Gross Settlement Amount.

10 14. “Individual Settlement Payment” means each Participating Class Member’s
11 respective share of the Net Settlement Amount. Individual Settlement Payments will be
12 determined by the calculations provided in this Agreement.

13 15. “Net Settlement Amount” means the maximum amount available for distribution
14 to the Class Members, after deduction of Class Counsel Fees and Costs, Class Representative
15 Enhancement Payment, Claims Administration Expenses, and \$50,000 as PAGA penalties from
16 the Gross Settlement Amount.

17 16. “Notice of Objection” means a Class Member’s valid and timely written objection
18 to the Settlement Agreement. For the objection to be valid, it must include: (i) the objector’s full
19 name, signature, address, and telephone number; and (ii) a written statement of all grounds for
20 the objection accompanied by any legal support for such objection. Further, an objector may
21 appear at the Final Approval hearing, either in person or through counsel, at his or her expense,
22 regardless of whether the objector submitted a Notice of Objection. The Parties will be permitted
23 to respond in writing to such objections at least seven calendar days prior to the Final Approval
24 hearing or within the time period set by the Court. Objections are only valid as to the Net
25 Settlement Amount. All PAGA Group Member (defined below) will receive a pro rata portion
26 of the PAGA Settlement Amount (defined below) and will be bound by the Released PAGA
27 Claims (defined below).

17. “Notice” means the Notice of Class Action Settlement, substantially in the form attached as Exhibit A.

18. “PAGA” means the California Private Attorneys General Act of 2004, which is codified in California Labor Code §2698, et seq.

19. “PAGA Group Member(s)” means Plaintiffs and all current and former hourly non-exempt employees of Defendants within California at any time during the PAGA Period.

20. “PAGA Period” means the period from January 17, 2021, through the date that a preliminary approval order is entered.

21. “PAGA Settlement Amount” means the portion of the Gross Settlement Amount allocated to the resolution of Class Members’ claims arising under PAGA. The Parties have agreed that the PAGA Settlement Amount is Fifty Thousand Dollars (\$50,000), subject to Court approval. Of the PAGA Settlement Amount, 75% or Thirty-Seven Thousand Five Hundred Dollars (\$37,500) will be paid to the LWDA and the remaining 25% or Twelve Thousand Five Hundred Dollars (\$12,500) will be distributed to PAGA Group Members regardless of whether they are a Participating Class Member or not.

22. "Individual PAGA Payment" means each PAGA Group Member's respective share of the PAGA Settlement Amount. Individual PAGA Payments will be determined by the calculations provided in this Agreement.

23. “Participating Class Members” means all Class Members who do not submit valid Requests for Exclusion.

24. “Preliminary Approval” means the Court order granting preliminary approval of the Settlement Agreement.

25. “PAGA Notices” means the letters Plaintiffs sent to the LWDA on January 17, 2022, and the amended notice sent on February 8, 2023, to inform the agency of Defendants’ alleged Labor Code Violations.

26. “Released PAGA Claims” means any and all claims for civil penalties under PAGA based on the labor code and IWC Wage Order violations alleged in each and every Notice

1 sent by Plaintiffs to the LWDA; those being California Labor Code sections 201, 202, 203, 204,
2 210, 221, 223, 224, 226, 226.3, 226.7, 300, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194,
3 1194.2, 1197, 1197.1, 1198, and 2802, and IWC Wage Order No. 1 as well as all facts, theories,
4 or claims for civil penalties that would be considered administratively exhausted under
5 applicable law by the PAGA Notices Plaintiffs sent to the LWDA. PAGA Group Members,
6 regardless of whether they submit timely and valid Requests for Exclusion from the Settlement
7 Class, will release all claims under PAGA that could have been premised on the claims, causes
8 of action or legal theories described the Operative Complaint during the PAGA Period, or, in the
9 alternative, all facts, theories, or claims for civil penalties that would be considered
10 administratively exhausted under applicable law by the PAGA Notice(s) Plaintiffs sent to the
11 LWDA. The State of California and the LWDA will also release all claims under PAGA that
12 could have been premised on the claims, causes of action or legal theories described the
13 Operative Complaint, or, in the alternative, as well as all facts, theories, or claims for civil
14 penalties that would be considered administratively exhausted under applicable law by the
15 PAGA Notice(s) Plaintiffs sent to the LWDA.

16 27. “Released Claims” means any and all claims, liabilities, demands, obligations,
17 penalties, costs, expenses, attorney's fees, damages, action or causes of action of whatever kind
18 or nature, whether known or unknown, contingent or accrued, that are alleged, or that reasonably
19 could have been alleged based on the facts alleged in the Zelaya Action and the Negrete Action,
20 including claims for: (a) failure to pay regular and minimum wages; (b) failure to pay overtime
21 wages; (c) failure to provide accurate itemized wage statements; (d) failure to pay final wages
22 upon separation of employment; (e) failure to provide timely, duty-free meal periods and/or pay
23 required meal period premiums; (f) failure to provide compliant rest periods and/or pay rest
24 required period premiums; (g) failure to reimburse necessary expenditures in discharge of duties;
25 (h) failure to maintain required records; (i) failure to pay wages timely during employment; (j)
26 unlawful discount and deduction of entitled wages; (k) any right or claim for damages, unpaid
27 wages, statutory penalties, or civil penalties arising under the California Labor Code or Wage

1 Orders based on the alleged failures set forth above (a)-(j) and which were alleged, or that
2 reasonably could have been alleged based on the facts alleged in the Zelaya Action and the
3 Negrete Action; and (l) any right or claim for unfair business practices in violation of California
4 Business & Professions Code sections 17200, *et seq.*, based on the alleged failures set forth in
5 (a)-(j) and which were alleged, or that reasonably could have been alleged based on the facts
6 alleged in the Zelaya Action and the Negrete Action; and (m) any violation of the California
7 Labor Code arising from or related to the conduct alleged in in (a)-(j) and which were alleged,
8 or that reasonably could have been alleged based on the facts alleged in the Zelaya Action and
9 the Negrete Action, including violation of California Labor Code sections 201–204, 210, 221,
10 223, 224, 226, 226.7, 226.3, 300, 510, 512, 558, 558.1, 1182.12, 1174, 1174.5, 1194, 1194.2,
11 1197, 1197.1, 1198, 2802, and IWC Wage Order No. 1; and expressly excluding all other claims,
12 including claims for unemployment insurance, disability, social security, and workers’
13 compensation, and claims outside of the Class Period. This Released Claims will cover all Class
14 Members who do not opt out. The Parties agree that the judgment, and the Release Class Claims
15 provided herein, shall have res judicata effect.

16 28. “Defendants” means Commercial Lumber and Pallet Co., Inc. and Raymond
17 Gutierrez.

