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Attorneys for Plaintiff Carlos A. Salcido, on behalf of himself and all “aggrieved employees” pursuant to Labor Code § 2698 *et seq.*

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

CARLOS A. SALCIDO, on behalf of
himself and all “aggrieved employees”
pursuant to Labor Code § 2698 *et seq.*,

Plaintiffs,

v.

NCRC, Inc. d/b/a Nationwide Construction
and Repair Company, and DOES 1 through
10, inclusive,

Defendants.

CASE NO: BCV-22-101027

*Assigned to the Hon. Bernard C. Barmann, Div.
H*

**DECLARATION OF DANIEL F. GAINES
IN SUPPORT OF UNOPPOSED MOTION
FOR AN ORDER APPROVING
SETTLEMENT OF CLAIMS BROUGHT
PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT OF 2004,
AWARDING ATTORNEYS’ FEES, COSTS,
ENHANCEMENT AND GENERAL
RELEASE PAYMENT, AND
REIMBURSEMENT OF SETTLEMENT
ADMINISTRATION EXPENSES, AND
DISMISSING ACTION WITH PREJUDICE**

**Date: April 10, 2024
Time: 8:30 A.M.
Div.: H**

Complaint Filed: April 28, 2022

1 I, DANIEL F. GAINES, hereby declare and state as follows:

2 1. I am an attorney duly admitted to the practice of law in the State of California. I am
3 the managing shareholder of Gaines & Gaines, APLC, counsel for Plaintiff Carlos A. Salcido
4 (“Plaintiff”) in this action. I have personal knowledge of the facts set forth herein and if called as
5 a witness to testify to them, I could and would do so competently.

6 **Counsel’s Experience and Recommendation:**

7 2. I obtained my BS degree from the University California at Berkeley in 2003. I
8 majored in Business Administration at the Haas School of Business.

9 3. Thereafter, I attended the University of Virginia School of Law. At Virginia, I was
10 a member of the editorial board of the Virginia Tax Review. I was also the recipient of the Lacy
11 Armour Scholarship, awarded to recognize academic excellence. At Virginia, I focused my studies
12 on tax and real estate. I earned my JD and became a member of the California Bar in 2007.

13 4. Until his retirement, I practiced law with my partner/father, Kenneth, at Gaines &
14 Gaines, APLC. Our practice specializes in litigation, with an emphasis in employment disputes
15 like this one. Over 95% of my practice is devoted to complex employment litigation similar to the
16 instant action.

17 5. As this Court knows, my firm regularly represents employees in complex
18 employment matters such as this one, with an emphasis in wage and hour issues. I have participated
19 in and have been certified as Court-approved class and representative counsel in hundreds of class
20 and representative action matters since my admission to the Bar. Attached hereto as **Exhibit A** is
21 a true and correct list of some of the cases in which I have represented employees in wage and hour
22 matters and been appointed as class and representative counsel.

23 **Background and Procedural History**

24 6. On February 15, 2022, pursuant to Labor Code section 2699.3, Plaintiff gave written
25 notice by online filing with the LWDA and by certified mail, return receipt requested, to Defendant
26 NCRC, Inc. d/b/a Nationwide Construction and Repair Company (“Defendant”) of the specific
27 provisions of the Labor Code alleged to have been violated, including the facts and theories to
28

1 support the alleged violation. On April 28, 2022, and after the LWDA declined to take action within
2 the statutorily permissible time with respect to Plaintiff's February 15, 2022 letter, Plaintiff filed
3 his representative action complaint in this Court.

4 7. A true and correct copy of the notice letter to the LWDA is attached hereto as
5 **Exhibit B.**

6 8. Defendant operates as a construction and repair company in Kern County,
7 California. Plaintiff worked for Defendant in Kern County, California.

8 9. Defendant employed Plaintiff as a non-exempt employee from 2015 through July,
9 2021. The PAGA Members/Aggrieved Employees are all individuals who were employed by
10 Defendant in California as hourly and/or non-exempt employees at any time from February 15,
11 2021 through January 17, 2024.

12 10. Plaintiff asserts claims that Defendant: (1) failed to pay all wages to Plaintiff and
13 other non-exempt PAGA Members due under Labor Code §§ 510, 558, 1194 and 1194.2 and IWC
14 Wage Order 16-2001; (2) failed to pay premium wages to Plaintiff and other non-exempt PAGA
15 Members who were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order
16 No. 16-2001; (3) failed to pay premium wages to Plaintiff and other non-exempt PAGA Members
17 who were denied proper meal periods, in violation of Labor Code §§ 226.7, 512, 558 and IWC
18 Wage Order 16-2001; (4) failed to reimburse Plaintiff and other PAGA Members for necessary
19 business expenses incurred in direct consequence of the discharge of their duties, in violation of
20 Labor Code § 2802; (5) failed to timely pay Plaintiff and other PAGA Members all wages due
21 during their employment, in violation of Labor Code §§ 204 and 210; (6) failed to provide Plaintiff
22 and other non-exempt PAGA Members with wage statements that fully and accurately itemized the
23 requirements set forth in Labor Code § 226(a); and (7) failed to pay Plaintiff and other PAGA
24 Members all wages due at the separation of their employment based on the time frames required
25 by Labor Code §§ 201 and 202. Plaintiff asserts these claims under PAGA, on behalf of herself,
26 individually, and on behalf of the State of California and other PAGA Members, seeking civil
27 penalties for the alleged Labor Code violations.
28

1 11. On or about August 12, 2022, Defendant successfully petitioned the Court to compel
2 Plaintiff's individual claims to arbitration and stay the Action.

3 12. On or about January 18, 2023, Plaintiff filed a Complaint in Arbitration for
4 individual damages and penalties under PAGA.

5 13. On or about December 12, 2023, the Court granted Plaintiff's motion to terminate
6 the Arbitration, lift the stay, and issued the Sanctions Award to my office.

7 14. Defendant filed an appeal of the Sanction Award and the Court's order terminating
8 the arbitration, Court of Appeal, Fifth Appellate District of California, case number F087369,
9 which has been dismissed in connection with this Settlement.

10 **Compliance with Procedural Requirements of PAGA:**

11 15. My office, on behalf of Plaintiff, submitted the Settlement Agreement and Release
12 of Individual Claims and Private Attorneys General Act Claim (the "Settlement Agreement"),
13 together with this Motion and all supporting documents, to the LWDA via online upload on March
14 18, 2024, concurrently with the filing of this Motion.

15 **Counsel's Diligence In Advance of, and In Connection With, Settlement Negotiations:**

16 16. My office engaged in targeted, informal discovery of Defendant's alleged Labor
17 Code violations, which specifically targeted evaluating the strength and value of the PAGA claims
18 in preparation for a resolution of this Action.

19 17. We obtained and reviewed multiple documents, including (i) Plaintiff's wage
20 statements, (ii) policy documents relating to the employment of Plaintiff and PAGA Members, and
21 (iii) data relating to the number of alleged violations and the value of the recoverable penalties,
22 including time and payroll data.

23 18. Based on the information received, as well as through discussions with Defendant's
24 Counsel, my office was able to (i) determine the total number of distinct individuals falling within
25 the definition of "Aggrieved Employee" for the relevant statutory period, (ii) the number of affected
26 pay periods at issue among them, and (iii) construct a damage model that calculated the maximum
27 realistic amount of PAGA penalties that could be levied against Defendant within the PAGA
28

1 Release Period based on employee timekeeping and payroll data produced by Defendant. At all
2 relevant times, Defendant has disputed Plaintiff's claims and contested both the existence of and
3 extent of liability as alleged by Plaintiff.

4 19. Plaintiff contends that Defendant: (1) failed to pay all wages to Plaintiff and other
5 PAGA Members due under Labor Code §§ 510, 558, 1194 and 1194.2 and IWC Wage Order 16-
6 2001; (2) failed to pay premium wages to Plaintiff and other PAGA Members who were denied rest
7 periods, in violation of Labor Code § 226.7 and IWC Wage Order No. 16-2001; (3) failed to pay
8 premium wages to Plaintiff and other PAGA Members who were denied proper meal periods, in
9 violation of Labor Code §§ 226.7, 512, 558 and IWC Wage Order 16-2001; (4) failed to reimburse
10 Plaintiff and other PAGA Members for necessary business expenses incurred in direct consequence
11 of the discharge of their duties, in violation of Labor Code § 2802; (5) failed to timely pay Plaintiff
12 and other PAGA Members all wages due during their employment, in violation of Labor Code §§
13 204 and 210; (6) failed to provide Plaintiff and other PAGA Members with wage statements that
14 fully and accurately itemized the requirements set forth in Labor Code § 226(a); and (7) failed to
15 pay Plaintiff and other PAGA Members all wages due at the separation of their employment based
16 on the time frames required by Labor Code §§ 201 and 202.

17 20. If Plaintiff stacked penalties, the maximum value of the PAGA claims would be
18 approximately \$844,900 (assuming one violation per pay period for all seven claims). However,
19 recovery on these claims was not certain. PAGA claims are discretionary, such that the Court could
20 (and almost certainly would) decline to award their full value. The Court could award far less than
21 the maximum value on these penalty claims, particularly where, as here, they greatly exceed the
22 value of the underlying wage claims. Considering the numerous claims asserted by Plaintiff and
23 the obstacles to prevailing on many of them, it is possible that he would not prevail on one or more
24 of them, such that his PAGA claims as to some or all of her claims would also fail. The
25 compromised settlement amount takes these risks into account. A discount on the maximum value
26 of PAGA Members' claims was required (and warranted) to resolve the matter at this stage of the
27 litigation.
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1 21. After several informal settlement discussions, the Parties reached a resolution of all
2 claims and jointly prepared and executed the Settlement Agreement and Release of Individual
3 Claims and Private Attorneys General Act Claim (the “Settlement” or “Settlement Agreement”).
4 A true and correct copy of the Settlement Agreement is attached hereto as **Exhibit C**.

5 **Settlement Terms:**

6 22. Defendant represents there are approximately 94 PAGA Members who worked up
7 to 1,207 aggregate pay periods during the PAGA Period.

8 23. All PAGA Members will receive a pro rata share of the \$6,875 allocated to PAGA
9 Members, which shall be distributed based on the number of pay periods each Aggrieved Employee
10 worked for Defendant in California during the PAGA Release Period. Although these calculations
11 will not be made until after approval, a rough estimation of the value to the approximately 94
12 individuals falling within the definition of “Aggrieved Employee” may be gleaned from the fact
13 that an equal division would provide about \$73.14 to each Aggrieved Employee, net of payments
14 to the LWDA, the Settlement Administrator, attorney’s fees and costs, and an enhancement and
15 general release payment to Plaintiff. The LWDA will be paid a substantial \$20,625.

16 24. Phoenix Settlement Administrators, a reputable settlement administration company,
17 has agreed to administer the settlement for no more than \$4,000, submitting a competitive bid.

18 25. Finally, under the terms of the Settlement Agreement, the value of checks uncashed
19 more than 180 days after issuance shall be remitted to the Unclaimed Property Fund of the
20 California State Controller’s Office to be held in the name of the Aggrieved Employee. My office
21 regularly receives calls from class members or aggrieved employees years after a case has settled
22 to inquire about obtaining their settlement share because they did not cash their check in time, lost
23 their check, or never received their check. By remitting the unclaimed checks to the State
24 Controller, the PAGA Members have a chance to receive their individual settlement payment after
25 the check cashing deadline.

