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Attorneys for Plaintiff Angel Garcia

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNADINO**

ANGEL GARCIA, individually, and on behalf
of other members of the public similarly
situated;

Plaintiff,

vs.

J&B INVESTMENTS, INC. dba J&B
MATERIALS, INC., a California corporation;
PACIFIC GYPSUM SUPPLY, INC., a
Georgia Corporation; GYPSUM
MANAGEMENT AND SUPPLY, INC., a
Georgia Corporation; and DOES 1 through 25,
inclusive.

Defendants.

Case No. CIVSB2208601

Honorable Joseph T. Ortiz
Department 17

**DECLARATION OF JONATHAN M. GENISH
IN SUPPORT OF AMENDED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: March 21, 2023
Time: 1:30 p.m.
Dept: S-17

Complaint Filed: April 25, 2022
Trial Date: Not Set

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1 Angeles Times, Deadline, The Hollywood Reporter, Business Insider, Law360, and others. Super
2 Lawyers has regularly honored me as a Southern California Rising Star since 2012.

3 5. In February 2018, I started the plaintiffs labor and employment law firm of Blackstone
4 Law, APC. The firm has grown exponentially over the past three-plus years, now maintaining five
5 highly pedigreed attorneys working on almost exclusively labor and employment class actions, Labor
6 Code Private Attorney General Act of 2004 (“PAGA”) cases, and individual matters, and other private
7 attorney representative actions, with roughly 15% of the firm focused on other complex general
8 litigation matters.

9 6. I have considerable experience in handling class and representative action lawsuits
10 throughout my career and have been approved as counsel in a number of cases, including, most
11 recently:

- 12 • *DiRico v. Seek Capital, LLC*, Los Angeles Superior Court, Case No. BC698078, a wage
13 and hour class action brought on behalf of a class of hourly-paid employees working the
14 State of California.
- 15 • *Consumer Protection Group, LLC v. A. D. Sutton & Sons, Inc.*, Los Angeles Superior
16 Court, Case No. 19STCV29979, a private attorney general action for penalties pursuant
17 to Health and Safety Code section 25249.7.
- 18 • *Consumer Protection Group, LLC v. Shaxon Industries, Inc. et al.*, Los Angeles Superior
19 Court, Case No. 19STCV30306, a private attorney general action for penalties pursuant
20 to Health and Safety Code section 25249.7.
- 21 • *Consumer Protection Group, LLC v. Home Depot U.S.A., Inc.*, Los Angeles Superior
22 Court, Case No. 19STCV30445, a private attorney general action for penalties pursuant
23 to Health and Safety Code section 25249.7.

24 7. I was counsel of record on several class action and PAGA actions that have since been
25 resolved, the most recent of which are as follows:

- 26 • *Maria Castillo-Rodriguez v. HR Outsourcing Associates, LLC*, Los Angeles Superior
27 Court, Case No. 20STCV44138, a wage and hour PAGA action.
- 28 • *Cruz v. LK Plumbing & Heating, Inc.*, Los Angeles Superior Court, Case No.

BC686825, a wage and hour PAGA action.

- *Savoy v. Collector's Universe, Inc., et al.*, Central District Court of California, Case No.: 8:20-cv-00632-DOC-ADS (recently remanded to Orange County Superior Court, Case No. 30-2020-01130892-CU-RI-CXC), a consumer fraud class action.

7. I am currently the managing partner overseeing roughly 100 labor and employment cases, approximately 80% of which include a wage and hour component. More than a dozen of these cases are wage-and-hour putative class actions or representative PAGA actions seeking relief on behalf of thousands of California employees.

Procedural History of the Action

8. I am fully familiar with the legal and factual issues in this case and have specific experience litigating complex wage and hour actions as class actions, including employment cases as set forth above.

9. On April 25, 2022, Plaintiff Garcia provided notice to the California Labor and Workforce Development Agency ("LWDA") and to Defendants J&B Investments, Inc. d/b/a J&B Materials, Inc., Pacific Gypsum Supply, Inc., Gypsum Management and Supply, Inc. ("J&B" or "Defendants") of his intent to seek civil penalties pursuant to PAGA. Also on April 25, 2022, Plaintiff Garcia filed a Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, California Labor Code §§ 2698, et seq. ("Complaint") alleging the following causes of action: (1) Failure to Pay Overtime Wages; (2) Failure to pay Minimum Wages; (3) Failure to Pay Prevailing Wage; (4) Failure to Pay Vacation Wages; (5) Failure to Provide Meal Periods (or pay premiums in lieu thereof); (6) Failure to Provide Rest Periods (or pay premiums in lieu thereof); (7) Failure to Provide Accurate Itemized Wage Statements; (8) Failure to Maintain Requisite Payroll Records; (9) Failure to Timely Pay Wages During Employment; (10) Failure to Timely Pay Wages Upon Termination; (11) Failure to Reimburse Business Expenses; and (12) Violation of Business and Professions Code §§ 17200, et seq.

10. Following the filing of the Complaint, the Parties met and conferred with respect to the potential resolution of this action by means of a private mediation and agreed to exchange informal discovery as part of that process.

1 11. Pursuant to the Parties’ decision to mediate, Defendants produced the Class Members’
2 time and pay records, as well as information and documents concerning the claims set forth in
3 Plaintiffs’ operative complaint, such as Defendants’ employee handbook(s), relevant wage and hour
4 policies, information regarding the number of putative class members, the number of current versus
5 former employees, the total workweeks worked by the Class, the dates of employment of the Class
6 Members, the rates of pay for each Class Member, and the number of Class Members who had
7 executed arbitration agreements and settlement agreements.

8 12. After a thorough investigation and analysis of these documents and data, on May 4,
9 2022, the parties attended a formal mediation with Tripper Ortman, Esq., a neutral and respected
10 mediator with extensive experience in complex wage and hour matters.

11 13. At the mediation, the Parties engaged in intensive settlement discussions during which
12 they debated their respective positions and exchanged views regarding the strengths and weaknesses
13 of the alleged claims. After a full day of mediation, and with the help of the mediator, the Parties were
14 able to reach an agreement to resolve this dispute on a class and representative basis, and shortly
15 thereafter executed a memorandum of understanding memorializing the key settlement terms.
16 Following mediation, the parties worked diligently to negotiate and memorialize the terms in a long
17 form settlement agreement, and as of June 2, 2022.

18 14. After multiple discussions and revisions to the agreement, the Joint Stipulation and
19 Settlement Agreement of Class Action and Representative Action Claims (“Settlement” or “Settlement
20 Agreement”) was fully executed by the Parties. A true and correct copy of the Settlement Agreement
21 is attached as **Exhibit A** hereto.

22 15. Pursuant to the Parties’ settlement agreement, Plaintiff Garcia filed a First Amended
23 Complaint (“FAC”) on June 3, 2022, adding a cause of action under the FLSA and a cause of action
24 pursuant to PAGA. Subsequent thereto, counsel for Plaintiff Garcia reached an agreement with counsel
25 for Plaintiffs Melendez, Mahan, Neri and Lopez Lopez to resolve all class and PAGA claims in their
26 cases as part of the Class and PAGA settlement already reached at the mediation between Garcia and
27 Defendants. In accordance with the global settlement reached, Plaintiff Garcia filed a Joint Stipulation
28 to Permit Filing of Second Amended Complaint (“SAC”) on February 23, 2023. Once leave is granted,

1 the SAC which adds all Plaintiffs and claims to this action will be filed and become the operative
2 complaint.

3 **Summary of the Terms of the Settlement Agreement**

4 16. For purposes of settlement only, the Parties have agreed that the Class shall be defined
5 as “All current and former non-exempt, hourly-paid employees of Defendants employed in California
6 at any time during the Class Period.” (“Class Members” or “Class”). The Class Period and the release
7 of claims period both begin on April 5, 2014 and end on the date of Preliminary Approval of the Class
8 Settlement. It is estimated that there are 621 Class Members.

9 17. The parties have agreed to settle the Class and PAGA claims at issue in the FAC for a
10 non-reversionary Gross Settlement Amount of One Million Seven Hundred Fifty Thousand Dollars
11 and Zero Cents (\$1,750,000.00), exclusive of employer-side payroll taxes. The Gross Settlement
12 Amount is a common fund and therefore includes all requested costs, fees, and other allocations. As
13 stated above, the Gross Settlement Amount includes: (1) Class Counsel’s fees in the amount of one-
14 third of the Gross Settlement Amount, equaling Five Hundred Eighty-Three Thousand Two Hundred
15 Seventy-Five Dollars and Zero Cents (\$583,275.00); (2) Class Counsel’s actual litigation costs, not to
16 exceed Ninety-Five Thousand Dollars (\$95,000); (3) Settlement Administration Costs, capped at
17 Eleven Thousand Five Hundred Dollars and Zero Cents (\$11,500.00); (4) Class Representative
18 Incentive Payments to Plaintiffs in the aggregate amount of Twenty Seven Thousand Five Hundred
19 Dollars and Zero Cents (\$27,500.00); and (5) PAGA Penalties of Two Hundred Thousand Dollars and
20 Zero Cents (\$200,000.00). After the above-estimated amounts are deducted from the Gross Settlement
21 Amount, approximately 621 Class Members will share in a Net Settlement Amount of approximately
22 Eight Hundred Thirty-Two Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents
23 (\$832,666.67).

24 18. The Net Settlement Amount will be distributed and paid to Settlement Class Members
25 on a pro-rata basis based on the number of workweeks worked during the Class Period. This will
26 provide Settlement Class Members with an average estimated payment of \$1,340.85. The actual
27 payments to Settlement Class Members will vary based on the actual weeks worked by Settlement
28 Class Members and shall be confirmed by the Settlement Administrator in advance of the final

1 approval hearing.

2 19. Additionally, employees who worked during the PAGA Period shall receive a share of
3 the 25% portion of the PAGA Penalties designated for distribution to PAGA Members. These
4 payments will be distributed on a pro rata basis based on the number of pay periods worked during the
5 PAGA Period.

6 20. Payments to Participating Class Members will be allocated as 20% wages, 40%
7 interest, and 40% penalties. The employee share of any applicable payroll taxes on wages will be
8 deducted from the wage portion of each Participating Class Member's Individual Settlement Payment.
9 Employer-side payroll taxes shall be paid by Defendant separately from and in addition to the Gross
10 Settlement Payment.

11 21. The Settlement Agreement is a non-reversionary and non-claims made settlement. All
12 money from the Net Settlement Fund will be distributed to Participating Class Members. No money
13 will revert to Defendant.