18 29. “Released Parties” means Defendants and Defendants’ former and present
19 parents, subsidiaries and affiliated companies and entities, franchisors and franchisees, and its
20 current, former, and future owners, officers, shareholders, directors, members, managers,
21 operators, employees, consultants, vendors, partners, affiliates, subsidiaries, shareholders,
22 attorneys, insurers, payroll providers, joint venturers, and agents, and any successors, assigns,
23 or legal representatives and any individual or entity who or which could be jointly liable with
24 Defendants and all persons or entities acting by, through under or in concert with any of them,
25 including but not limited to any and all staffing agencies and professional employment
26 organizations that supplied employees to Defendants, or performed professional employment
27 organization services, as applicable.

30. “Request for Exclusion” means a timely letter submitted by a Class Member indicating a request to be excluded from the Settlement. The Request for Exclusion must: (a) set forth the name, address, telephone number and last four digits of the Social Security Number of the Class Member requesting exclusion; (b) be signed by the Class Member; (c) be returned by mail or fax to the Claims Administrator at the specified address or fax number indicated in the Notice; (d) clearly state that the Class Member does not wish to be included in the Settlement; and (e) be faxed or postmarked on or before the Response Deadline.

31. “Response Deadline” means the deadline by which Class Members must fax or postmark to the Claims Administrator a valid Request for Exclusion, submit objections to the Settlement or dispute workweeks. The Response Deadline will be forty-five (45) calendar days from the initial mailing of the Notice by the Claims Administrator. The Response Deadline for Request for Exclusion, objection or dispute workweeks will be extended fifteen (15) calendar days for any Class Member who is re-mailed a Notice by the Claims Administrator in accordance with the notice procedure described in Paragraph 48 of this Settlement Agreement. The Response Deadline may also be extended by express agreement between Class Counsel and Defendants’ counsel.

TERMS OF AGREEMENT

Plaintiffs, on behalf of themselves and the Settlement Class, and Defendants agree as follows:

32. Impact of Any Court Determination Not to Enter Final Approval Order. In the event that the Court does not enter a Final Approval Order and this Settlement Agreement does not become effective, the following will occur:

a. on the date final approval is denied, the status of the Zelaya Action and the Negrete Action will be deemed to return to its status at the time immediately prior to and as if the Parties had never executed this Settlement Agreement; and

b. Defendants will pay the Claims Administrator for any costs incurred by the Claims Administrator.

33. Settlement Funding. Within twenty-one (21) calendar days of the Final Approval Order becoming final, as explained in Paragraph 12, Defendants will make the entire Gross Settlement Amount in the amount of \$756,465. The employers' share of the payroll taxes, which shall be paid in addition to the Gross Settlement Amount.

34. Class Counsel Fees and Costs. Defendants agree not to oppose or impede any application or motion by Class Counsel for Class Counsel Fees in the amount of up to thirty-five percent (35%) of the Gross Settlement Amount. Defendants also agree not to oppose or impede any application by Class Counsel for the reimbursement of the actual costs and expenses associated with Class Counsel's litigation and settlement of the Zelaya Action and the Negrete Action not to exceed \$40,000.00. In consideration of their awarded attorneys' fees and costs and expenses, Plaintiffs and Class Counsel waive any and all claims to any further attorneys' fees and expenses in connection with the Zelaya Action and the Negrete Action.

35. Class Representative Enhancement Payment. In exchange for named Plaintiffs' executing a general release, and in recognition of their effort in prosecuting the Zelaya Action and the Negrete Action on behalf of Class Members, Defendants agree not to oppose or impede any application or motion for a Class Representative Enhancement Payment of up to Ten Thousand Dollars (\$10,000) to each named Plaintiff. The Class Representative Enhancement Payment, which will be paid from the Gross Settlement Amount, will be in addition to Plaintiffs' Individual Settlement Payment paid pursuant to the Settlement. Plaintiffs will be solely and legally responsible to pay any and all applicable taxes, penalties and interest on the payment made pursuant to this paragraph and will hold Defendants harmless from any claim or liability for taxes, penalties, or interest arising as a result of the payment.

36. Claims Administration Expenses. The Claims Administrator will be paid for the reasonable fees and costs of administration of the Settlement, which are estimated no to exceed Fifteen Thousand Dollars and Zero Cents (\$15,000.00). These will include, *inter alia*, fees and

costs payable to the Claims Administrator for printing, translating into Spanish (or other first-languages of Class Members, if necessary), distributing (including with appropriate postage), and tracking documents for this Settlement in English and Spanish, any searches to locate any Class Members, calculating estimated Individual Settlement Payments, calculating estimated Individual PAGA Payments, tax reporting, distributing the Individual Settlement Payments, distributing Individual PAGA Payments, Class Representative Enhancement Payment, Class Counsel Fees and Costs, payment to LWDA for PAGA penalties, and providing necessary certification of completion of notice, reports and declarations, establishing and administering a Qualified Settlement Fund account, required tax reporting on the Individual Settlement Payments, the issuing of 1099 and W-2 IRS forms, calculating the employers' share of payroll taxes on the wage portion of the Individual Settlement Payments and coordinating related reporting, and other responsibilities as requested by the Parties. The Claims Administration Expenses will be paid from the Gross Settlement Amount.

37. Net Settlement Amount. The Net Settlement Amount will be used to satisfy Individual Settlement Payments to Participating Class Members from the Settlement Class.

38. Individual Class Settlement Payment Calculations. Defendants will provide the Claims Administrator with the total number of workweeks for each Participating Class Member and PAGA Group Member. The Claims Administrator will divide the Net Settlement Amount by the total number of workweeks for Participating Class Members ("Work Week Rate Amount") and then multiply this amount by each Participating Class Member's total number of workweeks to yield that employee's Individual Class Settlement Payment. Any one day worked during a Workweek will be credited as a full workweek. This formula is reflected as follows:

$$\frac{\text{NET SETTLEMENT AMOUNT}}{\text{Total number of Workweeks for}} \times \text{Participating Class Member's Workweeks}$$

all Participating
Class Members

In the event a Class Member submits a timely Request for Exclusion from the settlement, he/she will not receive his or her individual settlement allocated to Class Members and his/her share of the settlement will be added to the Net Settlement Amount.

39. Individual PAGA Settlement Payment Calculations. Each PAGA Group Member will receive an individual share of the \$12,500 portion of the PAGA Settlement Amount (or 25% of the PAGA Settlement Amount approved by the Court). The Individual PAGA Settlement Payment shall be calculated by the Claims Administrator, with a formula similar to payments to Participating Class Members. Any one day worked during a Workweek will be credited as a full workweek. This formula is reflected as follows:

$$\frac{\$12,500 \text{ for PAGA Penalties to PAGA Group Members}}{\text{Total number of Workweeks for all PAGA Group Members during PAGA Period}} \times \text{Individual PAGA Group Member's Workweeks during PAGA Period}$$

No PAGA Group Member will be permitted to exclude themselves from the PAGA claim portion of the Settlement. Individual PAGA Settlement Payments will be distributed by the Claims Administrator by mail to the PAGA Group Members including to those Class Members who submitted a request for exclusion.

