

Ankit H. Bhakta, State Bar #312607
Bhakta Law Firm, A Professional Corporation
3175 Sedona Ct., Bldg E, Suite 12
Ontario, California 91764
Telephone: (909) 858-6565
Facsimile: (909) 858-6566

Attorneys for Defendants,
LRB MILLWORK & CASEWORK, INC., a
California corporation; RENE ALBERTO
BERNHARDT, an individual

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

GILBERT GONZALES, an individual,	)	CASE NO. CIVSB2204728
	)	
Plaintiff,	)	Assigned for all purposes to:
	)	Hon. David Cohn
v.	)	Department: S26
	)	
LRB MILLWORK & CASEWORK INC., a	)	
California corporation; RENE ALBERTO	)	MEMORANDUM OF
BERNHARDT, an individual, and DOES 1	)	UNDERSTANDING
through 10, inclusive;	)	
	)	
Defendants.	)	
	)	Complaint Filed: March 28, 2022
	)	FAC Filed: July 26, 2022
	)	
	)	
	)	
	)	

This Memorandum of Understanding is entered into between Plaintiff GILBERT GONZALES ("Plaintiff"), as representative of all Class and PAGA Members defined below (collectively, "Plaintiffs"), and Defendants LRB MILLWORK & CASEWORK, INC., a California corporation (erroneously sued and served as LRB MILLWORK & CASEWORK INC., a California corporation) ("LRB") and RENE ALBERTO BERNHARDT, an individual (each individually a "Defendant" and collectively "Defendants"). Plaintiffs and Defendants will be referred to herein as the Parties and each individually as a Party. The Parties hereby agree as follows:

1 1. The Parties to this Memorandum of Understanding (“MOU”) hereby state that it
2 reflects their good faith compromise of the claims raised in this action, based upon their assessment
3 of the mutual risks and costs of further litigation and the assessments of their respective counsel,
4 after arms-length negotiations and mediation discussions before the Honorable Jackson Lucky
5 (Ret.).

6 2. There is no admission of liability on the part of Defendants.

7 3. The Parties agree this MOU is intended to settle all claims against Defendants and
8 “Released Parties,” either alleged, or that reasonably could have been alleged, based on the factual
9 allegations contained in: (1) the operative First Amended Complaint in the case known as
10 *GILBERT GONZALES, an individual, v. LRB MILLWORK & CASEWORK INC., a California*
11 *corporation; RENE ALBERTO BERNHARDT, an individual, and DOES 1 through 10, inclusive,*
12 pending in the Superior Court of California, County of San Bernardino, Court Case No.,
13 CIVSB2204728 (herein referred to as the “Lawsuit”).

14 4. On March 28, 2022, Plaintiff filed his putative class action and PAGA Complaint,
15 alleging the following causes of action against Defendants: (1) failure to pay minimum wages for
16 all hours worked; (2) failure to pay overtime wages; (3) failure to pay applicable prevailing wage
17 rates; (4) failure to provide meal periods; (5) failure to provide rest periods; (6) failure to reimburse
18 necessary business expenditures; (7) failure to provide and, maintain accurate records; (8) failure
19 to timely pay wages due; (9) PAGA penalties; and (10) unfair business practices. On July 26,
20 2022, a First Amended Complaint was filed by Plaintiff. Plaintiff anticipates filing a Second
21 Amended Complaint within 30 days of the execution of this MOU.

22 5. The Parties will stipulate to class certification for purposes of settlement only. If the
23 Court does not grant either preliminary or final approval of this settlement, the Parties stipulate
24 that class certification will be revoked without prejudice.

25 6. For purposes of settlement and release only, Class Members are defined as follows: *All*
26 *current and former non-exempt, hourly employees of Defendants who worked at least one shift in*
27 *California from March 28, 2018 to the date of preliminary approval, or September 27, 2023,*
28 *whichever occurs first.*

1 7. For purposes of settlement and release only, PAGA Members are defined as follows:
2 *All current and former non-exempt, hourly employees of Defendants who worked at least one shift*
3 *in California from March 28, 2021 to the date of preliminary approval, or September 27, 2023,*
4 *whichever occurs first.*

5 8. For purposes of settlement and release only, the Class Period is defined as March 28,
6 2018 to June 27, 2023. The PAGA Period is defined as March 28, 2021 to the date of preliminary
7 approval, or September 27, 2023, whichever occurs first.