26 26. This case addresses violations of important employee protections embodied in the
27 California Labor Code – namely, that Defendant: (1) failed to pay all wages to Plaintiff and other
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1 non-exempt PAGA Members due under Labor Code §§ 510, 558, 1194 and 1194.2 and IWC Wage
2 Order 16-2001; (2) failed to pay premium wages to Plaintiff and other non-exempt PAGA Members
3 who were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order No. 16-
4 2001; (3) failed to pay premium wages to Plaintiff and other non-exempt PAGA Members who
5 were denied proper meal periods, in violation of Labor Code §§ 226.7, 512, 558 and IWC Wage
6 Order 16-2001; (4) failed to reimburse Plaintiff and other PAGA Members for necessary business
7 expenses incurred in direct consequence of the discharge of their duties, in violation of Labor Code
8 § 2802; (5) failed to timely pay Plaintiff and other PAGA Members all wages due during their
9 employment, in violation of Labor Code §§ 204 and 210; (6) failed to provide Plaintiff and other
10 non-exempt PAGA Members with wage statements that fully and accurately itemized the
11 requirements set forth in Labor Code § 226(a); and (7) failed to pay Plaintiff and other PAGA
12 Members all wages due at the separation of their employment based on the time frames required
13 by Labor Code §§ 201 and 202.

14 27. Defendant's realistic maximum theoretical exposure in this Action, without stacking
15 penalties, totals approximately \$120,700 computed by multiplying 1,207 aggregate pay periods by
16 \$100 each. There is no California authority that expressly permits the practice of counting multiple
17 violations/penalties that occur within the same pay period, known as "stacking" penalties. My
18 office is aware of no court that has actually stacked such PAGA penalties for multiple violations
19 (meaning the "market" for PAGA settlements is based on no stacking of penalties) and given the
20 circumstances of this case, it is unlikely that this Court would impose a massive penalty by stacking
21 the PAGA penalty claims against Defendant. Based thereon, the non-stacking/one penalty per pay
22 period is an appropriate evaluation for maximum potential exposure in this case.

23 28. Defendant contends it acted within the requirements of California law at all times
24 as to all PAGA Members. In particular, Defendant contends that it timely paid all employees all
25 wages due. Defendant also contends that it has compliant meal and rest break and expense
26 reimbursement practices. Defendant further contends that not every pay period at issue involved
27 an alleged Labor Code violation subject to civil penalties. Moreover, Defendant maintained that
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1 even if the Court did award penalties, the Court could and would substantially reduce the penalties
2 awarded based on the discretionary factors contained in Labor Code § 2699(e)(2). Defendant also
3 argued that it had valid and enforceable arbitration agreements, which could preclude the litigation
4 of PAGA claims on a representative basis altogether, given the United States Supreme Court's
5 ruling in *Viking River Cruises v. Moriana*, 142 S.Ct. 734 (2022).

6 29. Based on these disputes, which had the potential to completely eliminate Plaintiff's
7 recovery, the range of realistic "litigation outcomes" on the Plaintiff's PAGA claim was defined
8 by a "maximum possible liability" amount of approximately \$844,900, and a net-zero recovery
9 based on the defenses asserted by Defendant. Notwithstanding the existence of such issues, the
10 Settlement achieves a significant benefit – approximately 59% recovery of the realistic maximum
11 liability [\$120,700]. As such, this factor weighs very heavily in favor of resolution by way of the
12 compromise set forth in the Settlement Agreement.

13 **Attorneys' Fees:**

14 30. As detailed in the first few paragraphs of this declaration, I have practiced law in
15 California since 2007 and most of that time has been dedicated exclusively to representing
16 employees in wage and hour matters, many of which have been litigated and resolved in the PAGA
17 and class action contexts.

18 31. My law colleague, Alex P. Katofsky, obtained his BA degree from the California
19 State University Northridge in 1993 where he majored in Political Science. Thereafter, he attended
20 the University of the Pacific McGeorge School of Law. At McGeorge, he was a member of the
21 Governing Board of Community Legal Services and was a student teacher of Appellate Advocacy.
22 He also earned the American Jurisprudence Award in Insurance Law. He earned his JD and became
23 a member of the California Bar in 1999. Since his admission to the Bar in 1999, he has devoted his
24 practice to a wide variety of matters, including business disputes, real estate litigation, and wage
25 and hour class action matters. He has substantial involvement in complex litigation like the instant
26 case, and has worked on more than one hundred wage and hour class action cases with Gaines &
27 Gaines.
28

1 32. This case was taken on a contingency basis with the real risk that my office would
2 receive no compensation whatsoever for our efforts. The potential costs which we can be required
3 to advance in wage and hour representative actions like this one are substantial. Furthermore, as
4 described above, my firm has extensive experience in representative action litigation, particularly
5 in the employment context, and as detailed herein, the PAGA Members and the State of California
6 reaped significant benefits. The success achieved by the Settlement supports my firm's fee request.

7 33. This Court can undoubtedly appreciate that litigating a representative action case in
8 dynamic, ever-changing areas of law is not appealing to most lawyers, particularly when the
9 plaintiff's lawyer undertakes the obligation to finance the litigation and effectively bears the risk in
10 the event of an unsuccessful outcome, at trial or otherwise. This case was taken on a contingency
11 basis with the real risk that my office would receive no compensation whatsoever for our efforts.
12 The potential costs which we can be required to advance in wage and hour actions like this one are
13 substantial.

14 34. Notwithstanding the existence of issues having the potential to eliminate recovery
15 on the PAGA claim, the Settlement Agreement not only achieves a recovery that exceeds typical
16 PAGA awards routinely approved by the courts, but it also recovers monies for PAGA Members
17 which they otherwise would not receive.

18 35. Representative action work also requires specialized learning and the willingness to
19 take large risks. My office has extensive experience in wage and hour representative action
20 litigation, particularly in the employment context, as detailed herein.

21 36. Furthermore, as described above, the PAGA Members and the State of California
22 reaped significant benefits. The success achieved by the Settlement supports my firm's fee request.

23 37. A small firm like ours can only properly litigate a limited number of cases at one
24 time. The requirements of this case were significant. Had we not reached a settlement with
25 Defendant, the demands of this case would have required a significant portion of our resources.
26 We were precluded from taking other employment cases due to the demands of litigating this case.

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1 **Counsel's Costs:**

2 38. My firm's total costs are \$1,027.24¹ and include, among other expenses, filing fees,
3 postage, and other typical litigation expenses. A true and correct copy of an itemized list of costs
4 incurred by my firm in this action is attached hereto as **Exhibit D**. These costs were reasonably
5 incurred in litigating this matter.

6 **Plaintiff's Enhancement and General Release Payment:**

7 39. The Parties have agreed that Plaintiff will be paid an enhancement and general
8 release payment in the amount of \$15,000. This payment is intended to recognize the time and
9 effort that Plaintiff spent on behalf of other PAGA Members and the State.

10 40. Without Plaintiff's efforts, there would be no recovery at all. The requested award
11 is appropriate to compensate Plaintiff for the risk and expense he incurred in conferring a benefit
12 on the PAGA Members and the State of California, as well as for his full general release of all
13 claims against Defendant. As a result of the named Plaintiff's efforts, the PAGA Members will
14 receive monetary settlement payments, and the State of California will receive \$20,625 to be put
15 toward education about and enforcement of California's labor laws.

16 41. Plaintiff is also entering into a full general release against Defendant and its
17 Released Parties, which is far broader than the release by other PAGA Members. Specifically,
18 PAGA Members are releasing only limited PAGA civil penalty claims, while Plaintiff is releasing
19 all claims which he asserts or could assert against Defendant. No other Aggrieved Employee is
20 subject to this broad form of release. This broad release by Plaintiff was negotiated (and necessary)
21 to resolve the Action. To resolve the Action, Defendant sought a full general release of Plaintiff's
22 claims.

23 42. The value of Plaintiff's individual wage and hour claims is substantial. Attached
24 hereto as **Exhibit E** is a true and correct copy of Plaintiff's individual damage analysis prepared by
25 my office.

26
27

28 ¹ My office incurred out-of-pocket costs higher than what is allotted for in the Settlement
Agreement. Accordingly, my office is only seeking reimbursement of litigation costs of \$1,000.

43. Without the resolution and release of Plaintiff's individual claims, litigation would continue in a piecemeal fashion. The Parties wished to avoid further litigation, and agreed that a global resolution of Plaintiff's individual claims and the PAGA claims asserted in the Complaint was in the best interest of all parties involved, and thus, a general release by Plaintiff was appropriate.

I declare, under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed on March 18, 2024, at Westlake Village, California.


DANIEL F. GAINES

EXHIBIT A

Adams v. Newell Rubbermaid, USDC – Central District of California (Los Angeles), Case No. EDCV 08-1499 JTM (CTx)

Adams v. Sam's West, Inc., San Bernardino County Superior Court, Case No. CIVDS1403987

Agredano v. GS Brothers, Inc., Los Angeles County Superior Court, Case No. BC445561

Allen v. Toms Sierra Company, Nevada County Superior Court, Case No. CU18-082823

Allen v. Valley Inventory Service, Inc., Solano County Superior Court, Case No. FCS034682

Alvarez v. Pilot Travel Centers, LLC, San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-4605

Alonzo v. Camblin Steel Service, Inc., Placer County Superior Court, Case No. SCV0034165

Amenhotep v. Google, Inc., Santa Clara County Superior Court, Case No. 17CV311528

Anaya v. Progressive Logistics Services, LLC, Riverside County Superior Court, Case No. RIC1308270

Andre v. Newell Rubbermaid, Inc., San Bernardino County Superior Court, Case No. CIVVS1200282

Anduha v. ABC Phones of North Carolina, Inc., Stanislaus County Superior Court, Case No. 2022729

Anslow v. Wellington Energy, Inc., USDC – Northern District of California (San Francisco), Case No. CV11-1596-JCS

Aranda, et al. v. Universal Lumpers of California, Inc., San Joaquin County Superior Court, Case No. STK-UOE-2017-7826

Armendariz v. Integrated Pain Management Medical Group, Inc., Kern County Superior Court, Case No. BCV-19-100267-SDS

Barrow, et al. v. Desmond Foods, L.P., Sacramento County Superior Court, Case No. 34-2015-00187227

Batmanghelich v. Sirius XM Radio Inc., USDC – Central District of California (Los Angeles), Case No. CV 09-9190 VBF (JCx)

Bosser v. Hooked on Solar, Yolo County Superior Court, Case No. CVCV-2016-876

Bourland v. Horizon Personnel Services, Inc., Sacramento County Superior Court, Case No. 34-2014-00161365-CU-OE-GDS

Bowen v. IMI Material Handling Logistics, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-0000192

Branson v. Mladen Buntich Construction, San Bernardino County Superior Court, Case No. CIVDS1609129

Brandt v. Sacramento Auto Insurance Center, Inc., San Joaquin County Superior Court, Case No. 39-2009-00202938-CU-OE-STK

Brown v. 22nd District Agricultural Association, United States District Court, Southern District of California, Case No. 15-cv-2578-DHB