40. Participating Class Members and PAGA Group Members. Individuals who are both Participating Class Member and PAGA Group Member shall receive both the Individual Class Settlement Payment and the Individual PAGA Settlement Payments. No Class Member or PAGA Group Member will be permitted to exclude themselves from the PAGA claim portion of the Settlement.

1 41. No Credit Toward Benefit Plans. All Individual Class and/or PAGA Settlement
2 Payments to Class Members shall be deemed to be income to such Class Members solely in the
3 year in which such payments actually are received by the Class Members. It is expressly
4 understood and agreed that the receipt of such Individual Class and/or PAGA Settlement
5 Payments will not entitle any Class Member to additional compensation or benefits under any
6 company bonus, paid time off (including vacation and sick leave), or other compensation or
7 benefit plan or agreement in place during the period covered by the Settlement, nor will it entitle
8 any Class Member to any increased retirement, 401(k) benefits or matching benefits, or deferred
9 compensation benefits. It is the intent of this Settlement Agreement that the Individual Class
10 and/or PAGA Settlement Payments provided for in this Agreement are the sole payments to be
11 made by Defendants to the Class Members in connection with this Settlement Agreement, and
12 that the Class Members are not entitled to any new or additional compensation or benefits as a
13 result of having received the Individual Class and/or PAGA Settlement Payments
14 (notwithstanding any contrary language or agreement in any benefit or compensation plan
15 document that might have been in effect during the period covered by this Settlement).

16 42. Claims Administration Process. The Parties agree to cooperate in the
17 administration of the settlement and to make all reasonable efforts to control and minimize the
18 costs and expenses incurred in administration of the Settlement.

19 43. Delivery of the Class List. Within twenty-one (21) calendar days of Preliminary
20 Approval, Defendants, with the assistance of Plaintiffs, will provide the Class List to the Claims
21 Administrator.

22 44. Notice by First-Class U.S. Mail. Within ten (10) calendar days after receiving the
23 Class List from Defendants, the Claims Administrator will mail the Notice to all Class Members
24 via regular First-Class U.S. Mail.

25 45. Confirmation of Contact Information in the Class Lists. Prior to mailing, the
26 Claims Administrator will perform a search based on the National Change of Address Database
27 for information to update and correct for any known or identifiable address changes. Any Notice
28

1 returned to the Claims Administrator as non-deliverable on or before the Response Deadline will
2 be sent promptly via regular First-Class U.S. Mail to the forwarding address, and the Claims
3 Administrator will indicate the date of such re-mailing on the Notice. If no forwarding address
4 is provided, the Claims Administrator will promptly attempt to determine the correct address
5 using a skip-trace, or other search using the name, address and/or Social Security number of the
6 Class Member involved, and will then perform a single re-mailing. Those Class Members who
7 receive a re-mailed Notice will have between the later of (i) an additional fifteen (15) calendar
8 days or (ii) the Response Deadline to fax or postmark a Request for Exclusion, submit an
9 objection to the Settlement or dispute workweeks.

10 46. Notice. All Class Members will be mailed the Notice. The Notice will be also
11 translated and provided in Spanish. The Notice will provide: (1) information regarding the nature
12 of the Zelaya Action and the Negrete Action, (2) a summary of the Settlement's principal terms,
13 (3) the Settlement Class definition, (4) each Class Member's number of workweeks worked
14 during the Class Period, (5) each Class Member's estimated Individual Class Settlement
15 Payment; (6) each PAGA Group Member's estimated Individual PAGA Settlement Payment;
16 (7) the dates which comprise the Class Period, (8) instructions on how to submit valid Requests
17 for Exclusion, objections or dispute workweeks, (9) the deadlines by which the Class Member
18 must fax or postmark Request for Exclusions, submit objections to the Settlement or dispute
19 workweeks, and (10) the claims to be released, as set forth in this Settlement Agreement, (11)
20 the Court's updated social distancing rules in effect, (12) where Class Members may obtain
21 additional information, including any changes to the date and location of court hearings, the
22 Order Granting Final Approval of Class Action Settlement and Entering Judgment following the
23 Final Approval Hearing (i.e., the Court's website or posted on the Settlement Administrator's
24 website). The Claims Administrator shall also post a copy of the Notice attached as Exhibit A,
25 or any updated Notice as required by the Court, and the Motion for Preliminary Approval and
26 Final Approval hearing dates, locations, and times and the final judgment on its website.

47. Request for Exclusion Procedures. Any Class Member wishing to opt out from the class action portion of the Settlement Agreement must sign and fax or postmark a written Request for Exclusion to the Claims Administrator within the Response Deadline. The date of the fax or postmark on the return mailing envelope will be the exclusive means to determine whether a Request for Exclusion has been timely submitted. The Parties to this Agreement and their counsel agree that they will not solicit or encourage Class Members to opt-out or object to this Settlement Agreement. If the Court approves the compromise of the PAGA claim, all PAGA Group Members are bound by the Court's resolution of that claim. Class Members who are also PAGA Group Members submitting a request for exclusion will nevertheless receive their pro-rata share of the 25% of the PAGA Settlement Amount (i.e., their Individual PAGA Settlement Payments) allocated for PAGA penalties to PAGA Group Members.

48. Defective Submissions. If a Class Member's Request for Exclusion is defective as to the requirements listed in this Settlement Agreement, that Class Member will be given an opportunity to cure the defect(s). The Claims Administrator will mail the Class Member a cure letter within three (3) calendar days of receiving the defective submission to advise the Class Member that his or her submission is defective and that the defect must be cured to render the Request for Exclusion valid. The Class Member will have until the later of (i) the Response Deadline or (ii) fifteen (15) calendar days from the date of the cure letter to fax or postmark a revised Request for Exclusion.

49. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class Member who does not affirmatively opt out of the Settlement Agreement by submitting a timely and valid Request for Exclusion will be bound by all of its terms, including those pertaining to the Released Claims (other than as it applies to the PAGA claims with respect to the PAGA Group Members), as well as any Judgment that may be entered by the Court if it grants final approval to the Settlement. If the Court approves the compromise of the PAGA claim, Class Members who are also PAGA Group Members submitting a request for exclusion, if any, will

nevertheless be bound by the Court's resolution of that claim and receive their pro-rata share of the 25% of the PAGA Payment allocated to the PAGA Group Members.

50. Objection Procedures. To object to the Settlement Agreement, a Class Member may submit a Request for Exclusion and may mail a valid Notice of Objection to the Claims Administrator by the Response Deadline. The Claims Administrator will notify counsel for the Parties forthwith via email. Class Counsel will lodge the objection with the Court. The Notice of Objection must be signed by the Class Member and contain all information required by this Settlement Agreement. The postmark date of the mailing will be deemed the exclusive means for determining that the Notice of Objection is timely. Class Members who wish to object will have a right to appear at the Final Approval Hearing, with or without counsel at his/her own expense, in order to have their objections heard by the Court, regardless of whether they submitted a Notice of Objection. At no time will any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit written objections to the Settlement Agreement or appeal from the Final Approval Order and Judgment.