14 22. Any Individual Settlement Payment checks remaining uncashed after 180 days will be
15 transferred to the California State Controller's Office and held in trust for such Settlement Class
16 Members and PAGA Members. As such, no "unpaid residue" under California Code of Civil
17 Procedure section 384 will result from the Settlement.

18 23. In exchange for participating in the settlement, Settlement Class Members will release
19 their wage and hour claims against Defendants, and the release given by Settlement Class Members is
20 properly and narrowly tailored to release only claims pleaded in the SAC or which could have been
21 alleged based upon the facts, allegations and/or claims pleaded in the SAC during the Class Period.

22 **The Settlement is Reasonable**

23 ***Informed Arms-Length Negotiations***

24 24. The Parties' settlement negotiations were at all times made at arm's-length and were
25 adversarial. The Settlement was reached following a full day of mediation with a highly respected
26 mediator with substantial experience mediating wage and hour cases, and Plaintiffs engaged in
27 additional negotiations in order to finalize the long-form agreement presently before the Court. At all
28 times, Plaintiffs were willing and prepared to litigate this matter through class certification and trial if

1 the Parties had been unable to reach a favorable resolution.

2 25. The Parties engaged in extensive informal discovery prior to reaching a settlement at
3 the mediation. Prior to mediation, Defendants produced the Class Members' time and pay records,
4 Defendants' employee handbooks and relevant wage and hour policies and procedures; information
5 regarding the number of putative class members; the total workweeks and pay periods worked by the
6 Class Members; the number of Class Members who executed arbitration agreements and settlement
7 agreement; and the rates of pay for each Class Member. This allowed Plaintiffs' counsel to conduct
8 an informed assessment and analysis of the strengths and weaknesses of the claims and the potential
9 class-wide damages.

10 26. Based on the information exchanged, the Parties extensively briefed issues regarding
11 class certification and liability and provided their analyses to the mediator who helped the Parties
12 debate the strengths and weakness of their respective positions.

13 ***Estimate of Potential Value of Class Claims***

14 27. My office and our expert analyzed all available data and estimated Defendants'
15 maximum potential exposure to be approximately \$16,621,564.88, assuming the litigation was
16 successful at trial on all claims at issue, but then reduced this exposure analysis by considering the
17 risks based on the likelihood of obtaining class certification, prevailing at trial, and other attendant
18 risks. This estimate is based off an estimated maximum liability for all claims at issue and the total
19 aggregate workweeks during the Class Period, based on the analysis of the sampled data.
20 \$2,834,272.79 for meal period violations, \$5,307,626.95 for rest period violations, \$4,777,693.14 for
21 unpaid overtime wages, waiting time penalties of \$1,982,472.00, and wage statement penalties of
22 \$1,719,500.00. Plaintiffs further estimated that Defendants faced an additional exposure of
23 \$1,743,200.00 in potential, non-stacked (i.e., one penalty, per employee, per pay period during the
24 PAGA Period) PAGA penalties.

25 ***Specific Risks Considered***

26 28. Although the investigation and information discovered supports Plaintiffs' contentions,
27 Defendants raised potential defenses and other circumstances that impacted the risk of proceeding on
28 a class-wide basis. Consideration of these risks factored into the decision to enter this Settlement.

1 29. My colleagues and I were aware of Defendants’ defenses and arguments and have also
2 taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and
3 delays inherent in such litigation, including those involved in class and/or representative adjudication.
4 Plaintiffs further recognize the burdens of proof necessary to establish liability for the claims asserted
5 in the Lawsuit, Defendants’ defenses, and the difficulties in establishing entitlement to monetary
6 recovery. Plaintiffs have also considered the Parties’ settlement discussions, as well as the evaluations
7 of the mediator, who is experienced and well-regarded in complex labor and employment matters.

8 30. Defendants denied and continue to deny any liability and wrongdoing of any kind
9 associated with the claims alleged in this action, and further deny that class certification is appropriate
10 for any purpose other than this Settlement. Defendants believe that it would ultimately prevail in this
11 action. Defendants proffered defenses to both certification and to the merits of Plaintiffs’ claims.
12 Defendants contended that Plaintiffs’ claims are not suitable for class certification because individual
13 issues would predominate should this case go to trial. As with all class actions, these complex cases
14 raise difficult management and proof issues and, accordingly, there is a significant risk that the Court
15 may deny class certification.

16 31. For example, a large portion of Defendant’s overall liability lies in Plaintiffs’ meal
17 period claims. These claims have been increasingly difficult to certify in recent years and Defendant
18 contended its practices were lawful. Plaintiffs’ theory of liability for meal period violations was based
19 on allegations that Defendants had failed to implement policies and practices that allowed Class
20 Members to take meal breaks in the manner required under California law. Defendants argued that
21 their practices at all times during the class period were lawful. Defendants further argued that the rate
22 of purported meal period violations reflected in the data would require individualized inquiry and that
23 such inquiry would prohibit a class from being certified. We had to consider the risk that the Court
24 would find validity in the individualized proof defense to certification of Plaintiffs’ meal period claim,
25 given what appeared to be a lawful written policy.

26 32. Plaintiffs’ rest period allegations were based on a similar failure to provide employees
27 with timely, full, and uninterrupted rest periods. As with the meal period allegations, Defendants
28 contended that they had a lawful written rest period policy, provided compliant rest breaks and relieved

1 Class Members of all duties as required under California law. Additionally, this claim was even more
2 uncertain given the difficulties associated with proving the alleged rest period violations, as
3 Defendants were not required to record these breaks. Given the lack of records demonstrating rest
4 period violations, there were legitimate concerns Plaintiffs would not be able to certify these claims
5 or prove substantial damages with requisite certainty.

6 33. Plaintiffs also faced challenges certifying and proving liability for their minimum wage
7 and overtime claims. These claims were largely based on unrecorded, off-the-clock work performed
8 by the Class Members such as donning and doffing uniforms and Personal Protective Equipment both
9 before and after their shifts, as well as waiting in line in order to submit to COVID-19 screening prior
10 to clocking-in. Employees also receive phone calls and text messages on their personal phones when
11 they are not at work about topics such as scheduling, checking up on the status of a project, and
12 questions about deliveries. However, the individualized nature of why this work was performed and
13 the individualized nature of damages presented substantial concerns regarding the manageability of
14 the case and the risk the Court could find these issues prevented certification.

15 34. Plaintiffs' regular rate claim also presented challenges because, although the claim did
16 not face the same certification hurdles as Plaintiffs' meal and rest break claims, Plaintiffs' damage
17 analysis revealed that the total amount of alleged underpaid wages based on Defendants' alleged
18 failure to pay overtime at the lawful regular rate was low: only about \$29,820.

19 35. There are also substantial risks associated with Plaintiffs' waiting time penalties and
20 wage statement claims. First, these claims were derivative of Plaintiffs' claims for unpaid meal period
21 premiums, unpaid rest period premiums, unpaid minimum wages, and unpaid overtime wages, and if
22 certification was denied on those underlying claims, these derivative claims for penalties would also
23 likely fail. Further, even if Plaintiffs prevailed on their underlying claims, they would still be required
24 to demonstrate that Defendants' violations of Labor Code section 203 were *willful* violations. Wage
25 statement claims have also seen varying treatment at the appellate level because such claims have an
26 element of discretion attached to them rather than a pure calculation of damages after liability is
27 proven. Accordingly, these derivative claims, which comprised a substantial portion of Defendants'
28 estimated liability, were therefore uncertain.

1 36. My office also recognized that, even if Plaintiffs prevailed at class certification, proving
2 the amount of wages due to each Class Member would be an expensive, time-consuming, and
3 extremely uncertain proposition. In order to prove liability and damages, Plaintiffs would need to
4 request and analyze thousands of pages of additional documents, obtain the Class Members' contact
5 information, contact them, and obtain declarations. Obtaining the cooperation of current employees
6 would also be difficult, given the likely reluctance to aid prosecution of a lawsuit against a current
7 employer. On the other hand, Defendants would likely be able to obtain the cooperation of their
8 employees. Moreover, even if Plaintiffs prevailed at class certification and trial, possible appeals
9 would substantially delay any recovery by the Class.

10 37. Perhaps most significant to our analysis of both liability and damages is that of the 621
11 Class Members and Aggrieved Employees, Defendants revealed during mediation that only 99 Class
12 Members and Aggrieved Employees had **not** signed a release agreement or an arbitration agreement
13 which included a class action waiver. Therefore, had this case proceeded, the Class size (and
14 accordingly, the alleged damages contemplated by Plaintiff's analysis) would have been significantly
15 less.

16 38. Therefore, taking into account the risk of not obtaining class certification, the cost and
17 delay in recovering the alleged potential damages, and the significant impact of the release agreements
18 and arbitration agreements/class waivers signed by the majority of the potential Class Members, Class
19 Counsel discounted Defendants' estimated liability by 50%. The merits-based risk factors also reduced
20 Defendants' estimated liability by an additional 40%. This resulted an adjusted estimated liability of
21 \$1,750,000.

22 39. My office also separately contemplated the risks of proceeding with the PAGA action
23 and potential liability Defendant could face from this claim as part of the global resolution. First, and
24 most significantly, as discussed above, only 99 out of 621 Class Members and Aggrieved Employees
25 did **not** sign a release agreement or an arbitration agreement. In the vast majority of the release
26 agreements, each alleged aggrieved employee acknowledged that they had not been aggrieved in the
27 manner alleged by Plaintiff Garcia. In addition, at the time the parties mediated this case, there was
28 ambiguity with respect to U.S. Supreme Court's then-forthcoming decision in *Viking River Cruises*,

1 *Inc. v. Moriana* and how the Court’s decision would impact Defendants’ arbitration agreements.
2 Separate from that, existing case law makes PAGA claims subject to the same defenses and risks as
3 Plaintiff’s underlying wage claims. Moreover, although California case law clearly states that PAGA
4 actions need not satisfy class action requirements, Class Counsel remained mindful of the fact that
5 some courts have nevertheless held that PAGA claims must meet a threshold “manageability”
6 requirement pursuant to *Wesson v. Staples the Office Superstore, LLC*, 68 Cal.App.5th 746 (2021).
7 We also anticipated that even if successful on the merits at trial, the imposition of cumulative civil
8 penalties based on the alleged wage and hour violations could be considered unjust, arbitrary and
9 oppressive, or confiscatory, and that Defendants would argue that they made a good faith attempt to
10 comply with their legal obligations warranting a reduction in penalties. Class Counsel also anticipated
11 Defendants would argue that they made a good faith attempt to comply with their legal obligations
12 and that the violations per pay period were low, warranting an additional reduction in civil penalties.
13 Finally, we were also mindful of the fact that PAGA is fundamentally not intended to be compensatory
14 in nature, but is instead intended to facilitate enforcement of California’s labor laws by financing state
15 activities and educating and deterring non-compliance.