Brown v. Sierra Central Credit Union, Sutter County Superior Court, Case No. CVCS18-0002161

Burgess v. Blue Cross and Blue Shield of South Carolina, San Joaquin County Superior Court, Case No. 39-2012-00277449-CU-BT-STK

Burgess v. Strategic Retail Solutions, LLC, Los Angeles County Superior Court, Case No. BC413791

Calhoun v. Celadon Trucking Services, Inc., USDC – Central District of California (Los Angeles), Case No. 5:16-cv-01351-PSG-FFM

Caporicci v. Owens & Minor Distribution, Inc., San Joaquin County Superior Court, Case No. 39-2013-00295662-CU-OE-STK

Carl v. Advanced Call Center Technologies, LLC, Sacramento County Superior Court, Case No. 34-2013-00148310

Carlisle, et al. v. Professional Technical Security Services, Inc., Case No. CGC18569791

Carrete v. Gamestop, Inc., Imperial County Superior Court, Case No. ECU08501

Carrillo v. Bimbo Bakeries, Inc., San Bernardino County Superior Court, Case No. CIVDS1606813

Caudillo v. Aegis Treatment Centers, LLC, Merced County Superior Court, Case No. 18CV-0744

Cerami v. Metlife, Inc., USDC – Central District of California (Orange County), Case No. 11-CV-00681-CJC (MLGx)

Charles v. Aaron's Inc., Los Angeles County Superior Court, Case No. BC431468

Charles v. Nursefinders, LLC, Imperial County Superior Court, Case No. ECU07422

Cheifer v. JetBlue Airways Corporation, Los Angeles County Superior Court, Case No. BC451887

Cheifer, et al. v. WHGM, Inc., Los Angeles County Superior Court, Case No. LC104900

Chong, et al. v. Crescent Northwoods Inn, Inc., Del Norte County Superior Court, Case No. CVUJ-2018-1133

Church v. GameStop, Inc., et. al., USDC – Central District of California (Los Angeles), Case No. 11-CV-00132-VAP-RZ

Clothier v. Spar Marketing Services, Inc., Alameda County Superior Court, Case No: RG12-639317

Coleman v. Wireless Lifestyle, Inc., USDC – Western District of Missouri, Case No. 4:12-cv-00855-ODS

Colombo-Beyeler, et al. v. Viking River Cruises, Inc., San Bernardino County Superior Court, Case No. CIVDS1611608

Conlee v. Clark Pacific Corporation, Yolo County Superior Court, Case No. CV14-1409

Contreras v. Osmose Utilities Services, Inc., San Bernardino County Superior Court, Case No. CIVDS1513998

Contreras v. West American Service Corporation, Kings County Superior Court, Case No. 14C0280

Corona v. Yosemite Meat & Locker Service, Inc., Stanislaus County Superior Court, Case No. 2006828

Cortellessa v. Dotnext, Inc., Alameda County Superior Court, Case No. RG09429971

County v. Ingram Mirco, Inc., San Bernardino Superior Court, Case No. CIVRS 1304445

Covarrubias, et al. v. Petersendean Builder Group, Inc., Kern County Superior Court, Case No. BCV-16-101122

Cowen, et al. v. Evergreen Alliance Golf Limited, L.P., d/b/a Arcis Golf, San Bernardino County Superior Court, Case No. CIVDS1719283

Cruz-Garcia v. Lemonade Restaurant Group, LLC, Los Angeles County Superior Court, Case No. BC478205

Cunningham v. Performance Contracting, Inc., Contra Costa County Superior Court, Case No. C16-02157

Dabney v. Coneybeare, LLC, et al., Orange County Superior Court, Case No. 30-2018-00999989-CU-OE-CXC

Dabney, et al. v. Panera, LLC., San Bernardino County Superior Court, Case No. CIVDS1516030

Diaz, et al. v. Seaworld Entertainment, Inc., Imperial County Superior Court, Case No. ECU10046

Diggs v. Western Waterproofing Company, Inc., San Francisco County Superior Court, Case No. CGC-14-539281

Dismuke v. Rhodes Retail Services, Inc., Sacramento County Superior Court, Case No. 34-2011-00105001

Dorsette v. TA Operating, LLC, USDC – Central District of California (Los Angeles), Case No. EDCV 09-1350 PA (RZx)

Duran v. The Image of California, Inc., Kern County Superior Court, Case No. S-1500-CV-284056 DRL

Edwards v. Trans World Entertainment Corp., San Diego County Superior Court, Case No. 37-2010-00095123-CU-OE CTL

Esakhani v. Central Valley Gaming, Stanislaus County Superior Court, Case No. 2020667

Escobar v. SMSSI of California, Inc., San Francisco Superior Court, JCCP No. 4776

Espinosa v. Taltech Construction, et al., Los Angeles County Superior Court, Case No. BC590176

Espinosa v. Bodycote Thermal Processing, Inc., Los Angeles County Superior Court, Case No. BC501617

Espinoza v. Pabco Building Products, LLC, Los Angeles County Superior Court, Case No. VC065660

Estrada v. Net Source Communications, Inc., Los Angeles County Superior Court, Case No. BC431169

Estrada v. OS Restaurant Services, LLC, Santa Clara County Superior Court, Case No. 16CV293249

Estupinan v. Global Development Strategies, Inc., Santa Clara County Superior Court, Case No. 110CV178898

Fadhl. v. Siemens Healthcare Diagnostics Inc., Sacramento County Superior Court, Case No. 34-2017-00209518

Fernandez v. The Regents of the University of California, Los Angeles County Superior Court, Case No. BC656256

Ferrer v. Dish Network Corporation, Los Angeles County Superior Court, Case No. BC441354

Findora v. Barry Callebaut USA LLC, Napa County Superior Court, Case No. 19CV000219

Flores v. Cintas Corporation, Los Angeles County Superior Court, Case No. BC400422

Friel v. Midwest Construction Services, Inc., San Joaquin County Superior Court, Case No. 39-2015-00329204-CU-OE-STK

Gagnon v. Banc of California, Contra Costa County Superior Court, Case No. C 15-00196

Galarza v. Bayou Well Services, LLC, Kern County Superior Court, Case No. S-1500-CV-279372 DRL

Galarza v. C & H Testing Service LLC, Kern County Superior Court, Case No. BCV-15-100008 SPC

Garcia v. Old Dominion Freight Line, Inc., San Bernardino County Superior Court, Case No. CIVDS1404636

Geer v. Applied Aerospace Structures Corp., San Joaquin County Superior Court, Case No. 39-2014-00313702-CU-OE-STK

Getz v. California Cinema Investments, Inc., Ventura County Superior Court, Case No. 56-2013-00437706-CU-MC-VTA

Gibbs v. M. Lehmann Enterprises, Orange County Superior Court, Case No. 30-2013-00678538-CU-OE-CXC

Gilles v. Schaefer Ambulance Service Inc., Imperial County Superior Court, Case No. ECU07970

Goldman, et al. v. Defender's, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-0009973

Gomez v. Low Desert Empire Pizza, Inc., San Bernardino County Superior Court, Case No. CIVVS900392

Gomez v. Pizza Hut of Southeast Kansas, Inc., San Bernardino County Superior Court, Case No. CIVVS900679

Gonzalez v. Harris Farms, Inc., USDC – Eastern District of California (Fresno), Case No. 1:14-cv-00038-LJO-SAB

Guerrero v. Main Electric Supply Company LLC, Ventura County Superior Court, Case No. 56-2019-00525427-CU-OE-VTA

Gutierrez v. Asset Management Specialists, Inc., Fresno County Superior Court, Case No. 12CECG03577

Gutierrez v. Linkus Enterprises, Inc., Madera County Superior Court, Case No. MCV065774

Gutierrez v. Shiekh, LLC, San Bernardino County Superior Court, Case Nos. CIVRS1206525, CIVRS1303408

Hairston v. Stanislaus Surgical Hospital, Stanislaus County Superior Court, Case No. CV-19-000651

Hindman v. Service Quick, Inc., San Bernardino County Superior Court, Case No. CIVDS1724229

Hogan v. iMobile of CA LLC, San Bernardino County Superior Court, Case No. CIVDS1409263

Hogan v. Wireless Evolution Inc., Riverside County Superior Court, Case No. MCC1300669

Hogan v. Wireless That's It! LLC, Riverside County Superior Court, Case No. RIC1201997

Holmes v. Bottling Group, LLC, Stanislaus County Superior Court, Case No. 2022584

Hooper, et al. v. URS Midwest, Inc., et al., San Bernardino Superior Court, Case No. CIVDS1607489

Humphrey v. Freedomroads, LLC, Shasta County Superior Court, Case No. 178228

Hurtado v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC427672

Hyde v. Dent Wizard International Corporation, Sacramento County Superior Court, Case No. 34-2015-00173882

Ibrihim v. Imperfect Foods, Inc., San Joaquin County Superior Court, Case No. STK-VI-UOE-2019-0000846

Id-deen v. Educational Services of America, Solano County Superior Court, Case No. FCS040803

Isherwood v. Mason Dixon Intermodal, Inc., San Joaquin County Superior Court, Case No. 39-2012-00279891-CU-OC-STK

Jahanbin v. Pacific Mercantile Bank, Orange County Superior Court, Case No. 30-2011-00480705CU-OE-CXC

Jenkins v. Sedgwick Claims Management Services, Inc., Los Angeles Superior Court, Case No. LC101648

Job v. California Security Services, Yuba County Superior Court, Case No. 14-0000820

Johnson v. The Goodyear Tire & Rubber Company, USDC – Northern District of California (San Francisco), Case No. 3:13-cv-01069-MMC

Jolin v. Bay Cities Recovery, Inc., El Dorado County Superior Court, Case No. PC20100458

Jordan v. Sutter Memorial Hospital, Stanislaus County Superior Court, Case No. 2023344

Keebaugh v. Mike Thompson Recreational Vehicles, San Bernardino County Superior Court, Case No. CIV-DS-1500718

Kelly v. Robin's Enviro Vac, Inc., Kern County Superior Court, Case No. S-1500-CV-282277
DRL

King v. Levy Premium Foodservice Limited Partnership, Alameda County Superior Court, Case No. HG15786353

Kunsman v. Punch Bowl Sacramento, LLC, et al., Sacramento County Superior Court, Case No. 34-2018-00243175

LaFear v. Encore Education Corporation, San Bernardino County Superior Court, Case No. CIVDS1802251

Lanzarin v. AWI Management Corporation, Solano County Superior Court, Case No. FCS041809

Lee, et al. v. Foster Dairy Farms, Stanislaus County Superior Court, Case Nos. 2006542, 2015679

Lemus, et al. v. Eastridge Workforce Technology, Inc., San Bernardino County Superior Court, Case No. CIV-DS-1611470

Lewis v. American Casino & Entertainment Properties LLC, San Bernardino County Superior Court, Case No. CIVDS1719094

Lemus v. On Assignment Staffing Services, San Bernardino County Superior Court, Case No. CIV-DS-1600497

Leon v. Piercey West Inc., Los Angeles County Superior Court, Case No. BC656874

Lopez v. Creative Communication Technologies, Inc., Imperial County Superior Court, Case No. ECU07851