51. Certification Reports Regarding Individual Settlement Payment Calculations. The Claims Administrator will provide Defendants' counsel and Class Counsel a weekly report which certifies: (i) the number of Class Members who have submitted a valid Request for Exclusion; (ii) the number of Class Members who have submitted a valid Notice of Objection; and (iii) the number of any deficient Requests for Exclusion or objections. Additionally, the Claims Administrator will provide to counsel for both Parties any updated reports regarding the administration of the Settlement Agreement as needed or requested. If requested by Plaintiffs' counsel or the Court, the Claims Administration shall also provide a declaration attesting to the services to be provided pursuant to this Settlement Agreement and/or the results of the mailing of the Notice.

52. Timing of Distribution of Payments. Within five (5) business days of Defendants depositing the payment as set forth above, the Claims Administrator will issue payments to (1) Participating Class Members and PAGA Group Members; (2) Plaintiffs; (3) Class Counsel; and

(4) payment to LWDA. The Claims Administrator will also issue a payment to itself for Court-approved services performed in connection with the settlement.

53. Uncashed or Undeliverable Settlement Checks. Individual settlement checks paid to participating Class Members will be valid for 180 days. Participating Class Members will have one hundred eighty (180) calendar days from the date of issuance of the check to cash their check. For any check not cashed after 180 calendar days, the Claims Administrator will send the amount represented by the check to the California State Controller's Office Unclaimed Property Fund, with the identity of the Participating Class Member to whom the funds belong, to be held for the participating Class Member per California Unclaimed Property Law, in the interest of justice. The money paid to the California State Controller's Office Unclaimed Property Fund will remain the Participating Class Member's property. This will allow Participating Class Members who did not cash their checks to collect their Individual Settlement Amounts at any time in the future. Therefore, there will be no unpaid residue or unclaimed or abandoned class member funds, and California Code of Civil Procedure section 384 shall not apply. The funds will be held by the State until claimed by the employee and the uncashed check never ceases to be the employee's property.

54. Increase in Workweeks. In the event the total number of workweeks exceeds 50,431 by more than 10%, i.e., 55,474, by the end of the Class Period, the Gross Settlement Amount shall be increased on pro rata basis at a value of fifteen dollars (\$15.00). For example, if the total number of workweeks is 55,475, Defendants would have to increase the Gross Settlement Amount by \$15.00 for a total of \$756,480.

55. Certification of Completion. Upon completion of administration of the Settlement, the Claims Administrator will provide a written declaration under oath to certify such completion to the Court and counsel for all Parties.

56. Treatment of Individual Settlement Payments. All Individual Settlement Payments will be allocated as follows: 100% of each PAGA Group Members' pro-rata share of the \$12,500 allocated for PAGA penalties shall be allocated as penalties; 15% of each Individual

Settlement Payment will be considered wages; and 85% of each Individual Settlement Payment will be considered interest and penalties. The portion allocated to wages in each Individual Settlement Payment will be reported on an IRS Form W-2 and the portion allocated to interest and penalties will be reported on an IRS Form-1099 by the Claims Administrator.

57. Administration of Taxes by the Claims Administrator. The Claims Administrator will be responsible for issuing to Plaintiffs, Participating Class Members, PAGA Group Members, Class Counsel, and Defendants any W-2, 1099, or other tax forms as may be required by law for all amounts paid pursuant to this Settlement Agreement. The Claims Administrator will also be responsible for forwarding all payroll taxes and other legally required withholdings, and related reporting, to the appropriate government authorities.

58. Defendants' Responsibility for Employer Taxes: For any portion of the Class Members' Individual Settlement Payments that are designated as "wages" for purposes of tax reporting, the employer's taxes, employer contributions of all federal, state, and local taxes (including, but not limited to, FICA, FUTA, and SDI), will be paid in addition to the Gross Settlement Amount, via and with the Claims Administrator's assistance.

59. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH

1 THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON
2 THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR
3 TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
4 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
5 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
6 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
7 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
8 OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF
9 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
10 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
11 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
12 AGREEMENT.

13 60. No Prior Assignments. The Parties and their counsel represent, covenant, and
14 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported
15 to assign, transfer, or encumber to any person or entity any portion of any liability, claim,
16 demand, action, cause of action or right released and discharged in this Settlement Agreement.

17 61. Release of Claims by Class Members. Upon the date the Court enters an order
18 granting final approval of the Settlement and Defendants fully fund the Gross Settlement
19 Amount, all Class Members who do not timely submit a valid Request for Exclusion do and will
20 be deemed to have fully, finally and forever released, settled, compromised, relinquished,
21 waived, and discharged any and all of the Released Parties of and from any and all Released
22 Claims accruing during the Class Period. In addition, on the date the Court enters an order
23 granting final approval of the Settlement and Defendants fully fund the Gross Settlement
24 Amount, all Class Members who do not timely submit a valid Request for Exclusion and all
25 successors in interest will be barred from prosecuting or participating in any and all Released
26 Claims against the Released Parties. Furthermore, upon the date the Court enters an order
27 granting final approval of the Settlement and Defendants fully fund the Gross Settlement

Amount, the State of California and PAGA Group Members (regardless of whether PAGA Group Members opt out of the Class Settlement) release the Released Parties from the Released PAGA Claims regardless of whether they submitted timely and/or valid Requests for Exclusion.

62. Release by Plaintiffs. Upon the date the Court enters an order granting final approval of the settlement and Defendants fully fund the Gross Settlement Amount, in addition to the claims being released by all Class Members, Plaintiffs will provide the following additional general release (“General Release”): Plaintiffs, on their own behalf and on behalf of their heirs, spouses, executors, administrators, attorneys, agents and assigns, fully and finally releases the Released Parties from all claims, demands, rights, liabilities and causes of action of every nature and description whatsoever, known or unknown, asserted or that might have been asserted, whether in tort, contract, or for violation of any state or federal statute, rule or regulation arising out of, relating to, or in connection with any act or omission by or on the part of any of the Released Parties committed or omitted prior to the execution of this Agreement. This General Release includes any unknown claims Plaintiffs does not know or suspect to exist in their favor at the time of this General Release, which, if known by them, might have affected their settlement with, and release of, the Released Parties or might have affected their decision not to object to this Settlement or this Release. To the extent the foregoing releases are releases to which Section 1542 of the California Civil Code or similar provisions of other applicable law may apply, Plaintiffs expressly waives any and all rights and benefits conferred upon them by the provisions of Section 1542 of the California Civil Code or similar provisions of applicable law which are 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.

1 The significance of this release and waiver of Civil Code Section 1542 has been explained to
2 Plaintiffs by their respective counsel. Release by Plaintiffs expressly excludes any claims for
3 workers compensation against Defendants.