16 40. Therefore, after considering this multitude of factors, we concluded that it was in the
17 best interest of the State of California and the Aggrieved Employees to enter into the Settlement, and
18 to allocate Two Hundred Thousand Dollars and Zero Cents (\$200,000.00) of the Settlement towards
19 the PAGA claims, which represents approximately 11.43% of the Gross Settlement Amount. This
20 percentage of the settlement is well-within the range of wage and hour settlements regularly approved
21 in both state and federal court for cases that include both a class and PAGA action. Typically, such
22 hybrid cases allocate only 1% of the gross settlement value to resolve PAGA claims, and, indeed,
23 settlements allocations as little as 0.22% of the gross settlement amount have been approved as
24 reasonable by courts. Moreover, the overall relief obtained by the Settlement is significant, not only
25 from a monetary perspective, but also because it fulfills the public policy objectives of PAGA—to
26 promote enforcement of California’s labor laws, provide funds to the state, and deter future non-
27 compliance by the employer.

28 41. I therefore submit that the Settlement is fair, reasonable, and adequate. The Settlement

1 is in the best interest of the Class Members and is within the accepted range of recoveries for this type
2 of litigation given the inherent risk of litigation, the risk of obtaining and maintaining class
3 certification, and the costs of further litigation.

4 ***Class Representative Enhancement Award***

5 42. As part of the settlement agreement, Plaintiffs are requesting an aggregate incentive
6 award to all Plaintiffs in the amount of \$27,500, \$5,000 of which is requested as a reasonable
7 enhancement award to our client, Plaintiff Angel Garcia. The requested enhancements are eminently
8 reasonable given the time and effort each Plaintiff spent on this case, and the benefit to the other
9 putative class members as a result of the Plaintiffs' actions. Last, notice of the requested enhancements
10 award is disclosed to the Class Members in the Notice of Class Action Settlement.

11 ***Attorneys' Fees and Costs***

12 43. The attorneys' fees incurred by Class Counsel are in line with the common fund
13 requested. The Settlement Agreement provides for Class Counsel to apply for attorneys' fees in an
14 amount of up to one-third of the Gross Settlement Payment (i.e., \$583,275) and actual litigation costs
15 and expenses in an amount not to exceed Ninety-Five Thousand Dollars (\$95,000.00), which will be
16 paid out of the Gross Settlement Payment, subject to approval by the Court. Class Counsel have borne
17 all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.

18 44. The effectiveness of Blackstone Law, APC's prosecution of this matter has translated
19 into tangible monetary benefits for the Settlement Class Members as follows: (1) Settlement Class
20 Members will obtain monetary recovery over a relatively short period of time, as opposed to waiting
21 additional years for the same, or potentially worse, result; (2) a guaranteed result that compares
22 favorably with other similar class action settlements of this type, given the strengths and weaknesses
23 of the case; and (3) significant savings in Class Counsel's fees and/or costs that would have only
24 increased significantly had the case progress through trial and/or appeals.

25 45. Class Counsel have litigated this matter for more than a year and were actively
26 preparing this matter for class certification and trial. The Motion for Final Approval will elaborate on
27 the nature of the legal services provided, the time incurred in performing those services, and Class
28 Counsel's hourly rates. The Motion for Final Approval will also elaborate on the reimbursement costs

sought by Class Counsel. Notice of the requested award of fees and costs is included in the Notice to the Class. (Settlement Agreement, Exh. 1).

46. Plaintiffs' counsel have entered into a written fee splitting agreement, and each named Plaintiff has agreed to and approved the aforementioned fee-splitting agreement in writing.

Notice to the Class

47. The Parties have agreed to retain CPT Group, Inc. ("CPT" or "Settlement Administrator") to handle the notice and settlement administration process. The Parties respectfully request that the Court appoint CPT to handle these procedures and to serve as the Settlement Administrator. Defendant will provide CPT with the Class List and CPT will calculate each Settlement Class Member's estimated Individual Settlement Share. CPT will also receive requests for exclusion from the Settlement, objections to the Settlement, and disputes about the number of workweeks worked; will provide necessary reports and declarations; will calculate, subtract, and transmit the employees' and employer's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Shares; will prepare and submit informational and other tax filings and documents; will issue and transmit all payments provided for by the Settlement, including, but not limited to, mailing Individual Settlement Payment checks to the Participating Class Members; and perform any other usual and customary duties for administering a class action settlement.

48. I am not aware of an alternative method of providing notice to the Class which would result in a higher likelihood of actual notice. The original source of the mailing addresses is from each Class Member, who provided the information to Defendant. As a fail-safe to this highly reliable method, skip tracing will be performed, if necessary.

Notice of Settlement to the LWDA

49. In accordance with California Labor Code section 2699(1)(2) and concurrently with the filing of this motion, a copy of the proposed Settlement, as well as information regarding the preliminary approval hearing on this matter, were submitted to the LWDA via online submission through the LWDA's website.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

1 Executed on February 27, 2023, at Beverly Hills, California.

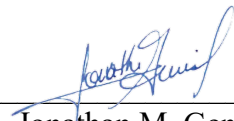
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Jonathan M. Genish

EXHIBIT A

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(Additional counsel listed on following page.)

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

ANGEL GARICA, individually, and on
behalf of other members of the public
similarly situated,

Plaintiff,

v.

J&B INVESTMENTS, INC. d/b/a J&B
MATERIALS, INC., a California
corporation; PACIFIC GYPSUM SUPPLY,
INC., a Georgia Corporation; GYPSUM
MANAGEMENT AND SUPPLY, INC., a
Georgia Corporation; and DOES 1 through
25, inclusive,

Defendants.

Case No. CIVSB2113372

*[Assigned for all purposes to Honorable Joseph
T. Ortiz, Dept. S-17]*

**JOINT STIPULATION AND SETTLEMENT
AGREEMENT OF CLASS ACTION AND
REPRESENTATIVE ACTION CLAIMS**

Complaint Filed: April 25, 2022

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23 Attorneys for Defendants
J&B INVESTMENTS, INC. D/B/A J&B MATERIALS, INC.,
24 PACIFIC GYPSUM SUPPLY, INC. D/B/A J&B MATERIALS, INC.
AND GYPSUM MANAGEMENT AND SUPPLY, INC.
25
26
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1 This Joint Stipulation and Settlement Agreement of Class Action and Representative Action
2 Claims (“Stipulation of Settlement” or “Settlement” or “Settlement Agreement”) is made and entered
3 into by and between Plaintiffs Angel Garcia, Christian Melendez, Jack Mahan, Athena Neri and
4 Eduardo Lopez Lopez (hereinafter referred to as “Plaintiffs”) and on behalf of the Class and Aggrieved
5 Employees (as defined below) and Defendants J&B Investments, Inc. d/b/a J&B Materials, Inc.,
6 Pacific Gypsum Supply, Inc., and Gypsum Management and Supply, Inc. (“Defendants”) (Plaintiff
7 and Defendants hereinafter collectively referred to as the “Parties”). Defendants J&B Investments,
8 Inc. d/b/a J&B Materials, Inc., Pacific Gypsum Supply, Inc., and Gypsum Management and Supply,
9 Inc. (“Defendants”) (Plaintiffs and Defendants hereinafter collectively referred to as the “Parties”).

10 THE PARTIES STIPULATE AND AGREE as follows:

11 **DEFINITIONS**

12 1. “**Actions**” shall mean the following actions entitled *Christian Melendez v. J&B*
13 *Investments, Inc., et al.*, pending in Riverside County Superior Court, Case No. RIC1806564 (“the
14 *Melendez Action*”), *Jack Mahan, et. al. v. J&B Investments, Inc., et al.*, pending in San Bernardino
15 Superior Court, Case No. CIVSB2113372 (“the *Mahan Action*”), *Angel Garcia v. J&B Investments, Inc.*
16 *d/b/a J&B Materials, Inc., Pacific Gypsum Supply, Inc. and Gypsum Management and Supply, Inc.*,
17 pending in San Bernardino Superior Court, Case No. CIVSB2208601, and *Eduardo Lopez Lopez v.*
18 *J&B Investments, Inc., et al.*, pending in Los Angeles Superior Court, Case No. 19STCV16570.

19 2. “**Class Counsel**” shall mean Jonathan M. Genish of Blackstone Law, APC, Jordan S.
20 Esensten of Esensten Law, Ian Silvers of Bisnar Chase, and Joseph Lavi of Lavi & Ebrahimian, LLP.

21 3. “**Class Members**” shall mean all current and former non-exempt employees of
22 Defendants who worked in California at any time during the Class Period (“Settlement Class
23 Members”).

24 4. “**Class Period**” shall mean April 5, 2014 until the date the Court grants preliminary
25 approval of this Settlement.

26 5. “**Class Released Claims**” shall have the meaning ascribed to it in Paragraph 64(a)-(d)
27 below.

6. **“Class Representatives”** or **“Plaintiffs”** shall mean Plaintiffs Angel Garcia, Christian Melendez, Jack Mahan, Athena Neri, and Eduardo Lopez Lopez.

7. **“Court”** shall mean the Superior Court of the State of California for the County of San Bernardino.

8. **“Court’s Final Order and Judgment”** means the Final Order Approving Class Action and PAGA Settlement and Judgment in a form to be agreed upon by the Parties and approved by the Court.

9. **“Defendants’ Counsel”** shall mean Elizabeth Staggs-Wilson of Littler Mendelson, P.C.

10. **“Effective Date”** shall have the meaning ascribed to it in Paragraph 37, below.

11. **“Final Approval Hearing”** shall mean the hearing whereat the Court shall consider, without limitations, any timely objections to the Settlement from Settlement Class Members, testimony from the Parties or their counsel, declarations regarding the claims process from the Settlement Administrator, and otherwise make a final determination regarding the fairness of the Settlement as set forth herein.

12. **“Incentive Awards”** shall mean the payment made to Plaintiffs in their capacity as Class Representatives, which sum is separate from and in addition to their Individual Settlement Payments.

13. **“Individual Settlement Payment”** will be the portion of the Net Settlement Amount payable to a Settlement Class Member.

14. **“Net Settlement Amount”** shall have the meaning ascribed to it in Paragraph 44, below.

15. **“Notice of Proposed Settlement”** or **“Notice”** means the Notice of Pendency of Class Action in substantially the form attached hereto as **Exhibit B**, and as approved by the Court.

16. **“Operative Complaint”** shall mean and refer to the Second Amended Class Action Complaint, attached hereto as **Exhibit A**.