Lopez v. Go Green Auto Spa Franchise, Inc., et al., Los Angeles County Superior Court, Case No. BC 562212

Lopez v. Truck Accessories Group, LLC, Yolo County Superior Court, Case No. CV13798

Ludlow v. Prince Telecom, LLC, Stanislaus County Superior Court, Case No. 684239

Luna v. Express Locations, LLC, Imperial County Superior Court, Case No. ECU09779

Macias v. American Tire Distributors, Inc., Kern County Superior Court, Case No. BCV-18-101586

Maldonado v. Hardwood Flooring Liquidators, Inc., Los Angeles County Superior Court, Case No. BC642170

Mansfield v. Cambridge Real Estate Services, Inc., Butte County Superior Court, Case No. 160175

Martinez v. DPI Specialty Foods West, San Joaquin County Superior Court, Case No. 39-2015-00327311-CU-OE-STK

Martinez v. Styles For Less, Inc., San Bernardino County Superior Court, Case No. CIVVS1203057

Mayne v. John Muir Behavioral Health, Contra Costa County Superior Court, Case No. C17-00998

Maze v. Bulldog Freightway, Inc., Imperial County Superior Court, Case No. ECU08716

McCormick v. G & O Body Shop, Inc., El Dorado Superior Court, Case No. PC20130291

McCrary v. Campbell Soup Supply Company, San Joaquin County Superior Court, Case No. 39-2013-00297698-CU-OE-STK

McDaniel v. Vancary, Inc., Tulare County Superior Court, Case No. 268036

Melgar-Farela v. Guardian Compliance, Inc., Los Angeles County Superior Court, Case No. BC481865

Mendiola v. Tyco Electronics Corporation, Riverside County Superior Court, Case No. RIC1400721

Mettler v. Les Schwab Tire Centers of California, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-476

Miller v. California Subshine, Inc., Los Angeles County Superior Court, Case No. BC637754

Miller v. Southwest Airlines Co., USDC – Northern District of California (San Francisco), Case No. 3:12-cv-05978-CRB

Mitchell v. Crossmark, Inc., USDC – Central District of California (Los Angeles), Case No. CV 11-2818-JAK (FMOx)

Moghrabi v. Vitaligent, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-1650

Molina v. Berkshire Hathaway Energy Company, et al., Imperial County Superior Court, Case No. ECU000522

Moore v. Horizon Solar Power, Inc., San Bernardino County Superior Court, Case No. CIVDS1410001

Murray v. Select Media Services, LLC, Los Angeles County Superior Court, Case No. BC424506

Myles v. Central Transport LLC, San Bernardino County Superior Court, Case No. CIVDS1401434

Navarro v. Mariana Packing Co., Inc., Solano County Superior Court, Case No. FCS045935

Nehrlich, et al. v. RPM Mortgage, Inc., Orange County Superior Court, Case No. 30-2013-00666783-CU-OE-CXC

Overton v. Hat World, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:11-CV-01645-LKK-KJN

Perez v. Alcatel-Lucent USA Inc., Imperial County Superior Court, Case No. ECU07977

Perez v. Major Gloves and Safety, Inc., San Bernardino County Superior Court, Case No. CIVDS1710445

Perry v. Cardinal Health 200, LLC, Solano County Superior Court, Case No. FCS035303

Phraxayavong-Briones v. RSM, Inc., Sacramento County Superior Court, Case No. 34-2012-00117524

Pugh v. Wi Spa, LLC, Imperial County Superior Court, Case No. ECU07932

Quist v. Knight Transportation, Inc., San Bernardino Superior Court, Case No. CIVDS 1615414

Quitco v. Aviation Fuel Systems Repair, Inc., San Bernardino Superior Court, Case No. CIVRS1302311

Rambeau v. C.C.M. Corporation, et al., Sacramento County Court, Case No. 34-2018-00244842

Rankins v. Roman Empire Living Skills, Inc., Los Angeles County Superior Court, Case No. BC713399

Rees v. Advantel, Incorporated, Santa Clara County Superior Court, Case No. 16-CV-292219

Renfrow v. Janra Enterprises, Inc., Sacramento County Superior Court, Case No. 3402010-00080471

Reynolds v. Diamond Pet Food Processors of Ripon, San Joaquin County Superior Court, Case No. 39-2014-00310818

Richard v. A-Para Transit Corp., Alameda County Superior Court, Case No. HG17870373

Richardson v. TEC Equipment, Inc., et al., Los Angeles County Superior Court, Case No. VC065536

Robles v. North County Health Project Incorporated, San Diego Superior Court, Case No. 37-2014-00001751-CU-OE-NC

Rodas v. Monetary Management of California, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:14 cv 01389 TLN AC

Rodriguez v. 20/20 Plumbing & Heating, Inc., San Bernardino County Superior Court, Case No. CIVDS1705362

Rodriguez v. Commerce Distribution Company, Los Angeles County Superior Court, Case No. BC656259

Rodriguez v. Valley Oak, San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-7980

Roden v. Service Champions, San Bernardino County Superior Court, Case No. CIVDS1613183

Russell v. Bradshaw International, Imperial County Superior Court, Case No. ECU00853

Rutledge, et al. v. Healthport Technologies, LLC, Alameda County Superior Court, Case No. RG16835813

Sabala v. Econtactlive, Inc., Stanislaus County Superior Court, Case No. 684981

Sabatier v. Picture Perfect Installation, Inc., Riverside County Superior Court, Case No. RIC10004953

Salameh v. Sonomaidence OPCO, LLC, Sonoma County Superior Court, Case No. SVC264228

Salazar v. Tag-3 Medical Investment Group, LLC, Los Angeles County Superior Court, Case No. BC527698

Salbeck v. Ingredion Incorporated, San Joaquin County Superior Court, Case No. STK-UOE-2017-0012622

Sampson v. Healthnet of California Inc., Sacramento County Superior Court, Case No. 34-2015-00183785-CU-OE-GDS

Sanchez v. Don Roberto Jewelers, Inc., Imperial County Superior Court, Case No. ECU06819

Sanders v. Lionakis, Sacramento County Superior Court, Case No. 34-2017-00223601

Santana v. United Staffing Associates, LLC, Tulare County Superior Court, Case No. 249338

Schrader v. Adidas Promotional Retail Operations, Inc., Los Angeles County Superior Court, Case No. BC414168

Sebrell v. Pomeroy IT Solutions, San Bernardino County Superior Court, Case No. CIVDS1721560

Seymour v. Quest Service Group, LLC, Sacramento County Superior Court, Case No. 34-2017-00206917

Silva v. Trical, San Benito County Superior Court, Case No. CU-16-00218

Simler v. Polly's Inc., Riverside County Superior Court, Case No. RIC 1117862

Sipin, Scott v. Salesforce.com, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2019-0004629

Skuro v. BMW of North America, LLC, USDC – Central District of California (Los Angeles), Case No.: CV 10-8672-GW (FFMx)

Smith v. Steelcase, Inc., San Bernardino County Superior Court, Case No. CIVDS1725850

Sohal v. Foster Poultry Farms, Stanislaus County Superior Court, Case No. 2026605

Solomon v. City of Los Angeles, Los Angeles County Superior Court, Case No. BC570345

Solano v. Vozzcom, Inc., Imperial County Superior Court, Case No. ECU09519

Smith, et al. v. Sente Development, Inc., Sacramento County Superior Court, Case No. 34-2016-00196614

Solorzano v. FDS Manufacturing Corporation, Los Angeles County Superior Court, Case No. BC542532

Solowitz v. BakeMark USA LLC, Los Angeles County Superior Court, Case No. BC467838

Spampinato v. Wind & Sea Restaurants, Inc., San Bernardino County Superior Court, Case No. CIVVS1205154

Spitzer, et al. v. FRHI Hotels & Resorts (Canada) Inc., San Bernardino County Superior Court, Case No. C IVDS1712220

Stephens v. C.S., Inc., Riverside County Superior Court, Case No. PSC1301224

Stevenson v. Harvest Management Sub LLC, Ventura County Superior Court, Case No. 56-2011-00397420-CU-OE-SIM

Thompson v. Continental Labor Resources, Inc. d/b/a Continental Labor & Staffing Resources, Kern County Superior Court, Case No. S-1500-CV-278751-DRL

Thompson v. Sidhu Truck Line, Inc., Kern County Superior Court, Case No. BCV-15-101308-DRL

Tigas v. Ajilon Communications, Los Angeles County Superior Court, Case No. BC409737

Torres v. Coastal Employment Inc., Los Angeles County Superior Court, Case No. BC529207

Tran v. CSP Fiber Services, San Bernardino County Superior Court, Case No. CIVDS172758

Tripp v. California Guest Services, Inc., Plumas County Superior Court, Case No. CV16-00036

Valdez v. Diamond Landscaping, Inc., Los Angeles County Superior Court, Case No. BC497097

Valencia v. American Team Managers, Inc., Orange County Superior Court, Case No. 30-2016-00857365-CU-CR-CXC

Van Son v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC494747

Vasquez v. Schurman Fine Papers, San Joaquin County Superior Court, Case No. STK-CV-LMC-2015-10035

Velasquez v. Modesto Ventures, LLC, Sacramento County Superior Court, Case No. 32-2012-00126159

Victoria v. Bali Limousines Inc., San Mateo County Superior Court, Case No. CIV507774

Victorian v. Vision X, Inc., Los Angeles County Superior Court, Case No. BC400333

Wade v. Frito Lay, Kern County Superior Court, Case No. BCV-17-102014

Walls v. E. & J. Gallo, Stanislaus County Superior Court, Case No. 2015874

Warner v. Waterdrops Express Car Wash, LLC, Tulare County Superior Court, Case No. 265708

Waybright v. EAH, Inc., Stanislaus County Superior Court, Case No. 2011677

Weiss v. C.A.R. Enterprises, Inc., Riverside County Superior Court, Case No. RIC1113165

White v. Sally Beauty Supply, LLC, Imperial County Superior Court, Case No. ECU08177

Williams v. Dennis Dillon RV, LLC, San Bernardino County Superior Court, Case No. CIVDS 16006879

Williams v. Closet World, Inc., Los Angeles County Superior Court, Case No. BC400178

Williams v. Progress Rail Services Corporation, Kern County Superior Court, Case No. S-1500-CV-280236 DRL

Wing v. Three Group, Inc., Los Angeles County Superior Court, Case No. BC643883

Wilson v. ALSCO, Inc., Imperial County Superior Court, Case No. ECU07406

Wilson v. Michael C. Stead, Inc., Contra Costa Superior Court, Case No. C1400135

Winningham v. Storer Transportation Service, San Joaquin County Superior Court, Case No. 39-2015-00324708-CU-STK

Woody v. WBN Home Design, San Bernardino County Superior Court, Case No. CIVDS1613367

Woods, et al. v. F&B Innovations, LLC, San Bernardino County Superior Court, Case No. CIVDS1717765

Woodyard v. Bellus ALC Acquisition, LLC, USDC – Central District of California (Los Angeles), Case No. 2:13-cv-05285 SJO AGRx

Wright v. Social Vocational Services, Inc., Kern County Superior Court, Case No. BCV-15-101264

Ybarra v. New Legend, Inc., Sutter County Superior Court, Case No. CVCS-16-2097

Zaragoza v. Center Automotive, Inc., Los Angeles Superior Court, Case No. BC505194

EXHIBIT B

GAINES & GAINES

A PROFESSIONAL LAW CORPORATION

WWW.GAINESLAWFIRM.COM

27200 AGOURA ROAD, SUITE 101

CALABASAS, CALIFORNIA 91301

PHONE (818) 703-8985

FAX (818) 703-8984

February 15, 2022

Via Certified Mail

Labor & Workforce Development Agency
By online submission

NCRC, Inc. dba Nationwide Construction and Repair Company
1280 Liberty Way, Ste D
Vista CA 92081

Defendant mailed certified # 70190700000201201831

Agent for Service of Process for NCRC, Inc. dba Nationwide Construction and Repair Company
David Marabella
1280 Liberty Way, Ste D
Vista CA 92081

Agent mailed certified # 70190700000201201848

Re: ***Labor Code Violations of NCRC, Inc. dba Nationwide Construction and Repair Company – Compliance Letter of California Labor Code § 2698 - Private Attorneys General Act***

Dear LWDA:

This office represents Carlos A. Salcido, a former non-exempt California employee of NCRC, Inc. dba Nationwide Construction and Repair Company (“Defendant”). The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.*

Our client was employed by Defendant in Southern California. Herein, we set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to our client and other of its California employees (“Aggrieved Employees”).