4 63. Neutral Reference. Defendants agree that they will only provide a neutral
5 reference for Plaintiffs should any prospective employers or anyone contact them regarding
6 Plaintiffs' employment. Defendants shall only provide the dates of employment and Plaintiffs'
7 last job title held with Defendants.

8 64. Nullification of Settlement Agreement. In the event that: (i) the Court does not
9 finally approve the Settlement as provided in this Settlement Agreement; or (ii) the Settlement
10 does not become final for any other reason, then this Settlement Agreement and any documents
11 generated to bring it into effect will be null and void. Any order or judgment entered by the
12 Court in furtherance of this Settlement Agreement will likewise be treated as void from the
13 beginning. In such case, the Settlement shall not be used or be admissible in any subsequent
14 proceedings, either in Zelaya Action, the Negrete Action, this Court, or any other Court or forum.

15 65. Preliminary Approval Hearing. The Parties will work together to obtain a hearing
16 before the Court to request the Preliminary Approval of the Settlement Agreement, and the entry
17 of a Preliminary Approval Order for: (i) conditional certification of the Settlement Class for
18 settlement purposes only, (ii) preliminary approval of the proposed Settlement Agreement, and
19 (iii) setting a date for a Final Approval/Settlement Fairness Hearing. The Preliminary Approval
20 Order will provide for the Notice to be sent to all Class Members as specified in this Settlement
21 Agreement. In conjunction with the Preliminary Approval motion, the Parties will submit this
22 Settlement Agreement, which sets forth the terms of this Settlement and will include the
23 proposed Notice.

24 66. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of
25 the deadlines to fax or postmark Request for Exclusion or submit objections to the Settlement
26 Agreement, and with the Court's permission, a Final Approval/Settlement Fairness Hearing will
27 be conducted to determine the Final Approval of the Settlement Agreement along with the

amounts properly payable for (i) Individual Settlement Payments; (ii) the Class Counsel Fees and Costs; (iii) the Class Representative Enhancement Payment; (iv) payment to LWDA for PAGA penalties; and (v) all Claims Administration Expenses. Class Counsel will be responsible for drafting all documents necessary to obtain final approval. Class Counsel will also be responsible for drafting the attorneys' fees and costs application to be heard at the Final Approval/Settlement Fairness Hearing.

67. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by the Court or after the Final Approval/Settlement Fairness Hearing, the Parties will present a proposed Judgment to the Court for its approval. Pursuant to California Rules of Court, Rule 3.771(b), the Claims Administrator shall post on its website a copy of the Judgment for a period of thirty days from the date the Court signs the Judgment. After entry of the Judgment, the Court will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement Agreement, (ii) settlement administration matters, and (iii) such post-Judgment matters as may be appropriate under court rules or as set forth in this Settlement Agreement.

68. Exhibits Incorporated by Reference. The terms of this Settlement Agreement include the terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth in this Settlement Agreement. Any Exhibits to this Agreement are an integral part of the Settlement.

69. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute the entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements may be deemed binding on the Parties. The Parties expressly recognize California Civil Code Section 1625 and California Code of Civil Procedure Section 1856(a), which provide that a written agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence, and the Parties agree that no such extrinsic oral or written representations or terms will modify, vary or contradict the terms of this Agreement.

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

71. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement Agreement, the Parties may seek the assistance of the Court to resolve such disagreement.

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

73. Execution and Counterparts. This Settlement Agreement is subject only to the execution of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them, including facsimile and scanned copies of the signature page, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange among themselves original signed counterparts.

74. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this Settlement Agreement is a fair, adequate and reasonable settlement of the Zelaya Action and the Negrete Action and have arrived at this Settlement Agreement after arm's-length negotiations and in the context of adversarial litigation, taking into account all relevant factors, present and potential. The Parties further acknowledge that they are each represented by

competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement Agreement.

75. Invalidity of Any Provision. Before declaring any provision of this Settlement Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

76. Captions. The captions and section numbers in this Agreement are inserted for the reader's convenience, and in no way define, limit, construe or describe the scope or intent of the provisions of this Agreement.

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

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

79. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed more strictly against one party than another merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arms-length negotiations between the Parties, all Parties have contributed to the preparation of this Agreement.

80. Representation By Counsel. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement

Agreement, and that this Settlement Agreement has been executed with the consent and advice of counsel.

81. All Terms Subject to Final Court Approval. All amounts and procedures described in this Settlement Agreement will be subject to final Court approval.

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

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

84. No Admission of Liability. Nothing contained in this Settlement Agreement shall be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendants. Each of the Parties has entered into this Settlement Agreement with the intention to avoid further disputes and litigation, and the attendant inconvenience and expense, and to fully and forever buy their respective peace. This Settlement Agreement shall be inadmissible in evidence in any action or proceeding, by any party, except an action or proceeding by one of the Parties to approve, interpret, or enforce the Settlement Agreement's terms.

85. Communications. The Parties and their counsel agree that they will not publicize or issue or post any press releases, advertising, or marketing, or initiate any contact with the media about this case or the parties involved, including the fact, amount, or terms of the Settlement. If counsel for either Party receives an inquiry about the Settlement from the media, counsel may only respond that a settlement has been reached. Before the date on which the Parties file their motion for preliminary approval of the Settlement, Plaintiffs and their Class Counsel will not initiate any contact with Class Members other than Plaintiffs about the

Settlement, except that, if contacted by a Class Member, they may respond that a settlement has been reached and that the details will be communicated in a forthcoming Court-approved notice.

86. Disputes. Any dispute between the Parties concerning the interpretation or implementation of this Settlement Agreement will be resolved by the Court. Prior to any such resort to the Court, counsel for the Parties will confer in good faith to resolve the dispute.

87. Applicable Law. All terms and conditions of this Stipulation and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law or choice of law principles.

SIGNATURES

READ CAREFULLY BEFORE SIGNING

Dated: Aug 9, 2023

PLAINTIFF
Joel Zelaya
Joel Zelaya (Aug 9, 2023 09:04 PDT)
Joel Zelaya

Dated: Aug 9, 2023

PLAINTIFF
Demetrio Montes
Demetrio Montes (Aug 9, 2023 10:04 PDT)
Demetrio Montes

Dated: _____

PLAINTIFF

Pedro Negrete

Dated: _____

DEFENDANT

Commercial Lumber & Pallet Co., Inc.

Dated: _____

DEFENDANT

Raymond Gutierrez

Settlement, except that, if contacted by a Class Member, they may respond that a settlement has been reached and that the details will be communicated in a forthcoming Court-approved notice.

86. Disputes. Any dispute between the Parties concerning the interpretation or implementation of this Settlement Agreement will be resolved by the Court. Prior to any such resort to the Court, counsel for the Parties will confer in good faith to resolve the dispute.

87. Applicable Law. All terms and conditions of this Stipulation and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law or choice of law principles.