17. **“PAGA”** shall mean the California Labor Code Private Attorneys General Act, Labor Code §§ 2698 *et seq.*

18. **“PAGA Employee”** or “Aggrieved Employee” shall mean all current and former non-exempt employees of Defendants who worked in California at any time during the PAGA Period.

19. **“PAGA Payment”** means the payment to the State of California Labor and Workforce Development Agency (“LWDA”) and the PAGA Employees in settlement of all claims for PAGA penalties.

20. **“PAGA Employee Payments”** means the payment issued to each PAGA Employee for his/her/their share of the PAGA Payment.

21. **“PAGA Period”** shall mean May 13, 2018 through the date the Court grants preliminary approval of this Settlement.

22. **“Parties”** shall refer to the Plaintiffs and Defendants, each of whom is a “Party.”

23. **“Released Parties”** collectively shall encompass J&B Investments, Inc. d/b/a J&B Materials, Inc., Pacific Gypsum Supply, Inc. and Gypsum Management and Supply, Inc. and any of their past, present and future direct or indirect parents, subsidiaries, predecessors, successors and affiliates, as well as each of their past, present and future officers, directors, employees, partners, members, shareholders and agents, attorneys, insurers, reinsurers and any individual or entity which could be jointly liable with Defendants.

24. **“Settlement Administrator”** shall mean Simpluris, Inc.

25. “**Settlement Class Members**” shall mean the individual Class Members who did not opt-out of the Settlement by submitting a valid request for exclusion as described in Paragraph 58.

26. **“Gross Settlement Amount”** shall refer to One Million Seven Hundred Fifty Thousand Dollars and Zero Cents (\$1,750,000.00), which is the maximum amount that Defendants will pay pursuant to this Settlement, excluding Defendants’ share of payroll taxes, which shall be paid by Defendants separately and in addition to the Gross Settlement Amount.

RECITALS

27. The Plaintiffs in the Actions allege causes of action for (1) failure to pay and/or accurately calculate minimum, regular, overtime, double time, prevailing and vacation wages; (2) failure to provide meal periods or pay premiums in lieu thereof; (3) failure to provide rest periods or pay premiums in lieu thereof; (4) failure to reimburse and indemnify expenses; (5) failure to timely

1 pay wages during and upon termination of employment; (6) failure to furnish and/or keep timely and
2 accurate wage statements and employment records; and (7) violation of the Unfair Competition Law.

3 28. Following exchange and extensive review of relevant documents and class data, on
4 May 4, 2022, there was a full-day mediation with experienced wage and hour class action mediator
5 Tripper Ortman, Esq., which resulted in a settlement.

6 29. Defendants deny any liability or wrongdoing of any kind whatsoever associated with
7 the claims in the Actions, and further deny that, for any purpose other than settling the Actions, the
8 Actions are appropriate for class action or representative treatment.

9 30. It is the Parties' desire to fully, finally and forever settle, compromise and discharge all
10 disputes and claims arising from or related to the allegations of the Actions.

11 31. It is the Parties' intention that this Stipulation of Settlement shall constitute a full and
12 complete settlement and release of all Class Released Claims and all PAGA Claims (as defined in
13 Paragraphs 64 and 65 below) against all Released Parties.

14 32. It is the Parties' intention that this Settlement shall not become effective until the
15 Effective Date, as defined in Paragraph 37, below.

16 33. Class Counsel have conducted a thorough investigation into the facts of the Actions,
17 including an extensive review of relevant documents and data, and have diligently pursued an
18 investigation of the Class Members' claims against Defendants. Based on its and their own
19 independent investigation and evaluation, Class Counsel are of the opinion that the Settlement with
20 Defendants is fair, reasonable and adequate and is in the best interest of the Class Members in light of
21 all known facts and circumstances, including the risks of significant delay, the class not being certified,
22 and the defenses asserted by Defendants. Defendants and Defendants' Counsel also agree that the
23 Settlement is in the best interests of the Class Members. Counsel for the Parties further agree that the
24 Settlement is fair, reasonable and adequate with respect to civil penalties sought pursuant to PAGA.

25 34. The Parties agree to cooperate and take all steps necessary and appropriate to
26 consummate this settlement in accordance with the terms of this Stipulation of Settlement.

27 **TERMS OF SETTLEMENT**

1 35. In consideration of the mutual covenants, promises and agreements set forth herein, the
2 Parties agree, subject to the Court’s approval, to the terms herein.

3 36. It is agreed by and between Plaintiffs and Defendants that the Actions and any claims,
4 demands, liabilities, penalties, damages or causes of action of any kind whatsoever claimed by
5 Plaintiffs on behalf of themselves, the Class Members, and/or the PAGA Employees arising out of the
6 disputes which are the subject of the Actions, be settled and compromised, subject to the terms and
7 conditions set forth in this Stipulation of Settlement and the Court’s approval.

8 37. Effective Date: The Settlement embodied in this Stipulation of Settlement shall
9 become effective when all of the following events have occurred (“Effective Date”): (i) this Stipulation
10 of Settlement has been executed by Plaintiffs, Defendants, Class Counsel and Defendants’ Counsel;
11 (ii) the Court has given preliminary approval to the Settlement; (iii) the Notice has been sent to the
12 Class Members, providing them the opportunity to object to the Settlement, and the opportunity to opt
13 out of the Settlement; (iv) the Notice has been sent to the LWDA; (v) the Court has held a formal
14 fairness hearing and entered the Court’s Final Order and Judgment; and (vi) the later of the following
15 events: (A) sixty (60) calendar days following issuance of the Final Order and Judgment has elapsed
16 without any appeal, writ or other appellate proceeding having been filed; or (B) five (5) business days
17 from when any appeal, writ or other appellate proceeding opposing the Settlement has been finally
18 and conclusively dismissed and the Court’s Final Order and Judgment has been upheld with no right
19 to pursue further remedies or relief. If the Court declines to approve the Settlement, the entire
20 Stipulation of Settlement is deemed void and unenforceable as if no settlement of any claim was ever
21 reached. All negotiations, statements and proceedings and data relating thereto shall be protected by
22 California Evidence Code §1152 and shall be without prejudice to the rights of any of the Parties.

23 38. As a condition of this settlement, Plaintiffs shall file a Second Amended Complaint
24 (“Operative Complaint”) in the Garcia Action to add Christian Melendez, Jack Mahan, Athena Neri,
25 and Eduardo Lopez Lopez as named plaintiffs prior to obtaining preliminary approval of the
26 Settlement and which shall be the Operative Complaint, a copy of which is attached as Exhibit A.
27 The Operative Complaint shall include a cause of action under the Fair Labor Standards Act (“FLSA”)
28 and a cause of action pursuant to the Labor Code Private Attorneys General Act of 2004, Cal. Labor

1 Code §§ 2698, *et seq.* Defendants will be permitted to file an Answer within 30 days, and the Parties
2 will jointly seek an immediate vacation or stay of pending dates, pending approval by the Court of this
3 Settlement. The Amended Complaint shall include all PAGA claims in Plaintiffs' PAGA letters
4 submitted to the LWDA Plaintiffs.

5 39. As a condition of this Settlement, the Parties agree to exercise best efforts to stay the
6 *Melendez* Action, the *Lopez Lopez* Action, and the *Mahan* Action pending approval of this Settlement
7 agreement and the Effective Date of the same, including, but not limited to, filing a stipulation or
8 motion in each of those cases seeking a stay of the case. Further, the Parties agree to take all steps
9 necessary to dismiss the *Melendez* Action, the *Lopez Lopez* Action, and the *Mahan* Action with
10 prejudice following the Effective Date, including, but not limited to, jointly filing a stipulation of
11 dismissal in the *Melendez* Action, the *Lopez Lopez* Action and the *Mahan* Action within five (5) days
12 of the Effective Date.

13 40. Currently pending in the California Court of Appeal, Fourth District (the "Court of
14 Appeal"), is a writ proceeding filed by Plaintiff Jack Mahan of an order compelling his claims to
15 arbitration. Mahan and Defendants agree that they will exercise best efforts to try and secure a stay
16 of the writ proceeding pending approval of this Settlement, including jointly filing a notice of
17 settlement / motion to stay with the Court of Appeals stating that a settlement encompassing Mahan's
18 claims has been reached and requesting that the Court of Appeals stay further consideration of the writ
19 proceeding pending approval of the settlement. Further, if the writ proceeding remains pending on
20 the Effective Date, Mahan and Defendants agree to jointly file a stipulation of dismissal within three
21 (3) business days of the Effective Date. However, the Parties acknowledge and understand that the
22 Court of Appeals does not have to accept the request for stay or the stipulation of dismissal, and
23 understand that any opinion or orders issued by the Court of Appeal will not impact this Agreement.

24 41. Gross Settlement Amount: To implement the terms of this Settlement, Defendants
25 agree to pay a maximum total payment of One Million Seven Hundred Fifty Thousand Dollars and
26 Zero Cents (\$1,750,000.00), which includes payments to Settlement Class Members (excluding any
27 appropriate and lawfully required employer-side payroll taxes owed by Defendants on such payments
28 which Defendants shall be separately responsible for apart from the Gross Settlement Amount),

1 Incentive Awards to the Class Representative, the PAGA Payment, the Settlement Administrator's
2 fees and costs, approved attorneys' fees and litigation costs, and any other payments provided by this
3 Settlement. Except as otherwise specified herein, Defendants shall not be required to pay any
4 additional monies beyond the amount of the Gross Settlement Amount plus the employer-side payroll
5 taxes. Further, no portion of the Gross Settlement Amount shall revert to Defendants, and any amount
6 of the Gross Settlement Amount not required to pay the above-referenced amounts shall be paid to the
7 Settlement Class Members on a pro rata basis according to the formula contained herein. The Gross
8 Settlement Amount is based on Defendants' representation to Class Counsel that the Class Members
9 worked a total of 55,259 workweeks during the Class Period. Should the qualifying workweeks
10 worked by the Class Members during the Class Period ultimately increase by more than 20% (i.e., by
11 more than 11,052 workweeks), Defendants shall have an option to either: (1) have the Released Claims
12 be released only for the 66,311 workweeks; or (2) increase the Gross Settlement Amount on a pro-rata
13 basis equal to the percentage increase in the number of workweeks worked by the Class Members
14 above 20% through the date of Preliminary Approval and have the Released Claims be released
15 through the date of Preliminary Approval. For example, if the number of workweeks increased by
16 21% to 66,864 workweeks through the date of Preliminary Approval, the Gross Settlement Amount
17 would be increased by 1% to have the Released Claims be released for that full time period.