8 9. The term “Release Date” is defined as the period of time between March 28, 2018 to
9 the date of preliminary approval, or September 27, 2023, whichever occurs first.

10 10. Defendants represented that the “Class Members” total approximately 57 employees as
11 of November 1, 2022. As an estimate, the weeks worked by Class Members is approximately
12 5,323 through mediation. The “PAGA members” total approximately 30 employees as of
13 November 1, 2022. Calculated through the date of preliminary approval (estimated to occur
14 November 2023), Defendants estimate roughly 5,800 weeks worked by the Class Members.
15 Plaintiff has relied upon this material representation in entering into this MOU. Should the actual
16 number of workweeks worked by the Class Members within the Release Period increase beyond
17 10% of the 5,800 workweek estimate, the MSA shall increase proportionately for each additional
18 week beyond the estimate.

19 11. For purposes of settlement only, Defendants agree to collectively pay the maximum
20 gross amount of THREE HUNDRED THOUSAND DOLLARS AND ZERO CENTS
21 (\$300,000.00) (the “Gross Settlement Amount”). As a result of this settlement, any of the
22 attorneys’ fees, costs, administrative fees, PAGA allotment, and class representative
23 enhancements, shall be paid from this amount. Defendants shall pay all employer-side payroll
24 taxes separately and in addition to the Gross Settlement Amount. At no time, for any reason
25 whatsoever, shall Defendants be required to contribute additional funds to the amount currently
26 designated as the Gross Settlement Amount (except the employer-side payroll taxes and any funds
27 due under the escalator clause identified in Paragraph 10). Any balance remaining from the Gross
28 Settlement Amount shall be distributed equally to a mutually agreeable *Cy Pres* designee that

1 complies with CCP 382. This is a non-reversionary settlement.

2 12. The Parties shall designate an administrator to administrate the settlement. One
3 National Change of Address search will be conducted prior to the mailing. The claim form will
4 include pre-printed information for Class Members and PAGA Members including, but not limited
5 to: full name, last known address, and last four digits of social security number. Class Members
6 and PAGA Members will be advised in the notice that they will have 30 days from the date that
7 notice is sent to opt-out or object. Defendants shall transmit the names and contact information
8 confidentially for all Settlement Class members to a mutually agreed upon Settlement
9 Administrator 15 calendar days after the entry of a Court order preliminarily approving the
10 Settlement (the "Class List"). The Class List provided by Defendants to the administrator as part
11 of the administration process shall also list the start and ends dates of employment for Class
12 Members, as well as Defendants' best estimates of workweeks worked by each Class Member.

13 13. Out of the Gross Settlement Amount, the Parties agree to allocate the amount of
14 Twenty-Five Thousand Dollars (\$25,000) to represent all penalties under the Private Attorneys
15 General Act of 2004 ("PAGA"). Of the PAGA allotment, the Parties agree that seventy-five
16 percent (75%), i.e. \$18,750, will be made payable to the State of California via the Labor
17 Workforce and Development Agency, and the remaining twenty-five percent (25%), i.e. \$6,250,
18 will be distributed among all PAGA members who do not validly opt-out of the settlement and
19 who worked during the PAGA Period in accordance with a formula that factors in each individual
20 PAGA Member's workweeks worked while employed by one or more Defendants. Any funds
21 remaining from settlement checks not cashed within 180 days of issuance shall be distributed to
22 the *Cy Pres* designee.

23 14. Defendants agree not to oppose, and to pay, as awarded and approved by the Court, the
24 following: (1) attorneys' fees of one-third (1/3) of the Gross Settlement Amount to Class Counsel,
25 and costs up to Fifteen Thousand Dollars (\$15,000); (2) a class representative enhancement of up
26 to Ten Thousand Dollars (\$10,000) to Plaintiff; and (3) reasonable costs of settlement
27 administration to be approved by the court, but in any event, no more than \$15,000. If the Court
28

declines to award attorneys' fees and/or class representative enhancements in that amount by the Court, any difference shall be added to the resulting Net Settlement Amount (defined below), if there is no appeal filed by Class counsel. Class Counsel is identified as King & Siegel LLP.