Our client claims that Defendant failed to pay him and other non-exempt Aggrieved Employees all wages due, in violation of Labor Code §§ 510, 558, 1194 and 1194.2 and IWC Wage Order 16-2001. Our client and other non-exempt Aggrieved Employees worked off-the-clock: they were required to clock out and spend an additional 15 to 20 minutes off-the-clock cleaning up the job site, without pay. In addition, our client and other non-exempt Aggrieved Employees were not always paid premium overtime wages at one-and-a-half times their regular rate of pay. Instead, they were sometimes paid overtime wages at one-half or at their regular hourly rate. Defendant also required our client and other non-exempt Aggrieved Employees to be on-call on the days they were not scheduled to work and our client was told to not make any plans for the day. If they were not called in to work, Defendant would not compensate them for any time worked that day, notwithstanding the fact they were subject to Defendant’s control during this on-call time. An employer is obligated to pay the wages of an hourly employee for all time that the employee is

under the control of the employer, and this includes all the time the employee is suffered or permitted to work, whether or not required to do so. When our client and other non-exempt Aggrieved Employees were on-call, they were under the control of Defendant and required to be compensated for all hours worked. Defendant, however, failed to do so. These instances deprived our client and other non-exempt Aggrieved Employees of significant hours worked and minimum and overtime wages due, and constitute violations of Labor Code §§ 510, 558, 1194, and 1194.2 and IWC Wage Order 16-2001.

Our client alleges that Defendant failed to pay premium wages to him and other non-exempt Aggrieved Employees who were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order No. 16-2001. Our client and non-exempt Aggrieved Employees were routinely unable to take a 10-minute rest period for every four (4) hours of work or major fraction thereof, but were not paid premium wages of one hour's pay for each missed rest period. When they were able to take a rest period, they were oftentimes late or cut short. This violates Labor Code §§ 226.7, 510 and 1194 and IWC Wage Order No. 16-2001.

Defendant failed to pay premium wages to our client and other non-exempt Aggrieved Employees who were denied proper meal periods, in violation of Labor Code §§ 226.7, 512, 558 and IWC Wage Order 16-2001. Our client and non-exempt Aggrieved Employees were routinely denied, and not authorized to take, a proper, timely, uninterrupted, 30-minute meal period for every shift worked that exceeded five hours, or a second proper, timely, uninterrupted, 30-minute meal period for every shift worked that exceeded ten hours, but were not paid premium wages of one hour's pay for each missed first or second meal period. When they were able to take a meal period, they were late or short. This violates Labor Code §§ 226.7, 510, 512, 558, and 1194 and IWC Wage Order 16-2001.

Defendant also failed to reimburse our client and other Aggrieved Employees for necessary business expenses incurred in direct consequence of the discharge of their duties, in violation of Labor Code § 2802, including, but not limited to, the use of their personal cellular phones and the use of their personal vehicles while working for Defendant. Labor Code § 2802 requires that an employer must indemnify its employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of their duties, and Defendant's failure to do so has violated this section.

Our client and other Aggrieved Employees were not paid their wages timely, in violation of Labor Code §§ 204 and 210. Defendant paid our client and other Aggrieved Employees on a bi-weekly basis but failed to issue them all their wages within seven calendar days of the conclusion of the payroll period, as required by Labor Code § 204(d); our client and other Aggrieved Employees were paid ten or more days after the close of a pay period. This subjects Defendant to penalties as authorized by Labor Code § 210.

Our client further alleges that Defendant failed to provide him and other non-exempt Aggrieved Employees with wage statements that fully and accurately itemized the requirements set forth in

Labor & Workforce Development Agency
NCRC, Inc. dba Nationwide Construction and Repair Company
David Marabella
February 15, 2022
Page 3

Labor Code § 226(a). Our client and other non-exempt Aggrieved Employees were not paid all wages due, as stated above. As such, the wage statements provided by Defendant failed to accurately state all gross wages earned, in violation of Labor Code §§ 226(a)(1) and 226.3, total hours worked, in violation of Labor Code §§ 226(a)(2) and 226.3, net wages earned, in violation of Labor Code §§ 226(a)(5) and 226.3, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, in violation of Labor Code §§ 226(a)(9) and 226.3.

Our client alleges that Defendant failed to pay him and other Aggrieved Employees all wages due at the separation of their employment based on the time frames required by Labor Code §§ 201 and 202. As stated above, our client and other non-exempt Aggrieved Employees were not paid all wages due during the course of their employment and, as a result of this failure, they were not timely paid all wages due at the separation of their employment. Furthermore, when our client was terminated, he was not issued his final wages at the time of his termination—rather, he was issued his final wages over a week later. Our client alleges that Defendant maintains a policy to untimely pay final wages to its former Aggrieved Employees. This violates Labor Code §§ 201-202 and is alleged on behalf of our client and certain Aggrieved Employees no longer employed by Defendant.

The \$75 PAGA filing fee has been mailed to the LWDA concurrently with the transmission of this letter.

We invite Defendant or its attorney to contact our office to discuss this matter, including whether an early resolution of the claims can be reached.

Our office awaits your response.

Very truly yours,

GAINES & GAINES
A Professional Law Corporation

By: 

EVAN S. GAINES

EXHIBIT C

**SETTLEMENT AGREEMENT AND RELEASE OF INDIVIDUAL CLAIMS AND
PRIVATE ATTORNEYS GENERAL ACT CLAIM**

This Settlement Agreement and Release of Individual Claims and Private Attorneys General Act Claim ("Settlement Agreement") is made by and between, on the one hand, Carlos Salcido ("Plaintiff"), individually, and on behalf of all other similarly situated PAGA Members and the State of California, and on the other hand, NCRC, Inc. d/b/a Nationwide Construction and Repair Company ("Defendant"). Plaintiff and Defendant are collectively referred to herein as the "Parties" and may be individually referred to as a "Party."

A. Definitions

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

1. "Action" or "Lawsuit" means and refers to *Carlos Salcido, et al. v. NCRC, Inc. d/b/a Nationwide Construction and Repair Company*, Kern County Superior Court Case No. BCV-22-101027. The operative complaint in the Action is the Representative Action Complaint filed on April 28, 2022.
2. "Arbitration" means and refers to *Carlos Salcido v. NCRC, Inc., d/b/a Nationwide Construction and Repair Company*, JAMS Ref. No. 5220002437.
3. "Active Date" means the latest of: (i) the Effective Date, if no objection is made or filed to the Settlement Agreement; (ii) if an objection is made or filed, but no appeal is filed, the expiration of the deadline for any appeals; and (iii) if an objection is made or filed, and an appeal is filed, the date that an appeal is resolved resulting in a court order approving this Settlement Agreement.
4. "Agreement" or "Settlement Agreement," shall mean this Settlement Agreement and Release of Individual Claims and Private Attorneys General Act Claim, together with all attached Exhibits.
5. "Attorneys' Fees and Costs" means the sum for which Plaintiff's Counsel shall make application to the Court, that shall not exceed one-third of the Gross Settlement Amount (estimated to be \$23,750), and actual litigation costs, not to exceed \$1,000, which shall be paid out of the Gross Settlement Amount.
6. "Court" shall mean the Superior Court of the State of California, County of Kern.
7. "Defendant's Counsel" means and refers to Keegan & Baker, LLP.
8. "Effective Date" means the date the Court approves the terms of the Settlement set forth in this Agreement and has entered the Final Order.
9. "Eligible Pay Period" means any pay period worked by a PAGA Member in California in a non-exempt position for Defendant at any time during the PAGA Period. Defendant represents there are 1,207 Eligible Pay Periods worked by PAGA Members from February 15, 2021 through September 1, 2023. If the actual number of pay periods increases by more than ten percent (10%) (i.e., if the total number of pay periods exceeds 1,327), Defendant will increase the Gross Settlement Amount proportionately for each pay period in excess of 1,327 (the "Escalator Payment").

10. "Final Order" means the Court's Order granting the Stipulation or Motion for Approval of the PAGA Settlement set forth in this Agreement, and dismissing the Action with prejudice.
11. "Funding Date" means fifteen (15) calendar days after the Active Date.
12. "Gross Settlement Amount" or "GSA" means the maximum settlement amount that Defendant will pay in connection with the Settlement of the Action. The GSA is Seventy-One Thousand Two Hundred Fifty Dollars (\$71,250), subject to the Escalator Payment memorialized in Paragraph 9, above. No part of the GSA shall revert to Defendant under any circumstances. Defendant shall pay no more and no less than the GSA to resolve the Action as described herein.
13. "LWDA Payment" means seventy-five percent (75%) of the PAGA Penalty Fund that shall be paid to the California Labor & Workforce Development Agency ("LWDA") pursuant to the PAGA for civil penalties.
14. "Net Settlement Amount" or "PAGA Penalty Fund" is the amount that remains after deduction of Plaintiff's Counsel's Attorneys' Fees and Costs, Plaintiff's General Release Payment, and the Settlement Administrator's fees and costs from the Gross Settlement Amount.
15. "Notice" means the written notice to be mailed to all PAGA Members with their settlement payment checks, once the Court enters its Final Order, and the Active Date occurs, in a form substantially similar to **Exhibit A**, and as approved by the Court.
16. "PAGA Member(s)" means any and all individuals who were employed by Defendant in a non-exempt position for at least one Eligible Pay Period in California during the PAGA Period.
17. "PAGA Settlement" or "Settlement" means the settlement of the Action memorialized in this Agreement.
18. "PAGA Period" or "Statutory Period" means the time period from February 15, 2021 through January 17, 2024.
19. "Plaintiff's Counsel" means Gaines & Gaines, APLC.
20. "Individual Claims" means all claims for wages, damages, penalties, interest, attorneys' fees and claims for individual PAGA penalties that were brought or could be brought by Plaintiff in Arbitration arising out of or related to his employment.
21. "Plaintiff's General Release Payment" means and refers to the individual settlement payment to Plaintiff in the amount of up to Fifteen Thousand Dollars (\$15,000) as consideration for Plaintiff's execution of this Agreement, including his general release of Individual Claims as to the Released Parties.
22. "Released Parties" means Defendant, and each and all of its past, present, and future subsidiaries, officers, directors, members, partners, owners, shareholders, employees, former employees, agents, servants, attorneys, assigns, affiliates, independent contractors, volunteers, predecessors, successors, parent companies and organizations, dual employers, service providers, contracting partners, subcontractors, employee benefit plans and

fiduciaries thereof, and all other persons and/or entities acting under, by, through, or in concert with any of them.