18 42. Tax Treatment of the Gross Settlement Amount: The Parties agree that the Gross
19 Settlement Amount will qualify as a settlement fund pursuant to the requirements of section 468(B)(g)
20 of the Internal Revenue Code of 1986, as amended, and section 1.468B-1 *et seq.* of the income tax
21 regulations. Furthermore, the Settlement Administrator is hereby designated as the "Administrator"
22 of the qualified settlement funds for purposes of section 1.46B-2(k) of the income tax regulations. As
23 such, all taxes imposed on the gross income of the Gross Settlement Amount and any tax-related
24 expenses arising from any income tax return or other reporting document that may be required by the
25 Internal Revenue Service or any state or local taxing body will be paid from the Gross Settlement
26 Amount.

27 43. Funding of Settlement Amount: By no later than the Effective Date, Defendants shall
28 transfer to the Settlement Administrator an amount equal to the Gross Settlement Amount plus the

1 employer's share of payroll taxes. The delivery of the Gross Settlement Amount and the employer's
2 share of payroll taxes to the Settlement Administrator shall constitute full and complete discharge of
3 the entire obligation of Defendants under this Settlement. Once Defendants have made such payments,
4 they will be deemed to have satisfied all terms and conditions under this Settlement, shall be entitled
5 to all protections afforded to Defendants under this Settlement, and shall have no further obligations
6 under the terms of the Settlement regardless of what occurs with respect to those sums.

7 44. Allocation of the Gross Settlement Amount: Subject to Court approval and the
8 conditions specified in this Agreement, and in consideration of the mutual covenants and promises set
9 forth herein, the Parties agree the Gross Settlement Amount shall encompass the following: (1) Class
10 Counsel's fees and expenses approved by the Court; (2) the Plaintiffs' Incentive Awards; (3) the
11 Settlement Administrator's costs; (4) the PAGA Payment (including both the PAGA payment to the
12 LWDA and the PAGA Settlement Checks); and (5) the Net Settlement Amount. After the deduction
13 of the amounts approved for the Incentive Awards to the Class Representative, the PAGA Payment,
14 the Settlement Administrator's costs, Class Counsel's fees and expenses, the remainder shall be
15 referred to as the Net Settlement Amount.

16 a. The Net Gross Settlement Amount shall be divided among the Settlement Class
17 Members on a pro-rata basis, based upon the following:

18 i. Each Settlement Class Member's workweek count, which shall be the sum of
19 the total number of workweeks the Settlement Class Member worked during
20 the Class Period;

21 ii. Divided by the combined sum of all Settlement Class Members' workweek
22 count; and

23 iii. Multiplied by the value of the Net Gross Settlement Amount.

24 b. The Parties agree that if any Settlement Class Member disputes the basis for
25 determining their share of the Settlement, Defendants' records shall presumptively
26 control unless the Settlement Class Member can produce documentation evidence of
27 other workweeks worked during the relevant time period. The Parties further agree
28

1 that any dispute that cannot be resolved by Class Counsel and Defendants' counsel may
2 be brought before the Court before final approval of the Class Settlement.

3 c. To the extent that amounts in Paragraphs 48 and 49 below are not approved by the
4 Court, such amounts will be reallocated to the Net Settlement Amount unless allocated
5 otherwise by agreement of the Parties, with approval of the Court.

6 d. The Parties agree that all of the Net Settlement Amount distributed to each Settlement
7 Class Member will be allocated as follows: twenty percent (20%) as alleged unpaid
8 wages, forty percent (40%) as alleged penalties, and forty percent (40%) as alleged
9 unpaid interest. The Settlement Administrator will issue an IRS W-2 to each Settlement
10 Class Member for the portion of each Individual Settlement Payment allocated as
11 alleged unpaid wages and subject to applicable tax withholdings. The Settlement
12 Administrator shall issue an IRS Form 1099-MISC to each Settlement Class Member
13 for the portion of each Individual Settlement Payment allocated as alleged unpaid non-
14 wage penalties and interest and not subject to payroll tax withholdings. The Parties
15 further agree that the PAGA payment distributed to each PAGA Employee will be
16 treated entirely as civil penalties and will be reported as such to each PAGA Employee
17 on an IRS Form 1099-MISC, if applicable.

18 e. Within ten (10) calendar days of the transfer of the Gross Settlement Amount to the
19 Settlement Administrator, and only upon the Effective Date being met, the Settlement
20 Administrator shall disburse: (1) the Net Settlement Amount to be paid to Settlement
21 Class Members; (2) the Attorney Fee Award and Cost Award to Class Counsel for
22 attorneys' fees and costs, as approved by the Court; (3) the Class Representative
23 Incentive Awards paid to the Class Representative, as approved by the Court; (4)
24 Settlement Administrator Costs, as approved by the Court; and (5) the PAGA Payment
25 to the LWDA and PAGA Employees, as approved by the Court.

26 f. Settlement Class Members and PAGA Employees must cash or deposit their Individual
27 Settlement Payment and PAGA Employee Payment checks within one hundred eighty
28 (180) days from the date of issuance of the check. If any checks are not redeemed or

1 deposited within ninety (90) calendar days after mailing, the Settlement Administrator
2 will send a reminder postcard indicating that unless the check is redeemed or deposited
3 in the next ninety (90) days, it will expire and become non-negotiable, and offer to
4 replace the check if it was lost or misplaced. If any checks remain uncashed or not
5 deposited by the expiration of the ninety (90) day period after mailing the reminder
6 notice, the Settlement Administrator will, within two hundred (200) calendar days after
7 the checks are mailed, cancel the checks. All funds associated with the Individual
8 Settlement Payment checks and PAGA Employee Payment checks returned as
9 undeliverable and funds associated with those Individual Settlement Payment checks
10 and PAGA Employee Payment checks remaining uncashed, shall be delivered to the
11 State of California's State Controller Unclaimed Property Fund with an identification
12 of the amount of unclaimed funds attributable to each Settlement Class Member and
13 PAGA Employee.

14 45. PAGA Payment: Subject to the Court's Approval, up to a maximum of Two Hundred
15 Thousand Dollars and Zero Cents (\$200,000.00) shall be allocated as the PAGA Payment. One
16 Hundred Fifty Thousand Dollars and Zero Cents (\$150,000.00), representing 75% of the PAGA
17 Payment, shall be paid to the LWDA. Fifty Thousand Dollars and Zero Cents (\$50,000.00),
18 representing 25% of the penalties paid pursuant to PAGA, shall be distributed to the PAGA Employees
19 as PAGA Employee Payments. The PAGA Employees shall release their PAGA claims in their
20 entirety and may not opt out of or object to the PAGA release. To arrive at the PAGA Employee
21 Payments, the portion of the PAGA Payment allocated to the PAGA Employees shall be divided
22 among the PAGA Employees on a pro-rata basis, based upon the following:

- 23 a. Each PAGA Employee's pay period count, which shall be the sum of the total number
24 of pay periods the PAGA Employee worked during the PAGA Period;
25 b. Divided by the combined sum of all PAGA Employees' pay period counts; and
26 c. Multiplied by the value of the portion of the PAGA Payment allocated to the PAGA
27 Employees.
28

1 46. Individual Settlement Payments Do Not Trigger Additional Benefits: All Individual
2 Settlement Payments, PAGA Employee Payments, and the Incentive Awards shall not be utilized to
3 calculate any additional benefits under any benefit plans to which any Plaintiff, Settlement Class
4 Members and/or PAGA Employees may be eligible including, but not limited to: retirement plans,
5 profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, paid time off,
6 sick leave plans, PTO plans, pension plans, or any other benefit plan. It is the Parties' intention that
7 this Agreement will not affect any rights, contributions, or amounts to which Plaintiffs, Settlement
8 Class Members and PAGA Employees may be entitled under any benefit plans.

9 47. Settlement Administrator: The Settlement Administrator shall be Simpluris, Inc. (the
10 "Settlement Administrator"). The Settlement Administrator will maintain acceptable electronic and
11 physical security protocols to adequately protect and safeguard the private employee information it
12 will have access to as a result of the claims process. The fees and expenses of the Settlement
13 Administrator, which is currently estimated at approximately Five Thousand Four Hundred Seventy-
14 One Dollars and Zero Cents (\$5,471.00), shall be paid out of the Gross Settlement Amount. Settlement
15 Administrator costs shall not exceed Six Thousand Dollars and Zero Cents (\$6,000.00).

16 48. Attorneys' Fees and Attorneys' Costs: Subject to the Court's approval, Class Counsel
17 shall seek attorneys' fees, which collectively shall not exceed one-third of the Gross Settlement
18 Amount, i.e., Five Hundred Eighty-Three Thousand Three Hundred Thirty-Three Dollars and Thirty
19 Three Cents (\$583,333.33). Class Counsel shall also seek reasonable costs/expenses, subject to
20 approval by the Court. Defendants will not object to Class Counsel's application for attorneys' fees
21 and costs in these amounts. The amount set forth above will cover all work performed and all fees
22 and costs incurred to date, and all work to be performed and all fees and costs to be incurred in the
23 future in connection with the approval by the Court of this Stipulation of Settlement, and the
24 administration of the Settlement. Should the Court approve a lesser amount of attorneys' fees and/or
25 attorneys' costs, the difference between the lesser amount and the maximum amount set forth above
26 shall be added to the Net Settlement Amount. No Class Counsel shall be entitled to further fees or
27 costs from Defendants if it or they elect to appeal any reduction in the requested fee or cost award.
28 Any reduction by the Court of Class Counsel's claimed attorneys' fees and/or reasonable

costs/expenses shall not be sufficient grounds to void the Settlement. Plaintiffs and Defendants shall bear their own attorneys' fees and costs, except as provided herein.

49. Class Representatives' Incentive Awards: Subject to the Court's approval, the Class Representatives will each be paid an Incentive Award in the amount set forth below in recognition for their service as a Class Representative, which shall be paid from the Gross Settlement Amount. Defendants will not object to Class Counsel's application for Court approval of an Incentive Award to the Class Representatives in the amounts set forth below. It is understood that the Incentive Awards is in addition to any claimed Individual Settlement Payment or PAGA Employee Payment to which Plaintiffs is entitled. The Incentive Awards shall not be deemed wages and will be reported on an IRS Form 1099-MISC, if applicable.

- a. Christian Melendez: an amount up to a maximum of Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00);
- b. Athena Neri: an amount up to a maximum of Five Thousand Dollars and Zero Cents (\$5,000.00);
- c. Jack Mahan: an amount up to a maximum of Five Thousand Dollars and Zero Cents (\$5,000.00);
- d. Angel Garcia: an amount up to a maximum of Five Thousand Dollars and Zero Cents (\$5,000.00);
- e. Eduardo Lopez Lopez: an amount up to a maximum of Five Thousand Dollars and Zero Cents (\$5,000.00).