15. After reductions for attorneys' fees and costs, administrative costs, class representative enhancements, and the PAGA allotment, the remaining balance of the settlement fund (the "Net Settlement Amount") shall be paid to Class Members without a claims process. The settlement amounts will be distributed in accordance with a formula that factors in each individual Class Member's workweeks worked while employed by one or more Defendants. Any funds remaining from settlement checks not cashed within 180 days of issuance shall be distributed to the *Cy Pres* designee.

16. The payments made to the Class Members shall be classified as 33% taxable wages and 67% to non-taxable penalties and interest. The Settlement Administrator will be responsible for issuing to participants a form W-2 for amounts deemed "wages" and an IRS Form 1099 for the portions allocated to penalties and interest.

17. Any enhancement award approved by the Court will result in the issuance of a Form 1099 to Plaintiff, who shall assume full responsibility and liability for the payment of taxes due on such award.

18. This settlement contemplates that as of the Release Date, all Class Members and PAGA Members release all state and wage claims against Defendants, and their present and former parents, subsidiaries, co-employers, , of any and all claims and/or causes of action that were or reasonably could have been alleged based on the factual allegations and legal theories in the operative Complaint and/or all LWDA letter(s), including, but not limited to, claims pursuant to Labor Code sections, 201, 202, 203, 204, 210, 226(a), 226.2, 226.3, 512, 1174(d), 1194, 1194.2, 1197, 2699 et seq, and also unpaid wages, including under any theory of piece-rate law, unpaid minimum wage, meal and rest period violations, waiting time penalties, itemized wage statement penalties, expense reimbursement, safety equipment reimbursement, wages for unpaid time, other civil or statutory penalties, attorneys' fees, and/or costs and all claims under the Private Attorneys General Act of 2004, under the Unfair Competition Law, and which was alleged in the Lawsuit,

1 or that could have reasonably been alleged in the Lawsuit based on the factual allegations in the
2 Lawsuit, within the Class Period (the “Claims”). The settlement also contemplates that Plaintiff,
3 in consideration for receipt of an enhancement award (regardless of the amount of the enhancement
4 award received), will execute a general release of any and all claims, including Claims in the
5 Lawsuits.

6 19. Defendants and Plaintiffs, and their respective counsel, agree that none of them will
7 take any steps to encourage, support, or induce Class Members to opt-out of the settlement. If opt-
8 outs exceed 10% of the Class Members, Defendants will have the option to cancel the settlement.

9 20. The effective date of the settlement (“Effective Date”) will be the last to occur of the
10 following: (a) if there are no objections to the settlement, then the date of final approval by the
11 Court; (b) if there are objections to the settlement, and if an appeal, review or writ is not sought
12 from the order granting final approval of the settlement, the 31st day after service of notice of entry
13 of the order; or (c) if an appeal, review or writ is sought from the order, the day after the order is
14 affirmed or the appeal, review or writ is dismissed or denied, and the order is no longer subject to
15 further judicial review. Prior to the effective date of the settlement, Defendants will not be required
16 to fund this settlement, in whole or in part, through the settlement administrator or any third party.

17 21. Defendants shall fund the MSA within 15 calendar days of being provided the final
18 accounting of funds by the settlement administrator, which shall be within 15 calendar days of the
19 “Effective Date.”

20 22. The Parties will cooperate in drafting the necessary papers to finalize this settlement in
21 an expeditious fashion, including a comprehensive settlement agreement (“Stipulation of
22 Settlement”) incorporating the terms of this MOU. The comprehensive settlement agreement will
23 include a proposed Notice Form, Opt-out, Objection, and Share Forms, and preliminary/final
24 approval orders; to use their best efforts to finalize the Stipulation of Settlement; and to use any
25 other efforts that may become necessary by order of the Court, or otherwise, to effectuate the
26 Stipulation of Settlement. Plaintiff shall prepare the initial drafts of the long-form Stipulation of
27 Settlement and deliver it to Defendants within 14 days of this MOU. In the event that the Parties
28 do not execute the Stipulation of Settlement within 30 days of this MOU, either party may move

1 for preliminary approval of this class action settlement on the basis of the terms set forth in this
2 MOU, which the Parties agree is final, binding, enforceable pursuant to California Code of Civil
3 Procedure Section 664.6, and admissible pursuant to California Evidence Code Section 1123. In
4 that event, Plaintiff will propose customary terms and procedures for the notice process and
5 settlement administration as part of any motions for approval. The Parties may extend this deadline
6 by mutual agreement in writing.