23. “Sanctions Award” refers to the Court’s award of attorneys’ fees in the amount of \$19,280 and costs in the amount of \$469.25 set forth in the Court’s December 12, 2023 Minute Order which granted Plaintiff’s motion to terminate the arbitration, lift the litigation stay, and awarded sanctions. The Sanctions Award is not a part of the Gross Settlement Amount.
24. “Settlement Administrator” means Phoenix Class Action Administration Solutions, or a different third-party administrator agreed to by the Parties and approved by the Court.

B. General

25. On or about February 15, 2022, Plaintiff sent a PAGA Notice to the LWDA, with a copy to Defendant via U.S. Certified Mail, alleging the following claims against Defendant: (1) failure to pay all wages due; (2) failure to pay proper premium wages to employees who were denied proper meal and rest periods; (3) failure to issue accurately itemized wage statements; (4) failure to reimburse business expenses; (6) failure to provide fully and accurately itemized wage statements; and (7) failure to timely pay wages during and upon separation of employment.

26. Without indication from the LWDA it intended to investigate the claims, on April 28, 2022, Plaintiff filed the Action in the Superior Court of California, County of Kern, which alleged the claims identified in Plaintiff’s PAGA Notice.

27. Defendant denies all of Plaintiff’s claims and allegations, as referenced in the Action and the PAGA Notice, and further denies any liability or wrongdoing of any kind associated with the claims alleged in the Action (or otherwise).

28. On or about August 12, 2022, Defendant successfully petitioned the Court to compel Plaintiff’s Individual Claims to arbitration and stay the Action.

29. On or about January 18, 2023, Plaintiff filed a Complaint in Arbitration for damages and individual penalties under PAGA.

30. Defendant denies all of Plaintiff’s claims and allegations, as referenced in the Arbitration, and further denies any liability or wrongdoing of any kind associated with the claims alleged in the Arbitration or otherwise.

31. On or about December 12, 2023, the Court granted Plaintiff’s motion to terminate the Arbitration, lift the stay, and issued the Sanctions Award to Plaintiff’s Counsel.

32. Defendant filed an appeal of the Sanction Award and the Court’s order terminating the arbitration, Court of Appeal, Fifth Appellate District of California, case number F087369, which is pending as of the date the Parties have executed this Agreement.

33. The Parties have conducted a thorough investigation into the facts of the Action and Arbitration. This included, among other things, informal discovery and exchanging extensive information and key documents relating to the underlying alleged violations. After engaging in several months of protracted settlement negotiations, the Parties reached the proposed Settlement described in this Agreement, and believe it is fair, reasonable, and adequate. The Parties understand,

acknowledge, and agree this Agreement constitutes a compromise of claims alleged by Plaintiff on behalf of both himself and the State of California and the LWDA, and the Individual Claims, and it is the desire and intention of the Parties to effect a final and complete resolution of the Individual Claims and representative claims Plaintiff has alleged against Defendant and/or any of the Released Parties. The Parties further acknowledge that this Agreement is a compromise of disputed claims and that nothing in this Agreement shall be construed as an admission of liability by Defendant.

34. Under California Law, the State may assess and collect civil penalties from employers for violations of certain provisions of the Labor Code. Labor Code §§ 2698, *et seq.* Under PAGA, however, if an “aggrieved employee” “give[s] written notice by certified mail to the [State] and the employer of the specific provision of the [Labor Code] alleged to have been violated,” and the State thereafter decides not to investigate, as is the case here, or does investigate and determines a citation against the employer should not issue, the employee may, “as an alternative” to enforcement by the State, act as a proxy or agent of the state’s labor law enforcement agencies and bring a civil action under PAGA to recover civil penalties “on behalf of himself or herself and other current or former employees.” *Id.* “[C]ivil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the state and 25 percent to the aggrieved employees.” *Id.*

35. California Labor Code § 2699(1)(2) provides “[t]he superior court shall review and approve any settlement of any civil action filed pursuant to this part.”

36. In consideration of the promises and agreements contained herein, the Parties agree and covenant as follows:

C. **Terms of Settlement**

37. Subject to the Court’s approval of the Settlement pursuant to Labor Code § 2699(1)(2), which counsel and the Parties agree to recommend in good faith to the Court, the Parties agree to the following binding settlement of the Action.

38. No later than seven (7) days after this Agreement is fully executed by the Parties, Defendant shall pay the Sanctions Award to Plaintiff’s Counsel and dismiss the appeal with prejudice. Payment of the Sanctions Award and the dismissal of the appeal are not conditioned on the occurrence of the Active Date or Effective Date of this Agreement.

39. Upon the Court entering the Final Order and the Active Date occurring, Defendant shall pay the non-reversionary Gross Settlement Amount in the total sum of Seventy-One Thousand Two Hundred Fifty Dollars (\$71,250), subject to the Escalator Payment memorialized in Paragraph 9, above. The Gross Settlement Amount will be distributed in the following manner:

- a. **Settlement Administration Costs:** The costs associated with settlement administration will be paid from the Gross Settlement Amount, and shall not exceed \$4,000. The Administrator’s services will include, but not be limited to the following: updating PAGA Members’ mailing addresses through a search of the National Change of Address database maintained by the U.S. Post Office, and skip-tracing bad addresses on the return of the PAGA Members’ Notice and settlement payment checks; formatting and printing the Notice to be mailed to the PAGA Member with their settlement payment checks; calculating, issuing and mailing payments to LWDA and PAGA Members; performing tax reporting to the appropriate authorities, among other things called for by this Agreement. Subject to Court approval, the

Parties agree to use Phoenix Class Action Administration Solutions as the Settlement Administrator.

- b. **Attorneys' Fees and Costs:** The Parties agree that, subject to the Court's review and approval, Plaintiff's Counsel will be paid up to one-third of the GSA (\$23,750) from the GSA, as reasonable Attorneys' fees, plus actual litigation costs of up to \$1,000, also to be paid from the GSA, incurred to litigate the Action and to obtain Court approval of the Settlement. The Settlement Administrator will issue an IRS Form 1099 to Plaintiff's counsel for the Attorneys' Fees and Costs awarded. In no circumstance(s) shall Defendant be liable for any payment(s) of Attorneys' Fees and Costs separate from the GSA. Any lesser amount awarded by the Court shall not invalidate this Settlement Agreement.
- c. **Plaintiff's General Release Payment:** The Parties agree that, subject to the Court's review and approval, Plaintiff will be paid up to Fifteen Thousand Dollars (\$15,000), which is Plaintiff's General Release Payment and inclusive of release of his Individual Claims. Any lesser amount awarded by the Court shall not invalidate this Settlement Agreement.
- c. **PAGA Penalty Fund:** After deducting the Attorneys' Fees and Costs, Plaintiff's General Release Payment, and Settlement Administration Costs from the Gross Settlement Amount, the remaining net settlement amount, the PAGA Penalty Fund, will be apportioned as required by the PAGA, Labor Code section 2699(i), with distribution of 75% to the LWDA, (the "LWDA Payment") and 25% to the PAGA Members. The PAGA Penalty Fund shall encompass all payments to the LWDA and to the PAGA Members.
- e. **PAGA Penalty Fund Allocation:** The PAGA Penalty Fund, estimated at \$27,500 shall be allocated \$20,625 (75%) for the LWDA Payment, and \$6,875 (25%) to the PAGA Members, to be distributed on a proportionate basis, using the number of Eligible Pay Periods each PAGA Member was employed during the PAGA Period, as detailed in Paragraph 50, herein.
- f. **Taxes and Reporting:** Each PAGA Member's individual share will be treated as non-wage income for which the Administrator shall issue an IRS Form 1099 to be mailed together with the PAGA Member's settlement check, and reported to the applicable governmental authorities, if required by law as determined by the Settlement Administrator.

D. Release as to the PAGA Representative Claims

40. Upon approval by the Court of this Settlement, and subject to Defendant's payment of the GSA and the Sanctions Award, Plaintiff, individually and in his representative capacity on behalf the State of California and the PAGA Members will fully and finally release and discharge the Released Parties from all claims, rights, demands, liabilities, costs, Attorneys' fees, and causes of action for civil penalties under the PAGA, arising during employment by Defendant in California in a non-exempt position during the PAGA Period, based on the factual and legal allegations pled in the operative Representative Action Complaint that support or relate to the following alleged violations of law asserted by Plaintiff in the Action pursuant to PAGA: (1) failure to pay all wages due under Labor Code §§ 510, 558, 1194 and 1194.2 and IWC Wage Order 16-2001; (2) failure to pay premium wages to Plaintiff and other non-exempt Aggrieved Employees who were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order No. 16-2001; (3) failure to pay

premium wages to Plaintiff and other non-exempt Aggrieved Employees who were denied proper meal periods, in violation of Labor Code §§ 226.7, 512, 558 and IWC Wage Order 16-2001; (4) failure to reimburse Plaintiff and other Aggrieved Employees for necessary business expenses incurred in direct consequence of the discharge of their duties, in violation of Labor Code § 2802; (5) failure to timely pay Plaintiff and other Aggrieved Employees all wages due during their employment, in violation of Labor Code §§ 204 and 210; (6) failure to provide Plaintiff and other non-exempt Aggrieved Employees with wage statements that fully and accurately itemized the requirements set forth in Labor Code § 226(a); and (7) failure to pay Plaintiff and other Aggrieved Employees all wages due at the separation of their employment based on the time frames required by Labor Code §§ 201 and 202 (the “Released PAGA Claims”).

41. In accordance with *Arias v. Superior Court* (2009) 46 Cal.4th 969, a judgment in “a representative action brought by an aggrieved employee under the Labor Code Private Attorneys General Act of 2004 ... is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding,” which the Final Order shall so reflect. The Final Order shall not bind or release the PAGA Members’ individual wage claims (or other individual claims), other than Plaintiff. However, in accordance with *Arias*, the Final Order shall be binding on the PAGA Members as to the Released PAGA Claims. A statement to this effect shall be included in the Notice sent to the PAGA Members mailed together with their Settlement payment checks and IRS 1099 Forms.