50. Tax Forms: The Settlement Administrator shall be responsible for issuing the payments and withholding all required state and federal taxes in accordance with this Stipulation of Settlement. The Settlement Administrator will issue an IRS W-2 to each Settlement Class Member for the portion of each Individual Settlement Payment allocated as alleged unpaid wages and subject to applicable tax withholdings. The Settlement Administrator shall issue an IRS Form 1099-MISC to each Settlement Class Member for the portion of each Individual Settlement Payment allocated as alleged unpaid non-wage penalties and interest and not subject to payroll tax withholdings. The Settlement Administrator will also issue IRS Forms 1099 to: (1) Plaintiffs for the Incentive Awards; (2) the PAGA Employees

1 for their portion of the PAGA Payment; and (3) Class Counsel for the amount paid for approved fees
2 and costs. The Settlement Administrator will be responsible for preparing these forms correctly. The
3 Settlement Administrator shall also be responsible for submitting Defendants' share of payroll taxes
4 to the appropriate government agencies on behalf of Defendants. Plaintiffs and Class Counsel will be
5 responsible for correctly characterizing this compensation for tax purposes and for paying any taxes
6 on the amounts received.

7 51. Indemnification: Plaintiffs and Class Counsel acknowledge and agree that they are and
8 will be responsible for the payment of any and all Federal, State, and Local taxes or penalties
9 associated with their respective allocated portions of the payments described herein, and agree to
10 indemnify, defend, and hold the Released Parties harmless from any and all claims by any Federal,
11 State, or Local taxing authority that Plaintiffs or Class Counsel failed to pay or underpaid their or her
12 or his share of taxes associated with the payments set forth in this Settlement. The Parties acknowledge
13 and agree that Class Counsel is not responsible for the payment of any Federal, State, and Local taxes
14 or penalties associated with payments to Plaintiffs and Class Members.

15 **NOTICE TO THE SETTLEMENT CLASSES**

16 52. Within fourteen (14) calendar days of preliminary approval of this Settlement by the
17 Court, Defendants shall provide to the Settlement Administrator a database containing the following
18 information ("Class Member List"):

- 19 a. The full name, last known address, last known telephone number, and full social
20 security number of all Class Members; and
21 b. The information necessary to determine the estimated settlement allocation to each
22 Class Member, including: (i) The total number of workweeks worked by each Class
23 Member within the Class Period; and (ii) The total number of pay periods worked by
24 each PAGA Employee within the PAGA Period.

25 53. The Settlement Administrator (along with any of its agents) shall represent and warrant
26 that it will: (1) provide reasonable and appropriate administrative, physical and technical safeguards,
27 including a reasonable security protocol, for any personally identifiable information ("PII"), which it
28 receives from Defendants' Counsel and/or Class Counsel; (2) not disclose the PII to third parties,

1 including agents or subcontractors, without Defendants' consent; (3) not disclose or otherwise use the
2 PII other than to carry out its duties as set forth herein; and (4) promptly provide Defendants with
3 notice if PII is subject to unauthorized access, use, disclosure, modification, or destruction. The
4 Settlement Administrator may provide notice to both Parties if the PII is subject to unauthorized
5 access, use, disclosure, modification or destruction; however, all additional communications from the
6 Settlement Administrator regarding the scope, circumstances, and substance shall be communicated
7 solely to Defendants.

8 54. The Settlement Administrator shall send a Notice to each Class Member by first-class
9 mail within fourteen (14) calendar days of receipt of the Class Member List. Prior to mailing the
10 Notice, the Settlement Administrator shall update the addresses of the Class Members by reference to
11 the National Change of Address Database maintained by the United States Postal Service. If a Notice
12 is returned as nondeliverable but with a forwarding address, the Settlement Administrator shall resend
13 the Notice to the forwarding address. If a Notice is returned as nondeliverable with no forwarding
14 address, the Settlement Administrator shall conduct an advanced skip trace to locate the most current
15 address of the person to whom the Notice was addressed and shall resend the Notice to any updated
16 address within five (5) calendar days. Upon completion of these steps, the Parties shall be deemed to
17 have satisfied their obligations to provide the Notice to the affected Class Members.

18 55. The Settlement Administrator shall provide to the Court, concurrently with Plaintiffs'
19 Motion for Final Approval, a declaration of due diligence and proof of mailing with regard to the
20 mailing of the Notices.

21 56. The Settlement Administrator shall also be responsible for:

- 22 a. Mailing the Notice as directed by the Court;
- 23 b. Consulting with counsel for the Parties concerning any relevant issue, including
24 (without limitation) the estimated amounts of approximate Individual Settlement
25 Payments, PAGA Employee Payments, and the acceptance of any late or deficient
26 disputes;
- 27 c. Keeping track of timely and proper requests for exclusion;
- 28 d. Calculation of the Individual Settlement Payments, PAGA Employee Payments, and

- 1 the PAGA Payment to the LWDA;
- 2 e. Providing weekly status reports to counsel for the Parties, including: (a) the number of
- 3 Notices mailed (including information regarding undeliverable and/or emailed
- 4 Notices); (b) the number of disputes received (and sending copies of said disputes); (c)
- 5 the number of objections received; and (d) the number of requests for exclusion
- 6 received;
- 7 f. Notifying Counsel for Defendants of the wiring instructions to fund the Settlement
- 8 Amount as approved by the Court;
- 9 g. Preparing the checks containing the Individual Settlement Payments;
- 10 h. Distributing and paying the Incentive Awards, Individual Settlement Payments, PAGA
- 11 Employee Payments, the PAGA Payment to the LWDA, and fees and costs awarded to
- 12 Class Counsel;
- 13 i. Issuing tax forms and addressing employer and employee-side payroll taxes; and
- 14 j. Such other tasks as the Parties mutually agree or the Court orders the Settlement
- 15 Administrator to perform, including responding to questions from Class Members.
- 16

17 **REQUESTS FOR EXCLUSION**

18 57. Each Class Member shall have sixty (60) calendar days from the mailing of the Notice

19 within which to complete and postmark a written request for exclusion, for return to the Settlement

20 Administrator. The written request for exclusion must: (1) state the Class Member's name, address,

21 telephone number, and social security number or employee identification number; (2) state the Class

22 Member's intention to exclude themselves from or opt-out of the Settlement (e.g. "I want to exclude

23 myself from this settlement. I also understand that I retain all rights to sue the Defendants for the

24 claims asserted in this lawsuit."); (3) be addressed to the Settlement Administrator; (4) be signed by

25 the Class Member or his or her lawful representative; and (5) be postmarked no later than sixty (60)

26 calendar days from the mailing of the Notice (or the ten (10) day extension referenced below for

27 eligible Class Members). No requests for exclusion shall be accepted if postmarked after the sixty

28 (60) calendar day period for the filing of exclusions. Class Members whose Notices are returned as

1 undeliverable and who are sent a re-mailed Settlement Notice shall be given an extension of ten (10)
2 calendar days from their original Response Deadline to postmark a request for exclusion. Class
3 Members are responsible for maintaining a photocopy of their request for exclusion, reflecting that it
4 was submitted in a timely manner. Any disputes regarding the timeliness of a request for exclusion
5 or whether a written communication constitutes a valid request that cannot be resolved between the
6 Parties shall be determined by the Court, whose determination shall be final.

7 58. Any Class Member who validly excludes himself/herself/themselves from this
8 Settlement shall not be bound by this Settlement Agreement and shall not be entitled to any portion of
9 the Net Settlement Amount.

10 59. If five percent (5%) or more of the Class Members opt out of the Settlement by
11 submitting valid and timely requests for exclusion, Defendants shall have the sole and absolute
12 discretion to rescind/void the Settlement Agreement within twenty (20) days after receiving from the
13 Settlement Administrator the final list of requests for exclusion. Defendants agree to meet and confer
14 in good faith with Class Counsel before rescinding or voiding the Settlement Agreement. In the event
15 that Defendants elect to rescind/void the Settlement Agreement, Defendants shall provide written
16 notice of such rescission to Class Counsel. Such rescission shall have the same effect as a termination
17 of the Settlement Agreement for failure to satisfy a condition of settlement, and the Settlement
18 Agreement shall become null and void and have no further force or effect. The Parties specifically
19 agree not to solicit opt-outs, directly or indirectly, through any means.
20
21

22 **OBJECTIONS TO THE SETTLEMENT**

23 60. Each Class Member shall have sixty (60) calendar days from the mailing of the Notice,
24 or such number of days as the Court shall specify, within which to postmark an objection, for return
25 to the Settlement Administrator. Class Members whose Notices are returned as undeliverable and who
26 are sent a re-mailed Settlement Notice shall be given an extension of ten (10) days from their original
27 Response Deadline to postmark an objection. Any Class Member, who does not affirmatively opt-out
28 of the Settlement by submitting a valid and timely request for exclusion, may object to the approval

1 of class action settlement (“Objecting Class Member”). Any Class Member who makes a timely
2 request for exclusion has waived their right to object. The Objecting Class Member shall inform the
3 Settlement Administrator in writing and (1) state the case name and number of the action; (2) state the
4 Class Member’s name, address, telephone number, and social security number or employee
5 identification number; (3) describe, in clear and concise terms, the legal and factual arguments
6 supporting the objection; (4) list identifying witness(es) the objector may call to testify at the Final
7 Approval Hearing; (5) provide true and correct copies of any exhibit(s) the objector intends to offer at
8 the Final Approval Hearing; (6) state whether the objection applies only to the objector, to a specific
9 subset of the Class, or to the entire Class; (7) be addressed to the Settlement Administrator; (8) be
10 signed by the Class Member or his or her lawful representative; and (9) be postmarked no later than
11 sixty (60) calendar days from the mailing of the Notice (or the ten (10) day extension referenced above
12 for eligible Class Members). Regardless of whether a Class Member timely submitted a written
13 objection, a Class Member who wishes to appear at the Final Approval Hearing and be heard orally in
14 support of, or in opposition to the class action settlement, may do so. Class Members shall have no
15 right to object to the PAGA release or PAGA Payment.

16 61. Any Class Member who fails to timely submit an objection shall be foreclosed from
17 making any objection to this Settlement or from filing an appeal of the Court’s Final Order and
18 Judgment unless otherwise ordered by the Court.

19 62. Counsel for the Parties shall file any response to the objections submitted by Objecting
20 Class Members, if any, at least seven (7) calendar days before the date of the Final Approval Hearing.

21 63. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage
22 Class Members to submit written objections to the Settlement or to appeal from the Court’s Final
23 Order and Judgment. Class Counsel shall not represent any Class Members with respect to any such
24 objections to this Settlement.