SIGNATURES

READ CAREFULLY BEFORE SIGNING

PLAINTIFF

Dated: _____

Joel Zelaya

PLAINTIFF

Dated: _____

Demetrio Montes

PLAINTIFF

Dated: _____

Pedro Negrete

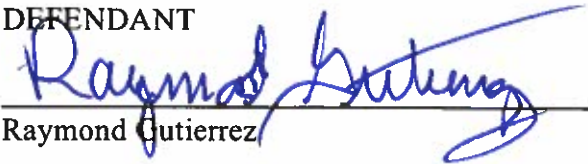
DEFENDANT

Dated: 8-10-23


Commercial Lumber & Pallet Co., Inc.

DEFENDANT

Dated: 8-10-23


Raymond Gutierrez

APPROVED AS TO FORM

Dated: Aug 9, 2023 , 2023

BARKHORDARIAN LAW FIRM, PLC

By: 
Heather K. Cox, Esq.
Gregory P. Wong, Esq.

Attorneys for Plaintiffs
JOEL ZELAYA and DEMETRIO MONTES,
on behalf of themselves and all others similarly
situated

Dated: , 2023

WILSHIRE LAW FIRM

By:
Justin F. Marquez, Esq.
Christina M. Le, Esq.
Zachary D. Greenberg, Esq.

Attorneys for Plaintiffs
PEDRO NEGRETE, on behalf of himself and
all others similarly situated

Dated: , 2023

NIXON PEABODY, LLP

By:
Richard J. Frey
Robert Pepple
Jonathan Assia
Philip Lamborn

Attorneys for Defendants
COMMERCIAL LUMBER & PALLET CO,
INC. and RAYMOND GUTIERREZ

APPROVED AS TO FORM

Dated: , 2023

BARKHORDARIAN LAW FIRM, PLC

By: Heather K. Cox, Esq.
Gregory P. Wong, Esq.

Attorneys for Plaintiffs
JOEL ZELAYA and DEMETRIO MONTES,
on behalf of themselves and all others similarly
situated

Dated: , 2023

WILSHIRE LAW FIRM

By: Justin F. Marquez, Esq.
Christina M. Le, Esq.
Zachary D. Greenberg, Esq.

Attorneys for Plaintiffs
PEDRO NEGRETE, on behalf of himself and
all others similarly situated

Dated: August 8 , 2023

NIXON PEABODY, LLP

By: 
Richard J. Frey
Robert Pepple
Jonathan Assia
Philip Lamborn

Attorneys for Defendants
COMMERCIAL LUMBER & PALLET CO,
INC. and RAYMOND GUTIERREZ

EXHIBIT A

[CLASS MEMBER NAME and ADDRESS]

**[CLASS MEMBER NAME], PLEASE READ THIS NOTICE CAREFULLY.
IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHTS.**

*This is **not** a solicitation from a lawyer. A court authorized this notice.*

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Joel Zelaya, et al. vs. Commercial Lumber & Pallet Co, Inc., et al.

Superior Court of The State of California, County of Los Angeles Case No. 22PSCV00340

Pedro Negrete vs. Commercial Lumber & Pallet Co, Inc.

Superior Court of The State of California, County of Los Angeles Case No. 22STCV03643

If you are or were employed by Commercial Lumber & Pallet Co, Inc. at any time between January 17, 2018 and **[INSERT PRELIMINARY APPROVAL DATE]** (the “Settlement Class”), a proposed class action settlement may affect your rights and you may be entitled to money under the proposed Settlement.

You are **not** being sued. A court authorized this notice. This is **not** a solicitation from a lawyer.

**PLEASE READ THIS NOTICE CAREFULLY. IT CONTAINS IMPORTANT INFORMATION
ABOUT YOUR RIGHTS.**

1. Why Did I Get This Notice?

The Court has granted preliminary approval of the Settlement of the class action brought on behalf of all individuals who were employed by Commercial Lumber & Pallet Co, Inc. in the State of California at any time between January 17, 2018 and **[INSERT PRELIMINARY APPROVAL DATE]**.

You are receiving this Notice because Defendants’ records show that you are in the proposed Settlement Class. This notice informs you about settlement of this pending lawsuit, that you may be a member of the Settlement Class, and that you have certain rights to object to the settlement.

2. What Is This Lawsuit About?

Both the above actions allege that Commercial Lumber & Pallet Co, Inc. and Raymond Gutierrez (“Defendants”), failed to pay minimum and overtime wages, failed to pay timely wages, failed to provide accurate itemized wage statements, failed to provide timely, duty-free meal periods and/or pay meal period premiums for missed meal periods, failed to provide compliant rest periods and/or pay rest period premiums, failed to maintain adequate records, failed to reimburse business expenses, unfairly competed, and unlawfully assigned wages to them and other similarly situated employees. Plaintiffs also seek penalties under the Private Attorneys’ General Act of 2004 (“PAGA”) on behalf of themselves and other allegedly aggrieved employees as well as restitution under Cal. Bus. & Prof. Code section 17200.

Plaintiff Joel Zelaya and Plaintiff Demetrio Montes filed their action in the Superior Court of The State of California, County of Los Angeles Case No. 22PSCV00340 on April 6, 2022 and Plaintiff Pedro Negrete (collectively with Plaintiff Joel Zelaya and Plaintiff Demetrio Montes “Plaintiffs”) filed his action in the Superior Court of The State of California, County of Los Angeles Case No. 22STCV03643 on January 28, 2022.

Defendants deny Plaintiffs’ claims and allegations and assert that they have complied with all of their legal obligations under the California Labor Code, PAGA, Cal. Bus. & Prof. Code section 17200, and other applicable laws.

This description of the case is general and does not cover all the issues of this case. This Notice is not an expression by the Court about the merits of the case. The Settlement is not an admission of any wrongdoing, and the Court has not made any findings of liability.

3. Has The Court Decided Who Is Right?

No. The Court has made no decision regarding the merits of Plaintiffs’ allegations or Defendants’ defenses.

4. Why Did This Case Settle?

The Parties in this action disagree as to the probable outcome of the action with respect to liability and damages if it were not settled. Although Plaintiffs believe their claims and that of the Settlement Class have merit, Plaintiffs recognize that litigating is a risky proposition, and that they may not have prevailed on all or some of their claims. Likewise, while Defendants are confident that they have strong defenses to Plaintiffs’ and the Settlement Class’ claims, they recognize the risks, distractions, and costs involved with litigation. The Parties engaged in direct settlement negotiations and, recognizing the risks and costs inherent in litigation, thereafter reached the proposed settlement of all the claims asserted in the lawsuit.

On [INSERT PRELIMINARY APPROVAL DATE], the Court granted preliminary approval of the proposed settlement, upon finding this proposed settlement is the result of good faith, arm’s-length negotiations between the parties through their respective attorneys. The Court has expressed no opinion on the merits of Plaintiffs’ claims or Defendants’ defenses.