E. Release by Plaintiff

42. Upon approval by the Court of this Settlement, and subject to Defendant’s payment of the GSA and the Sanctions Award, except for claims created or preserved by this Agreement, Plaintiff, for himself and his heirs, executors, beneficiaries, successors, assignees, immediate family members, and any other person or entity who could now or hereafter assert a claim in his name or on his behalf, hereby releases and forever discharges the Released Parties from the Individual Claims and any and all past, present, or future claims, lawsuits, demands, actions, or causes of action (collectively “Claims”), which Plaintiff now has, owns, or holds, or claims to have, own, or hold, or which Plaintiff at any time heretofore had owned or held, or claimed to have had, owned, or held, up to the date of execution of this Agreement, including but not limited to any and all Claims relating to Plaintiff’s employment with NCRC and any other Released Parties, and/or the cessation of such employment, and/or any alleged mistreatment of Plaintiff of any kind and/or relating to any aspect of any relationship or dealing or interaction or communication of any kind involving Plaintiff or any of the other Released Parties. The scope of what Plaintiff releases in this Agreement includes, but is not limited to, a full general release by Plaintiff of any and all Claims or potential Claims that Plaintiff may have against NCRC and/or against any of the other Released Parties for any and all injunctive relief, declaratory relief, physical injury, personal injury, and/or injury of any and all other kinds, and/or any and all other kinds of alleged damages, or other monetary obligation, or obligation of any other sort, including but not limited to any and all compensatory damages, emotional distress damages, punitive damages, costs, attorneys’ fees, and any and all other kinds of damages that are based in whole or in part on any act or omission occurring before this Agreement becomes effective.

43. This Agreement does not release any rights or claims that arise after the date of execution of this Agreement, including any claim for breach of this Agreement. It is expressly stipulated by the Parties that neither Plaintiff nor NCRC is to be considered a prevailing party for any purpose.

44. **Waiver of Section 1542.** The Parties hereby state that their intention in executing this Agreement is that the same shall be effective as a bar to each and every claim, demand, cause of action, obligation, damage, liability, charge, attorneys' fees and costs released herein. The Parties hereby expressly waive and relinquish all rights and benefits, if any, arising under the provisions of Section 1542 of the Civil Code of the State of California, which provides:

Section 1542. [Certain Claims Not Affected By General Release.]

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.

F. Settlement Approval and Implemental Procedures

45. Plaintiff's Counsel shall prepare a stipulation or motion for approval of the Settlement pursuant to California Labor Code § 2699(1)(2). Defendant shall not oppose any such motion or stipulation provided (a) Plaintiff's Counsel sends a draft of the motion or stipulation for approval to Defendant's Counsel at least seven (7) calendar days before it is filed and Defendant's Counsel agrees, in writing, to the filing of the motion or stipulation; and (b) the motion is consistent with the terms of this Settlement Agreement. Defendant's Counsel will work with Plaintiff's Counsel to provide Plaintiff's Counsel with, and allow Plaintiff's Counsel to submit to the Court, adequate information related to the Released PAGA Claims to obtain approval of the Settlement pursuant to a reasonable request by Plaintiff's Counsel. As required by Labor Code, at the time the motion for approval of the Settlement is filed with the Court, Plaintiff's Counsel shall submit the stipulation or motion, together with its exhibits, to the LWDA.

46. Within three (3) business days after the Active Date, the Settlement Administrator shall send Defendant's Counsel electronic wiring instructions to fund the Gross Settlement Amount.

47. No later than the Funding Date, Defendant will send to the Settlement Administrator a list which shall provide for each PAGA Member, the following information: (1) full name; (2) last known address; (3) social security number; and (4) the number of Eligible Pay Periods (the "Data List"). The fact that Defendant may not possess/maintain/know any or all of the PAGA Members' last known contact information shall not constitute a breach of this Agreement or be grounds for enforcement; however, Defendant will conduct a reasonable search and diligent inquiry to obtain such information and provide to the Settlement Administrator. The Data List shall be treated as and remain confidential and be used solely to manage the notice and payment process described herein, and for no other purpose, and shall not be disclosed to anyone other than the Settlement Administrator, except as may be required by applicable taxing authorities, or pursuant to express written authorization of Defendant, the PAGA Members or by order of the Court.

48. No later than the Funding Date, Defendant shall wire the Gross Settlement Amount, i.e., \$71,250 to the Settlement Administrator. Upon receipt of payment from Defendant, the Administrator will distribute the Gross Settlement Amount as ordered by the Court. If additional payments are required to fund the GSA pursuant to the of the Escalator Payment clause memorialized in Paragraph 9, above, Defendant shall fund that payment no later than ten (10) calendar days after the Settlement Administrator confirms the additional amount due. The Gross Settlement Amount must be fully funded before any disbursements will be made. Should Defendant fail to fund the Gross Settlement Amount at the time and in the amounts as provided for by this Agreement, and unless otherwise agreed upon by the Parties or ordered by the Court, Plaintiff may elect to enforce this Agreement or, at his option, this Agreement and the settlement described within

it, shall be rescinded, and the Parties shall be restored to their respective positions as of January 17, 2024.

49. The Settlement Administrator will perform all settlement administration duties, including (i) a National Change of Address (“NCOA”) database search, (ii) skip trace to update PAGA Member addresses on the return of undelivered Notices and checks; , (iii) issuing the Notice and payments to Plaintiff and all PAGA Members, (iv) issuing all required IRS forms, and reporting same to the applicable taxing authorities; and (v) issuing payment to the LWDA, PAGA Members, Plaintiff’s Counsel and to itself, with payment coming from the Gross Settlement Amount.

50. The Administrator shall have the authority and obligation to calculate the amounts of the PAGA Members' Settlement payments in accordance with the methodology set forth in this Agreement and orders of the Court. Each PAGA Member will be eligible to receive a Settlement payment based on the total number of his/her Eligible Pay Periods worked during the PAGA Period in relation to the aggregate number of Eligible Pay Periods worked by all PAGA Members during the PAGA Period, e.g.

$$\text{PAGA Member Payment} = \$ \text{____} \times \frac{\text{PAGA Member's Number of Eligible PAGA Pay Periods}}{\text{All PAGA Members' Eligible PAGA Pay Periods}}$$

51. All disbursements to the PAGA Members, Plaintiff, the LWDA, the Settlement Administrator, and Plaintiff's Counsel required under this Settlement Agreement shall be made within ten (10) business days after Defendant fully funds the GSA. Prior to disbursement, the Settlement Administrator will forward its calculations of the PAGA Members' Settlement payments to all counsel, and receive approval from all counsel as to such amounts. Any Party's failure to respond to the Settlement Administrator's request for approval within five (5) business days shall be deemed approval of the calculations.

52. PAGA Members shall have 180 calendar days after mailing to cash their individual settlement checks. If any PAGA Member's check is not cashed within that period, the check will be voided and a stop-payment will be issued. Any funds in the Settlement Administrator's account as a result of a failure to timely cash a settlement check shall be transmitted to the California State Controller's Unclaimed Property Fund in the name of each respective PAGA Member whose check was uncashed and voided. Neither Defendant, Defendant's Counsel, Plaintiff's Counsel, nor Plaintiff will have any liability for lost or stolen settlement checks, forged signatures on settlement checks, or unauthorized negotiation of settlement checks. The Parties agree that this disposition results in no "unpaid residue" under California Civil Procedure Code § 384, as the entire Settlement will be paid out to PAGA Members whether or not they all cash their settlement checks. Therefore, Defendant will not be required to pay any interest on said amount. In no circumstance(s) shall Defendant be liable for any interest payment(s).

53. By no later than 240 days after mailing Settlement payment checks to all PAGA Members, the Settlement Administrator shall provide Plaintiff's Counsel and Defendant's Counsel with a declaration setting forth the disbursements made to the PAGA Members, the LWDA, Plaintiff's Attorneys for attorneys' fees and litigation costs, and to itself, and shall include information regarding the number of uncashed checks as of that date, the aggregate sum of uncashed checks, and the timeline for transmittal of sum represented by all uncashed checks to California's Controller, Unclaimed Property Division, (if applicable).

G. Miscellaneous Provisions

54. **Eligible Pay Periods:** Defendant has represented there are approximately 1,207 Eligible Pay Periods worked by the PAGA Members between February 15, 2021 and September 1, 2023.

55. **Voiding the Agreement:** With the sole exception of the Sanctions Award and the dismissal of the appeal, the Settlement Agreement shall be voidable and unenforceable as to all Parties herein at the option of either Party if (a) the Court should for any reason fail to grant final approval of this Settlement, or (b) the Court should for any reason fail to enter a dismissal with prejudice of the Action, or (c) the approval of the Settlement and dismissal is reversed or declared or rendered void by a court of competent jurisdiction. In that event, then neither the Settlement nor any of the related negotiations or proceedings shall be of any force or effect, and all Parties to the Settlement shall stand in the same position, without prejudice, as if the Settlement had been neither entered into nor filed with the Court. Notwithstanding the foregoing, the Parties may attempt in good faith to cure any perceived defects in the Settlement to facilitate approval. For the avoidance of doubt, in the event the Court reduces or modifies the award of Attorneys' Fees and Costs or award of Plaintiff's General Release Payment provided in this Settlement Agreement, such reduction or modification shall not render this Settlement Agreement voidable or unenforceable.

56. **Waiver:** The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

57. **Parties' Authority:** The signatories hereto represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.

58. **Mutual Full Cooperation:** The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement Agreement, Plaintiff's Counsel shall, with the assistance and cooperation of Defendant and Defendant's counsel, take all necessary steps to secure the Court's approval of the Settlement, and the Final Order.

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

60. **No Admission:** Defendant denies any and all liability to Plaintiff and/or the PAGA Members in this Action, as to any and all causes of action that were asserted or that might have been asserted in this Action based on the facts set forth in the Representative Action Complaint. Nonetheless, Defendant wishes to settle and compromise the matters at issue in the Action to avoid further substantial expense and the inconvenience and distraction of protracted and burdensome litigation. Defendant also has taken into account the uncertainty and risks inherent in litigation, and without conceding any infirmity in the defenses that it has asserted or could assert against Plaintiff,

have determined that it is desirable and beneficial that Plaintiff's claims be settled in the manner and upon the terms and conditions set forth in this Agreement.

61. **Binding Settlement:** Nothing contained herein, nor the consummation of this Settlement Agreement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this Settlement Agreement with the intention of avoiding further disputes and litigation with the attendant inconvenience and expenses. This Settlement Agreement is a settlement document and shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be inadmissible in evidence in any proceeding, except an action or proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement.

62. **Enforcement Actions:** This Agreement is binding and enforceable under California Code of Civil Procedure section 664.6, and the Court shall retain jurisdiction to enforce this Agreement. Except as otherwise provided in this Settlement Agreement, in the event that one or more of the Parties to this Settlement Agreement institutes any action or proceeding in this case under Section 664.6 or otherwise or separate legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement Agreement or to declare rights and/or obligations under this Settlement Agreement, the successful Party or Parties shall be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs incurred in connection with any enforcement actions.

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

To Plaintiff:

Daniel F. Gaines
Alex P. Katofsky
Gaines & Gaines, APLC
4550 E Thousand Oaks Blvd, Suite 100
Westlake Village, CA 91362

To Defendant:

John J. Weber
Keegan & Baker, LLP
5820 Oberlin Drive, Suite 205
San Diego, California 92121

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

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

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

66. **Modification**: This Settlement Agreement may not be materially changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. Non-material changes requested by the Court may be made upon stipulation signed by all counsel. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by all of the Parties hereto.

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

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

69. **Continuing Jurisdiction**: After entry of the Final Order, the Court will have continuing jurisdiction under California Code of Civil Procedure § 664.6 and as otherwise allowed by law solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii) settlement administration matters; and (iii) such post-Final Order matters as may be appropriate under court rules or as set forth in this Settlement.