25 **RELEASE OF CLAIMS BY CLASS REPRESENTATIVE, SETTLEMENT CLASS**
26 **MEMBERS, AND PAGA EMPLOYEES**

27 64. The “Class Released Claims”. Upon the date the Settlement is funded, the Settlement
28 Class Members and Plaintiffs release all claims pleaded in the Operative Complaint, attached hereto

1 as **Exhibit A**, and which could have been alleged based upon the facts, allegations and/or claims
2 pleaded in the Operative Complaint, against the Released Parties (as defined above), for work
3 performed during the Class Period, including the following:

4 a. The Claims set forth in the Operative Complaint, specifically, (1) failure to pay and/or
5 accurately calculate minimum, regular, overtime, double time, prevailing and vacation
6 wages (Violations of Labor Code §§ 227.3, 510, 1194, 1194.2, 1197, 1197.1, 1198,
7 1770); (2) failure to provide meal periods or pay premiums in lieu thereof (Violations
8 of Labor Code §§ 512, 226.7, and the applicable Wage Orders); (3) failure to provide
9 rest periods or pay premiums in lieu thereof (Violation of Labor Code § 226.7 and the
10 applicable Wage Order); (4) failure to reimburse and indemnify expenses (Violation of
11 Labor Code §§ 2800 and 2802); (5) failure to timely pay wages during and upon
12 termination of employment (Violation of Labor Code §§ 201-204); (6) failure to furnish
13 and/or keep timely and accurate wage statements and employment records (Violation
14 of Labor Code §§ 226, 1174, 1174.5); violation of California Unfair Competition Law
15 (Violation of Business & Professions Code § 17200 *et seq.*); (8) Violation of the
16 California Private Attorneys General Act of 2004 (Labor Code § 2698 *et seq.*); (9)
17 violation of the Fair Labor Standards Act (29 U.S.C. § 201 *et seq.*).

18 b. Any claims predicated on the same or similar facts and/or claims alleged in the
19 Operative Complaint and/or PAGA letter or amended PAGA letter sent to the LWDA
20 by Plaintiffs during the pendency or prior to the Actions and incorporated therein, as
21 well as any claims that could have been pled which arise from the facts alleged in the
22 Operative Complaint concerning Plaintiffs or the Class Members, including any claims
23 for unpaid wages (including minimum, regular, vacation, prevailing and overtime
24 wages), unlawful rounding of employee time punches, untimely wage payments both
25 during and at the end of employment, noncompliant meal periods, noncompliant rest
26 periods, noncompliant wage statements, failure to reimburse and indemnify business
27 expenses, failure to correctly calculate the regular rate of pay, and claims for interest,
28 penalties (including, but not limited to, waiting time penalties), or premiums in

connection therewith, as well as any claims under the California Labor Code and California Industrial Welfare Commission Wage Orders that were alleged or which could have been alleged under the facts, allegations and/or claims pleaded in the Operative Complaint.

- c. Any claims for injunctive relief, declaratory relief, restitution, fraudulent business practices or punitive damages alleged or which could have been alleged under the facts, allegations and/or claims pleaded in the Operative Complaint;
- d. In addition, to the extent required by law, the cashing of the settlement check by the Settlement Class Member shall be deemed to be an opt-in for purposes of releasing Released Parties from any claims under the Fair Labor Standards Act (“FLSA”) that were alleged or could have been alleged under the facts, allegations and/or claims pleaded in the Operative Complaint consistent with *Rangel v. PLS Check Cashers of Cal., Inc.*, 899 F.3d 1106, 1110-11 (9th Cir. 2018) (holding opt-out release of California state law claims was *res judicata* against FLSA claims “which were direct federal law counterparts to the state law claims settled”).

65. Release of PAGA Claims. Upon the date the Settlement is funded, Plaintiffs and the PAGA Employees hereby do and shall be deemed to have fully, finally, and forever released, settled, compromised, relinquished and discharged any and all of the Released Parties of and from any and all claims for violation of the California Private Attorneys General Act of 2004 (Labor Code § 2698 *et seq.*), (“PAGA claims”) as alleged in the Operative Complaint, attached hereto as **Exhibit A**, which includes those alleged in the PAGA letter(s) sent to the LWDA by Plaintiffs that arose at any time during the PAGA Period. The PAGA Employees will be issued a check for their share of the PAGA Payment and will not have the opportunity to opt out of, or object to, the PAGA Payment and release of the PAGA Claims set forth in this Paragraph. The PAGA Employees are bound by the release of the PAGA Claims regardless of whether they cash or deposit their PAGA Employee Payment.

DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL/CLASS CERTIFICATION

66. For settlement purposes only, the Parties agree that the Class as defined in Paragraph 3 herein, and which will run through the date of preliminary approval, may be certified in the Actions.

1 The Parties are not certifying any PAGA claims. In support of this Agreement, Plaintiffs will request
2 that the Court certify for settlement purposes the Class as to all non-PAGA claims that have been
3 asserted, which Defendants shall not oppose or object to.

4 67. Class Counsel shall promptly submit this Stipulation of Settlement to the Court in
5 support of Plaintiffs' Motion for Preliminary Approval and for determination by the Court as to
6 whether the proposed Settlement is within the range of possible judicial approval. Promptly upon
7 execution of this Stipulation of Settlement, Class Counsel shall apply to the Court for the entry of an
8 order substantially in the following form:

- 9 a. Scheduling of the Final Approval Hearing on the question of whether the proposed
10 Settlement, including payment of attorneys' fees and costs and the Incentive Awards
11 should be finally approved as fair, reasonable and adequate as to the Settlement Class
12 Members and for approval of the PAGA Settlement;
- 13 b. Certifying the Settlement Class;
- 14 c. Approving the Notice attached hereto as **Exhibit B**;
- 15 d. Directing the mailing of the Notice by first-class mail to the Class Members and PAGA
16 Employees; and
- 17 e. Preliminarily approving the Settlement subject only to the objections of the Class
18 Members and final review by the Court.

19 68. The Parties will work cooperatively to mutually agree upon the form and content of the
20 Notice, as well as the Proposed Order Granting Preliminary Approval.

21 69. The Class Representative and Class Counsel will not make any public disclosure of the
22 Settlement until after the filing of the motion for preliminary approval of the Settlement. The Class
23 Representative and each Class Counsel represent that they have not made any such disclosure. The
24 Class Representative and Class Counsel shall not encourage any Class Members to opt-out. Class
25 Counsel will take all steps necessary to ensure that the Class Representative is aware of, and will
26 encourage him to adhere to, the restriction against any public disclosure of the Settlement until after
27 the Settlement is preliminarily approved by the Court. Thereafter, Class Counsel and the Class
28 Representative agree not to publicize the terms of this Settlement with the media, including, but not

1 limited to, any newspaper, journal, magazine, website and/or online reporter of settlements, or
2 publicize the fact or the terms of this Settlement on any website. Nothing in this Settlement Agreement
3 shall restrict Class Counsel from disclosing and including all publicly available information regarding
4 this case and the Settlement in any documents filed with the court and/or judicial submissions (e.g.,
5 declarations regarding adequacy or experience, etc.).

6 **DUTIES OF THE PARTIES FOLLOWING FINAL APPROVAL**

7 70. Following final approval by the Court of the Settlement provided for in this Stipulation
8 of Settlement, Class Counsel shall submit a proposed Final Order and Judgment in approximately the
9 following form and with input from Defendants' Counsel: Approving the Settlement, adjudging the
10 terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and
11 provisions including the approval of Class Counsel's application for an award of attorneys' fees and
12 costs and the Incentive Awards to the Class Representative. The Parties will work cooperatively to
13 mutually agree upon the form and content of the Proposed Order Granting Final Approval of the Class
14 Settlement and Approval of the PAGA Settlement and Judgment.

15 **VOIDING OF AGREEMENT IF SETTLEMENT NOT FINALIZED**

16 71. Subject to the obligations of mutual full cooperation set forth herein, either Plaintiffs
17 or Defendants may terminate this Settlement if after submitting the settlement for approval to the
18 Court, the Court declines to enter the preliminary approval order, the final approval order, or judgment
19 in substantially the form submitted by the Parties, or if the Stipulation of Settlement as agreed does
20 not become final because of appellate court action. The terminating Party shall give to the other Party
21 (through counsel) written notice of its decision to terminate no later than fourteen (14) calendar days
22 after receiving notice that one of the enumerated events has occurred. Termination shall have the
23 following effects:

24 (a) The Stipulation of Settlement shall be terminated and shall have no force or effect, and
25 no Party shall be bound by any of its terms.

26 (b) In the event the Settlement Agreement is terminated, Defendants shall have no
27 obligation to make any payments to any party, Settlement Class Member, PAGA
28

1 Employee or Class Counsel, except for all of the Settlement Administration costs
2 incurred by the Settlement Administrator as of the date of termination.

3 (c) The preliminary approval order, final approval order and judgment shall be vacated.

4 (d) The Stipulation of Settlement and all negotiations, statements and proceedings relating
5 thereto shall be without prejudice to the rights of any of the Parties, all of whom shall
6 be restored to their respective positions prior to the Settlement.

7 (e) Except as otherwise discoverable, neither this Stipulation of Settlement nor any
8 ancillary documents, actions, statements or filings in furtherance of settlement
9 (including all matters associated with the mediation) shall be admissible or offered into
10 evidence in the Actions or any other action for any purpose whatsoever.

11 **PARTIES' AUTHORITY**

12 72. The signatories hereto hereby represent that they are fully authorized to enter into this
13 Stipulation of Settlement and bind the Parties hereto to the terms and conditions thereof.

14 **MUTUAL FULL COOPERATION**

15 73. The Parties agree to fully cooperate with each other to accomplish the terms of this
16 Stipulation of Settlement, including, but not limited to, execution of such documents and taking of
17 such action as reasonably may be necessary to implement the terms of this Stipulation of Settlement.
18 The Parties to this Stipulation of Settlement shall use their best efforts, including all efforts
19 contemplated by this Stipulation of Settlement and any other efforts that may become necessary by
20 order of the Court, or otherwise, to effectuate this Stipulation of Settlement and the terms set forth
21 herein. As soon as practicable after execution of this Stipulation of Settlement, Class Counsel shall
22 take all necessary steps to secure the Court's final approval of this Stipulation of Settlement.

23 74. The Parties and their respective counsel agree that they will not attempt to encourage
24 or discourage Class Members from filing requests for exclusion.