5. What Are The Terms Of The Proposed Settlement And How Much Will I Receive?

Without admitting any fault or liability and in exchange for a release of all claims, Defendants have agreed to pay a total of \$756,465 to create a non-reversionary settlement fund (“Gross Settlement Amount”). The Gross Settlement Amount shall be available to pay each Settlement Class member who has not previously opted out; provided that a portion of the Gross Settlement Amount will be distributed to the PAGA Group (defined below) regardless of whether a Settlement Class Member opts out. Under the proposed settlement, the following amounts will be deducted from the Gross Settlement Amount before any payments are made to employees, subject to final approval by the Court:

- Attorneys’ Fees – up to \$264,762.75
- Attorneys’ Costs of Suit – up to \$40,000
- PAGA Payment – \$50,000 (\$37,500 of the \$50,000 Payment to the Labor & Workforce

Development Agency; and \$12,500 of the \$50,000 in PAGA Penalties will be distributed separately to all PAGA Group Employees, as further explained below).

- Settlement Administration Expenses – up to \$15,000
- Service Award to Class Representative(s) – \$10,000 each (\$30,000 total)

After these deductions, \$356,702.25 will be available for payment to the Settlement Class receiving this notice as the “Net Settlement Amount.” Specifically, each Class Participant shall receive a credit of one work week for each week worked between January 17, 2018 and [INSERT PRELIMINARY APPROVAL DATE]. The proposed method of allocation is fair and reasonable.

PAGA Group Employees¹ will receive an equal portion of the 25% of the PAGA Payment allocated to the PAGA Group Employees (i.e., \$12,500 of the \$50,000), on a pro rata basis. This Individual PAGA Payment shall be made to each and every PAGA Group Employee, including those who submit valid Requests for Exclusion/ Opt-Outs.

Final approval and a determination of attorneys’ fees, attorneys costs, PAGA penalties, settlement administration expenses, and a service award to the class representative are subject to a fairness hearing that will occur on [INSERT FINAL APPROVAL HEARING DATE] in Dept. 1 of the Los Angeles County Superior Court, 312 North Spring Street, Los Angeles California 90012 at XX Pacific Time.

6. What Are Your Options?

As a member of the Settlement Class, you have several options available to you:

PARTICIPATE IN THE SETTLEMENT AND RECEIVE A SETTLEMENT PAYMENT	<u>YOU DO NOT NEED TO DO ANYTHING TO PARTICIPATE IN THE SETTLEMENT AND RECEIVE A SETTLEMENT PAYMENT.</u> By doing nothing, you <u>WILL</u> receive a share of the Settlement proceeds if the proposed Settlement is finally approved, and you will be covered by the release summarized in section 7 below and will therefore give up any rights you may otherwise have to sue Defendants separately regarding certain claims. Your estimated Individual Settlement Amount is [INSERT ESTIMATED INDIVIDUAL SETTLEMENT AMOUNT AS CLASS PARTICIPANT] based on Defendants’ records that indicate you worked [INSERT WORK WEEK VALUE] weeks for Defendants between January 17, 2018 and [INSERT PRELIMINARY APPROVAL DATE]. It is important that if your address has changed, you give your current mailing address to the Settlement Administrator to ensure you receive your share of the Settlement proceeds if the proposed Settlement is finally approved.
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¹ “PAGA Group Employees” shall include and mean all individuals who or were employed by Commercial Lumber & Pallet Co, Inc. in the State of California during the PAGA Covered Period from January 17, 2021 through [INSERT PRELIMINARY APPROVAL DATE].

ASK TO BE EXCLUDED (SUBMIT A VALID REQUEST FOR EXCLUSION/ OPT-OUT) FROM THE CLASS ACTION SETTLEMENT	If you timely request in writing to be excluded from the proposed Settlement, you <u>WILL NOT</u> receive a share of the Net Settlement Amount, and the settlement will not affect any rights you may otherwise have to sue Defendants separately about the same legal claims in this lawsuit, other than those claims brought under the Private Attorneys General Act (PAGA) for civil penalties. Section 9 below explains how to request to be excluded from the settlement. Your written Request for Exclusion/ Opt-Out letter must be postmarked by [REDACTED], 2023. However, if you are a PAGA Group Employee, even if you request to be excluded from of the settlement, you will still receive your pro rata portion of the (\$50,000) PAGA Payment that will be distributed to the PAGA Group Employees. Your estimated Individual PAGA Payment is [INSERT ESTIMATED INDIVIDUAL PAGA PAYMENT].
OBJECT	You may object to the settlement if you did not ask to be excluded from the settlement. If you timely submit in writing an objection to the settlement and the settlement is nonetheless granted final approval, you <u>WILL</u> (i) receive a share of the settlement proceeds and (ii) release legal claims against Defendants. Your written notice of intent to object must be postmarked by [REDACTED], 2023. Note, however, that whereas you may object to the Class Action Settlement portion of the Settlement, you cannot object to the PAGA Portion of the Settlement.
DISPUTE YOUR SETTLEMENT AWARD	You may dispute Defendants' records of number of weeks worked during the Class Period by submitting information to the Settlement Administrator, CPT Group not later than [REDACTED], 2023. CPT Group shall make the final decision based on the information presented by you and Defendants.

7. What Rights Am I Giving Up?

As part of the settlement, Plaintiffs and each member of the Settlement Class (excluding those who elect to exclude themselves from the class settlement) will fully release and discharge Defendants as well their its respective parents, subsidiaries, and affiliates, owners, shareholders, insurers and current and former officers, directors, employees and agents (the "Release").

The Release covers any and all claims, debts, liabilities, demands, obligations, penalties, guarantees, costs, expenses, attorney's fees, damages, action or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, that are alleged, or that reasonably could have arisen out of the same facts alleged in the Action, including, but not limited to claims for: (a) failure to pay regular and minimum wages; (b) failure to pay overtime wages; (c) failure to provide accurate itemized wage statements; (d) failure to pay final wages upon separation of employment; (e) failure to provide timely, duty-free meal periods and/or pay required meal period premiums; (f) failure to provide compliant rest

periods and/or pay rest required period premiums; (g) failure to reimburse necessary expenditures in discharge of duties; (h) failure to maintain required records; (i) failure to pay wages timely during employment; (j) unlawful discount and deduction of entitled wages; (k) any right or claim for damages, unpaid wages, statutory penalties, or civil penalties arising under the California Labor Code or Wage Orders based on the alleged failures set forth above (a)-(j) and which were alleged, or that reasonably could have been alleged based on the facts alleged in the Action; and (l) any right or claim for unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*, based on the alleged failures set forth in (a)-(j) and which were alleged, or that reasonably could have been alleged based on the facts alleged in the Action; and (m) any violation of the California Labor Code arising from or related to the conduct alleged in (a)-(j) and which were alleged, or that reasonably could have been alleged based on the facts alleged in the Action, including violation of California Labor Code sections 201–204, 210, 221, 223, 224, 226, 226.7, 226.3, 300, 510, 512, 558, 558.1, 1182.12, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2802, and violation of IWC Wage Order No. 1, and (m) all claims for unfair business practices under California Business & Professions Code section 17200, *et seq.* that could have been premised on the claims, causes of action or legal theories of relief described above in (a)-(j) and which were alleged, or that reasonably could have been alleged based on the facts alleged in the Action.