70. **Waiver of Appeals**: The Parties waive all appeals from the Court's approval of the Agreement, unless the Court materially modifies the Agreement and/or unless a non-Party files an appeal.

71. **Binding On Assigns**: This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

72. **Counterparts**: This Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully-signed Settlement Agreement, which shall be binding upon and effective as to all Parties. Electronic delivery shall be deemed an original.

IN WITNESS WHEREOF, the parties knowingly and voluntarily executed this Settlement Agreement and Release of PAGA Claim as of the date set forth below.

Dated: 01 / 28 / 2024

By: 
Plaintiff, Carlos Salcido

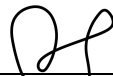
Dated: _____

By: _____
Defendant, NCRC, Inc. d/b/a Nationwide
Construction and Repair Company

AS TO FORM:

Gaines & Gaines, APLC

Dated: 01/29/2024

By: 
Daniel F. Gaines, Attorney for Plaintiff
Carlos Salcido

Keegan & Baker, LLP

Dated: _____

By: _____
John J. Weber, Attorneys for Defendant
NCRC, Inc. d/b/a Nationwide Construction
and Repair Company

IN WITNESS WHEREOF, the parties knowingly and voluntarily executed this Settlement Agreement and Release of PAGA Claim as of the date set forth below.

Dated: _____

By: _____
Plaintiff, Carlos Salcido

Dated: 1/29/2024

By: _____
Defendant, NCRC, Inc. d/b/a Nationwide
Construction and Repair Company
By: David Marabella
Its: CEO

AS TO FORM:

Gaines & Gaines, APLC

Dated: _____

By: _____
Daniel F. Gaines, Attorney for Plaintiff
Carlos Salcido

Keegan & Baker, LLP

Dated: 1/29/2024

By: _____
John J. Weber, Attorneys for Defendant
NCRC, Inc. d/b/a Nationwide Construction
and Repair Company

EXHIBIT A

«DATE»

«FIRST_NAME» «LAST_NAME»

«ADDRESS 1»

«ADDRESS 2»

Re: Settlement Payment from *Carlos Salcido, et al. v. NCRC, Inc. d/b/a Nationwide Construction and Repair Company*

Dear «FIRST_NAME» «LAST_NAME»

By order of the Kern County Superior Court, enclosed is your payment from the settlement of the *Carlos Salcido, et al. v. NCRC, Inc. d/b/a Nationwide Construction and Repair Company*, litigation filed in the Kern County Superior Court, Case No. BCV-22-101027 (the “Lawsuit”).

The Lawsuit was filed against NCRC, Inc. d/b/a Nationwide Construction and Repair Company (referred to as “Defendant”) under the California Private Attorneys General Act of 2004, Cal. Labor Code §§ 2698, *et seq.* (abbreviated “PAGA”) for alleged violations of the California Labor Code. The claim was brought on behalf of the State of California and all non-exempt individuals employed by Defendant in California at any time from February 15, 2021 through January 17, 2024 (“PAGA Members”). You have been identified as a PAGA Member, on whose behalf the case was brought.

The plaintiff in the Lawsuit claimed Defendant owed civil penalties under PAGA for violating certain provisions of the California Labor Code. The provisions of the California Labor Code that were alleged to have been violated are: (1) failure to pay all wages due; (2) failure to proper premium wages to employees who were denied proper meal and rest periods; (3) failure to issue accurately itemized wage statements; (4) failure to reimburse business expenses; (6) failure to provide fully and accurately itemized wage statements; and (6) failure to timely pay wages during and upon separation of employment. Defendant vigorously denies it did anything wrong or owes any PAGA penalties to the State of California or to PAGA Members.

The Kern County Superior Court has not ruled on the merits of the Lawsuit but it has approved the settlement between the Parties, including the civil penalties settlement amount to be paid by Defendant. Pursuant to California law, a portion of that settlement amount goes to the State of California’s Labor and Workforce Development Agency, (“LWDA”). Another portion of the settlement amount goes to the PAGA Members. In agreeing to this settlement, Defendant does not admit that it is liable in any way to any individuals for the alleged violations. The settlement of this Lawsuit and Final Approval Order does not in any way release a PAGA Member’s individual claims, to the extent a PAGA Member may have any individual claims.

You are receiving this payment as your share of the settlement. You have 180 days to cash the settlement check. If you do not cash your check by this date, the money will be transferred to the State of California Unclaimed Property Fund, from which you may recover the money at a future time. You will receive an IRS Form 1099 form for the amount of your settlement check, if required by law. If you have lost or misplaced your settlement check, you should contact the Administrator at the toll-free number shown at the top of this letter. It is strongly recommended that all checks be cashed immediately upon receipt. Defendant will not in any manner retaliate against any individual who cashes their settlement check.

You are not a party to the Lawsuit, but you and the State of California will be bound by the order in this matter approving the settlement in the Lawsuit, as well as to the release of

claims in this Lawsuit, stated below, only as to civil penalties under PAGA.

The Court-approved settlement contains the following release of claims, to which you are bound:

Upon approval by the Court of this Settlement, and subject to Defendant's payment of the GSA and the Sanctions Award, Plaintiff, individually and in his representative capacity on behalf the State of California and the PAGA Members will fully and finally release and discharge the Released Parties from all claims, rights, demands, liabilities, costs, attorney's fees, and causes of action for civil penalties under the PAGA, arising during employment by Defendant in California in a non-exempt position during the PAGA Period, based on the factual and legal allegations pled in the operative Representative Action Complaint that support or relate to the following alleged violations of law asserted by Plaintiff in the Action pursuant to PAGA: (1) failure to pay all wages due under Labor Code §§ 510, 558, 1194 and 1194.2 and IWC Wage Order 16-2001; (2) failure to pay premium wages to Plaintiff and other non-exempt Aggrieved Employees who were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order No. 16-2001; (3) failure to pay premium wages to Plaintiff and other non-exempt Aggrieved Employees who were denied proper meal periods, in violation of Labor Code §§ 226.7, 512, 558 and IWC Wage Order 16-2001; (4) failure to reimburse Plaintiff and other Aggrieved Employees for necessary business expenses incurred in direct consequence of the discharge of their duties, in violation of Labor Code § 2802; (5) failure to timely pay Plaintiff and other Aggrieved Employees all wages due during their employment, in violation of Labor Code §§ 204 and 210; (6) failure to provide Plaintiff and other non-exempt Aggrieved Employees with wage statements that fully and accurately itemized the requirements set forth in Labor Code § 226(a); and (7) failure to pay Plaintiff and other Aggrieved Employees all wages due at the separation of their employment based on the time frames required by Labor Code §§ 201 and 202 (the "Released PAGA Claims").

The "Released Parties" means Defendant, and each and all of its past, present, and future subsidiaries, officers, directors, members, partners, owners, shareholders, employees, former employees, agents, servants, attorneys, assigns, affiliates, independent contractors, volunteers, predecessors, successors, parent companies and organizations, dual employers, service providers, contracting partners, subcontractors, employee benefit plans and fiduciaries thereof, and all other persons and/or entities acting under, by, through, or in concert with any of them.

If you have any questions, you can contact the settlement administrator (whose contact information is at the top of this letter), or Plaintiff's Counsel as follows:

Attorneys for Plaintiff Carlos Salcido:

Daniel F. Gaines, Esq.
Alex P. Katofsky, Esq.
GAINES & GAINES, APLC
4550 East Thousand Oaks Boulevard, Suite 100
Westlake Village, CA 91362
Telephone: (866) 550-0855

**PLEASE DO NOT CONTACT THE COURT OR THE JUDGE WITH ANY
QUESTIONS ABOUT THE LAWSUIT OR THE SETTLEMENT**

EXHIBIT D

**Carlos Salcido v. NCRC, Inc.
Gaines Gaines, APLC Counsel's Costs**

<u>EXPENSE CATEGORY</u>	<u>EXPENSE</u>
Filing fees	\$ 867.57
Postage	\$ 30.12
Fedex	\$ 35.18
Future estimated expenses -	\$ 94.37
• <i>Filing fees and One Legal Service fees for Motion for PAGA Approval (will be filed via One Legal) - \$80.00</i> • <i>Filing fees and One Legal Service fees for Notice of Entry of Order once PAGA Order signed (will be filed via One Legal) - \$14.37</i>	
TOTAL EXPENSES	\$ 1,027.24

EXHIBIT E

Salcido v NCRC, Inc.

PLAINTIFF'S CONFIDENTIAL INDIVIDUAL DAMAGE MODEL

Subject to all applicable mediation and settlement privileges

Assumptions

April 28, 2018 to July 2021 Dates of employment within Limitations Period

850 Estimated total number of shifts worked by Plaintiff during his employment (85 pay periods x 10 shifts per pay period)

85 Total number of bi-weekly pay periods worked by Plaintiff during his employment

\$20.00 Plaintiff's hourly rate during his employment

Labor Code 510/1194 - Failure to Pay all Overtime Wages Due (Estimate based on 30 minutes OTC/day)

850 Estimated total number of shifts worked by Plaintiff during his employment (85 pay periods x 10 shifts per pay period)

\$15.00 Total estimated unpaid overtime per shift (\$30 x 0.5)

\$12,750.00 Total Unpaid Wages

Labor Code 226.7 /512 Failure to Provide Meal Periods

850 Estimated total number of shifts worked by Plaintiff during his employment (85 pay periods x 10 shifts per pay period)

\$20.00 Plaintiff's hourly rate during his employment

100% Violation rate (estimated)

\$17,000.00 Total Meal Period Premium Wages

Labor Code 226.7 - Failure to Provide Rest Periods

850 Estimated total number of shifts worked by Plaintiff during his employment (85 pay periods x 10 shifts per pay period)

\$20.00 Plaintiff's hourly rate during his employment

100% Violation rate (estimated)

\$17,000.00 Total Rest Period Premium Wages

Labor Code 2802 - Failure to Reimburse for Business-Related Expenses

85 Total number of bi-weekly pay periods worked by Plaintiff during his employment

\$30.00 Estimated total unpaid business-related expenses (phone expenses estimated at \$30 per pay period).

\$2,550.00 Est. Total Unpaid Business-Related Expenses

Labor Code 204/210 - Failure to Timely Pay Wages During Employment

26 Total number of Wage Statements provided to Plaintiff during the applicable limitations period

\$200.00 Penalty per violation

\$13,000.00 Plus 25% of held wages (estimated \$2,000/pay period)

\$18,200.00 Total Penalties

Labor Code 226(e) - Wage Statement Penalties

26 Total number of Wage Statements provided to Plaintiff during the applicable limitations period

\$50 per initial violation (1 x \$50) and \$100 per subsequent violation (25 x \$100)

\$2,550.00 Total Wage Statement Penalties

Labor Code 203 - Waiting Time Penalties

\$190 average daily wage for Plaintiff (\$20/hr x 8 hours + 1hr of OT at \$30)

30 days x \$190/average daily wage

\$5,700.00 Total Waiting Time Penalties

\$75,750.00 TOTAL PENALTIES AND WAGES, EXCLUDING ATTORNEYS' FEES & COSTS