7 23. Plaintiff will file a Notice of Settlement within 21 days of the execution of this MOU,
8 informing the Court that the Parties have resolved the matter and advising that a motion for
9 preliminary approval will be filed in accordance with this MOU and requesting a hearing date for
10 the motion for preliminary approval. Aside from finalizing the terms of this settlement, and filing
11 any pleadings necessary to effectuate such settlement, the Parties agree to a 210-day stay of the
12 Lawsuit pending final approval of the settlement.

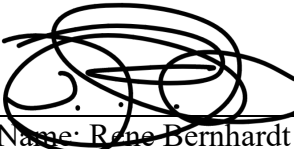
13 24. The Parties will confer in good faith to agree upon adequate confidentiality provisions
14 that will be inserted in the final settlement agreement to prevent the class representative and his
15 counsel from, prior to the filing of a preliminary approval motion, discussing the terms or the fact
16 of the settlement with third parties other than (1) his immediate family members, (2) his respective
17 accountants or lawyers as necessary for tax purposes; (3) Class Members, or the Court. Plaintiff
18 and Class Counsel agree not to publish any of the terms or conditions of this settlement other than
19 as required for judicial approval of the settlement and as set forth below in Paragraph 25. For the
20 avoidance of doubt, this provision does not prevent Class Counsel from posting a neutral description
21 of publicly available facts regarding the Settlement, provided that such posting does not expressly
22 identify Defendant by name.

23 25. The Parties agree not to issue press releases, communicate with, or respond to, any media
24 or publication entities concerning the Settlement, including the fact of the Settlement, its terms or
25 contents, and the negotiations underlying the Settlement prior to final approval and Entry of Judgment,
26 except as required by law or as shall be contractually required to effectuate the terms of the Settlement
27 as set forth herein. Nothing stated herein shall prohibit Class Counsel from discussing the Settlement,
28 the fact of Settlement, and its terms and conditions: (i) with Class Members and/or (ii) in court filings,

1 including in their respective firm resumes, and/or (iii) in all necessary motions and supporting
2 memoranda related to preliminary and final approval of the Settlement, or for other class action
3 settlements. This provision also does not limit Class Counsel (i) from complying with ethical
4 obligations; or (ii) from posting a neutral description of publicly available facts regarding the
5 Settlement, provided that such posting does not expressly identify Defendant by name.

6
7
8 Dated: June 29, 2023

By:


Name: Rene Bernhardt

Its: President

for himself individually and on behalf of LRB Millwork
& Casework Inc.

12 Dated: June __, 2023

By:

GILBERT GONZALES, on behalf of himself and
others similarly situated

17 Approved as to form (and confidentiality provisions as defined in Paragraphs 24-25) by:

19 Dated: June 29, 2023

Bhakta Law Firm, A Professional Corporation

By



ANKIT H. BHAKTA, ESQ.

Attorneys for Defendants LRB MILLWORK &
CASEWORK, INC., a California corporation; RENE
ALBERTO BERNHARDT, an individual

1 including in their respective firm resumes, and/or (iii) in all necessary motions and supporting
2 memoranda related to preliminary and final approval of the Settlement, or for other class action
3 settlements. This provision also does not limit Class Counsel (i) from complying with ethical
4 obligations; or (ii) from posting a neutral description of publicly available facts regarding the
5 Settlement, provided that such posting does not expressly identify Defendant by name.

6
7
8 Dated: June __, 2023

By:

9 Name: Rene Bernhardt
10 Its: President
11 for himself individually and on behalf of LRB Millwork
& Casework Inc.

12 Dated: June 29, 2023

13
14 By:

15 
16 GILBERT GONZALES, on behalf of himself and
17 others similarly situated

18 Approved as to form (and confidentiality provisions as defined in Paragraphs 24-25) by:

19 Dated: June __, 2023

Bhakta Law Firm, A Professional Corporation

20
21
22 By

23 ANKIT H. BHAKTA, ESQ.
24 Attorneys for Defendants LRB MILLWORK &
25 CASEWORK, INC., a California corporation; RENE
26 ALBERTO BERNHARDT, an individual
27
28

1
2 Dated: June 29, 2023

King & Siegel LLP

3
4 By



5 ELLIOT J. SIEGEL

BRENT R. BOOS

6 Attorneys for Plaintiff Gilbert Gonzales, on behalf of
7 himself and others similarly situated
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF RIVERSIDE