The Release does not include any claims for workers compensation, unemployment, or disability benefits of any nature, nor do they include any claims, actions, or causes of action which may be possessed by Settlement Class Members under state or federal anti-discrimination statutes, including, without limitation, the Cal. Fair Employment and Housing Act, the Cal. Government Code § 12940, *et seq.*; the Unruh Civil Rights Act, the Cal. Civil Code § 51, *et seq.*; the California Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000, *et seq.*; the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101, *et seq.*; the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 *et seq.*; the Fair Credit Reporting Act, the Investigative Consumer Reporting Agencies Act (ICRAA), and/or the Consumer Credit Reporting Agencies Act (CCRAA).

8. What Are PAGA Penalties?

PAGA Penalties: \$50,000 of the Gross Settlement Amount is allocated to alleged Private Attorneys General Act (PAGA) civil penalties (“PAGA Penalties”), subject to Court approval. By law, 75% of the PAGA Penalties (*i.e.*, \$37,500) will be paid to the California Labor & Workforce Development Agency and 25% of the PAGA Penalties (*i.e.*, \$12,500) will be distributed to the PAGA Group Employees. Under PAGA, the state of California deputizes private attorney generals, such as Plaintiffs, to prosecute employers for alleged violations of the Labor Code and all employees are entitled to share in the 25% of the penalties that would otherwise be recoverable by the State if it directly prosecuted Defendants for the alleged Labor Code violations.

If this settlement is approved, and you are a PAGA Group Employee, you will receive a portion of the 25% of the PAGA Penalties allocated for distribution to the PAGA Group Employees on a pro rata basis based on your weeks worked during the PAGA Covered Period regardless of whether or not you otherwise submit a valid Request for Exclusion/ Opt-Out of the Settlement.

9. What If I Do Not Wish To Be Part Of The Proposed Settlement?

Anyone not wishing to participate in the class action portion of the proposed settlement may exclude himself or herself (“opt out”) by completing, signing and mailing a Request for Exclusion letter by **XXXX** to the Settlement Administrator as follows.

Settlement Administrator: CPT Group INSERT INSERT INSERT	
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If your Request for Exclusion is postmarked after **XXX**, it will be rejected, and you will be a Settlement Class member and be bound by the Settlement terms.

To be valid, any Request for Exclusion must state something similar to the effect that the Settlement Class member wishes to be excluded from the class settlement and contain the following additional information: (1) the name, employee identification number and/or last four digits of the employee’s social security number for identification purposes; (2) a statement that the Settlement Class member wishes to be excluded from the class settlement such as “I wish to be excluded from the Settlement in Joel Zelaya, et al. vs. Commercial Lumber & Pallet Co, Inc., et al. & Pedro Negrete vs. Commercial Lumber & Pallet Co, Inc. pending in Los Angeles County Superior Court. I understand that in asking to be excluded from the Settlement class, I will not receive any money as part of the settlement approved by the Court”; and (3) be postmarked by the **[INSERT RESPONSE DEADLINE <<forty-five (45) days>>]** and mailed to the Settlement Administrator at the address specified above.

Anyone who submits a timely and valid Request for Exclusion shall not be deemed a Settlement Class member and will not receive payment as part of this proposed settlement, except for his or her pro rata share of the PAGA penalties, if they are a PAGA Group Employee, as outlined above in section 8. Such persons will keep any rights they may otherwise have to sue Defendants separately about the claims made in this lawsuit, other than those brought under PAGA for civil penalties.

10. What If I Have An Objection?

Any objection to the class action portion of the proposed Settlement must be in writing and mailed to the Settlement Administrator (identified above) by **XXXX**. To be valid, any objection must: (1) contain the objecting Settlement Class member’s full name; (2) be postmarked by the **[INSERT RESPONSE DEADLINE]** and mailed to the Settlement Administrator at the address specified above; and (3) should provide each specific reason in support of the objection. Class Members need not include legal arguments for their written objections to be considered.

11. Who Represents The Settlement Class?

The Court has appointed Plaintiffs (Joel Zelaya and Demetrio Montes and Pedro Negrete) as the class representatives and appointed the following Plaintiffs’ attorneys as Class Counsel:

Gregory P. Wong (SBN 204502)
Heather K. Cox (SBN 278898)
BARKHORDARIAN LAW FIRM, PLC
6047 Bristol Parkway, Second Floor
Culver City, CA 90230
Tel: 323-450-2777
Fax: 310-215-3416

Justin F. Marquez (SBN 262417)
Christina M. Le (SBN 237697)
Zachary D. Greenberg (SBN 331501)
WILSHIRE LAW FIRM, PLC
3055 Wilshire Blvd. 12th Floor
Los Angeles CA 90010
Telephone: (213) 381-9988
Facsimile: (213) 381-9989

You do not need to hire your own lawyer because Class Counsel is working on your behalf. However, if you want your own lawyer, including to make any objections to the proposed settlement, you are free to hire one at your own expense.

12. What Happens Next In The Case?

The proposed settlement has only been preliminarily approved. The Court will hold a hearing in Dept. 1 of the Los Angeles County Superior Court, 312 North Spring Street, Los Angeles California 90012 on , 2023, at XX Pacific Time, to consider any objections and determine whether the settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve the settlement of the PAGA representative claim and also Class Counsel's request for attorneys' fees and costs, the costs of settlement administration, and the proposed service award. The hearing may be continued without further notice to you. It is not necessary for you to appear at this hearing. Face masks and/or facial coverings may be required or mandatory at all times to enter any courthouse or courtroom and may be required to be worn covering the nose and mouth. Social distancing may be observed in the courthouse and courtroom in the event you elect to appear at the hearing. If a Class Member would like to arrange to appear by telephone or video conference, please contact Class Counsel and they will make efforts to facilitate that.

13. How Can I Receive More Information?

This Notice is a summary of the basic terms of the proposed settlement. For the precise terms and conditions of the proposed settlement, you may review the detailed "Stipulation of Settlement" on file with the Clerk of the Court as well as the pleadings and other records in this litigation at the Office of the Clerk of the Los Angeles County Superior Court, 213 North Spring Street, Los Angeles, California 90012. You must make an appointment to view documents at the Office of the Clerk.

For further information, you may also call or email Class Counsel (listed above) or the Settlement Administrator (listed above). You may also ask Class Counsel to send you a copy of the Stipulation and Settlement Agreement. The pleadings and other records in this litigation may also be examined at the Office of the Clerk of the Los Angeles County Superior Court, 312 North Spring Street, Los Angeles, California 90012. You must make an appointment to view documents at the Office of the Clerk. Additional information is also available through the Court's online system at <https://www.lacourt.org/>.

Please do not telephone the Court, the Office of the Clerk, or Defendant for information regarding this proposed Settlement.

EXHIBIT C