25 **NO PRIOR ASSIGNMENTS**

26 75. The Parties and their respective counsel represent, covenant and warrant that they have
27 not, directly or indirectly, assigned, transferred, encumbered or purported to assign, transfer or
28

1 encumber to any person or entity any portion of any liability, claim, demand, action, cause of action
2 or right herein released and discharged except as set forth herein.

3 **NO ADMISSION**

4 76. Nothing contained herein, nor the consummation of this Stipulation of Settlement, is to
5 be construed or deemed an admission of liability, culpability, negligence or wrongdoing on the part of
6 Defendants. Each of the Parties hereto has entered into this Stipulation of Settlement solely with the
7 intention to avoid further disputes and litigation with the attendant inconvenience and expenses.

8 **BREACH AND ENFORCEMENT ACTIONS**

9 77. The Parties will jointly request that the Court retain jurisdiction pursuant to California
10 Code of Civil Procedure § 664.6 to oversee and enforce the terms of this Settlement. In the event of
11 a breach of this Settlement, the nonbreaching Party shall provide notice to the breaching party and
12 request that the breaching party cure any alleged breach. If the breach is not cured within thirty (30)
13 days of said notice, the nonbreaching party may pursue legal action or other proceeding against any
14 other breaching party or parties to enforce the provisions of this Stipulation of Settlement or to declare
15 rights or obligations under this Stipulation of Settlement. In the event of such enforcement actions,
16 the successful party or parties shall be entitled to recover from the unsuccessful party or parties
17 reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any
18 enforcement actions. All such disputes shall be resolved by the Court.

19 **NOTICES**

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

24 **To Plaintiffs, the Settlement Class and Class Counsel:**

25 Jonathan M. Genish
26 jgenish@blackstonepc.com
27 BLACKSTONE LAW, APC
28 8383 Wilshire Boulevard, Suite 745
Beverly Hills, California 90211

Jordan S. Esensten
jesensten@esenstenlaw.com
Robert L. Esensten
Resensten@esenstnlaw.com
ESENSTEN LAW
12100 Wilshire Boulevard, Suite 1660
Los Angeles, California 90025

1 Telephone: (310) 622-4278
2 Facsimile: (855) 786-6356

3 Brian D. Chase
4 bchase@bisnarchase.com
5 Ian M. Silvers
6 isilvers@bisnarchase.com
7 BISNAR | CHASE LLP
8 1301 Dove Street, Suite 120
9 Newport Beach, CA 92660
10 Telephone: (949) 752-2999
11 Facsimile: (949) 752-2777

12 Sahag Majarian II, Esq.
13 sahaii@aol.com
14 **Law Offices of Sahag Majarian II**
15 18250 Ventura Boulevard
16 Tarzana, California 91356
17 Telephone: (818) 609-0807
18 Facsimile: (818) 609-0892

19 To Defendant and Defendant's Counsel:

20 Elizabeth Staggs-Wilson
21 LITTLER MENDELSON, P.C.
22 633 West 5th Street, 63rd Floor
23 Los Angeles, CA 90071
24 Telephone: (213) 443-4300
25 E-mail: Estaggs-wilson@littler.com

26 **CONSTRUCTION**

27 79. The Parties hereto agree that the terms and conditions of this Stipulation of Settlement
28 are the result of lengthy, intensive arms-length negotiations between the Parties, and this Stipulation
of Settlement shall not be construed in favor of or against any party by reason of the extent to which
any Party or their counsel participated in the drafting of this Stipulation of Settlement.

29 **CAPTIONS AND INTERPRETATIONS**

30 80. Paragraph titles or captions contained herein are inserted as a matter of convenience
31 and for reference, and in no way define, limit, extend or describe the scope of this Stipulation of
32 Settlement or any provision of it. Each term of this Stipulation of Settlement is contractual and not
33 merely a recital.

Telephone: (310) 273-3090
Facsimile: (310) 207-5969

Joseph Lavi, Esq. (State Bar No. 209776)
jlavi@lelawfirm.com
Vincent C. Granberry, Esq. (State Bar No.
276483)
vgranberry@lelawfirm.com
LAVI & EBRAHIMIAN, LLP
8889 W. Olympic Blvd., Suite 200
Beverly Hills, California 90211
Telephone: (310) 432-0000
Facsimile: (310) 432-0001

1 **MODIFICATION**

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

6 **INTEGRATION CLAUSE**

7 82. This Stipulation of Settlement, and the Exhibits attached hereto and incorporated herein
8 by reference, contain the entire agreement between the Parties relating to the settlement and transaction
9 contemplated hereby, and all prior or contemporaneous agreements, understandings, representations
10 and statements, whether oral or written and whether by a Party or such Party's legal counsel, are
11 merged herein. No rights hereunder may be waived except in writing.

12 **BINDING ON ASSIGNS**

13 83. This Stipulation of Settlement shall be binding upon and inure to the benefit of the
14 Parties hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

15 **CLASS MEMBER SIGNATORIES**

16 84. It is agreed that because the Class Members are so numerous, it is impossible or
17 impractical to have each member execute this Stipulation of Settlement. The Class Notice, Exhibit
18 "B" hereto, will advise the Class Members of the binding nature of the release, and the release shall
19 have the same force and effect as if this Stipulation of Settlement were executed by each member.

20 **COUNTERPARTS**

21 85. This Stipulation of Settlement may be executed in counterparts and by facsimile
22 signatures, and when each party has signed and delivered at least one such counterpart, each
23 counterpart shall be deemed an original and, when taken together with other signed counterparts, shall
24 constitute one Stipulation of Settlement binding upon and effective as to all Parties.

25 IN WITNESS HEREOF, the Parties hereto knowingly and voluntarily executed this Joint
26 Stipulation of Settlement and Release between Plaintiffs and Defendants as of the date(s) set forth
27 below:
28

1 Dated: 01/25/2023, 2023


Angel Garcia
Plaintiff and Class Representative

2
3
4 Dated: _____, 2023

Christian Melendez
Plaintiff and Class Representative

5
6
7
8 Dated: _____, 2023

Jack Mahan
Plaintiff and Class Representative

9
10
11 Dated: _____, 2023

Athena Neri
Plaintiff and Class Representative

12
13
14
15 Dated: _____, 2023

Eduardo Lopez Lopez
Plaintiff and Class Representative

16
17
18
19 Dated: _____, 2023

Defendant J&B Investments, Inc. d/b/a
J&B Materials, Inc.

20
21
22 Dated: _____, 2023

Defendant Pacific Gypsum Supply, Inc.

23
24
25 Dated: _____, 2023

Defendant Gypsum Management and Supply, Inc.

26
27 **APPROVED AS TO FORM AND CONTENT:**

28 28.

1 Dated: _____, 2023

Angel Garcia
Plaintiff and Class Representative

2
3 01-24
4 Dated: _____, 2023

Christian Melendez
Plaintiff and Class Representative

5
6
7
8 Dated: _____, 2023

Jack Mahan
Plaintiff and Class Representative

9
10
11 Dated: _____, 2023

Athena Neri
Plaintiff and Class Representative

12
13
14 Dated: _____, 2023

Eduardo Lopez Lopez
Plaintiff and Class Representative

15
16
17
18 Dated: _____, 2023

Defendant J&B Investments, Inc. d/b/a
J&B Materials, Inc.

19
20
21 Dated: _____, 2023

Defendant Pacific Gypsum Supply, Inc.

22
23
24 Dated: _____, 2023

Defendant Gypsum Management and Supply, Inc.

25
26
27 **APPROVED AS TO FORM AND CONTENT:**

1 Dated: _____, 2023

Angel Garcia
Plaintiff and Class Representative

2
3
4 Dated: _____, 2023

Christian Melendez
Plaintiff and Class Representative

5
6
7
8 Dated: _____, 2023


Jack Mahan
Plaintiff and Class Representative

9
10
11 Dated: _____, 2023

Athena Neri
Plaintiff and Class Representative

12
13
14 Dated: _____, 2023

Eduardo Lopez Lopez
Plaintiff and Class Representative

15
16
17
18
19 Dated: _____, 2023

Defendant J&B Investments, Inc. d/b/a
J&B Materials, Inc.

20
21
22 Dated: _____, 2023

Defendant Pacific Gypsum Supply, Inc.

23
24
25 Dated: _____, 2023

Defendant Gypsum Management and Supply, Inc.

26
27 **APPROVED AS TO FORM AND CONTENT:**

1 Dated: _____, 2023

Angel Garcia
Plaintiff and Class Representative

4 Dated: _____, 2023

Christian Melendez
Plaintiff and Class Representative

8 Dated: _____, 2023

Jack Mahan
Plaintiff and Class Representative

11 Dated: February 2, 2023


Athena Neri
Plaintiff and Class Representative

15 Dated: _____, 2023

Eduardo Lopez Lopez
Plaintiff and Class Representative

19 Dated: _____, 2023

Defendant J&B Investments, Inc. d/b/a
J&B Materials, Inc.

22 Dated: _____, 2023

Defendant Pacific Gypsum Supply, Inc.

25 Dated: _____, 2023

Defendant Gypsum Management and Supply, Inc.

APPROVED AS TO FORM AND CONTENT:

28.

1 Dated: _____, 2023

Angel Garcia
Plaintiff and Class Representative

4 Dated: _____, 2023

Christian Melendez
Plaintiff and Class Representative

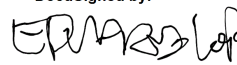
8 Dated: _____, 2023

Jack Mahan
Plaintiff and Class Representative

12 Dated: _____, 2023

Athena Neri
Plaintiff and Class Representative

15 Dated: January 26, 2023, 2023

DocuSigned by:

9AA3A33498944E9...

Eduardo Lopez Lopez
Plaintiff and Class Representative

19 Dated: _____, 2023

Defendant J&B Investments, Inc. d/b/a
J&B Materials, Inc.

22 Dated: _____, 2023

Defendant Pacific Gypsum Supply, Inc.

25 Dated: _____, 2023

Defendant Gypsum Management and Supply, Inc.

APPROVED AS TO FORM AND CONTENT:

1 Dated: _____, 2023

Angel Garcia
Plaintiff and Class Representative

2
3
4 Dated: _____, 2023

Christian Melendez
Plaintiff and Class Representative

5
6
7
8 Dated: _____, 2023

Jack Mahan
Plaintiff and Class Representative

9
10
11 Dated: _____, 2023

Athena Neri
Plaintiff and Class Representative

12
13
14
15 Dated: _____, 2023

Eduardo Lopez Lopez
Plaintiff and Class Representative

16
17
18
19 Dated: 1/19/2023, 2023

Bob Young
Defendant J&B Investments, Inc. d/b/a
J&B Materials, Inc.

20
21
22 Dated: 1/19/2023, 2023

[Signature]
Defendant Pacific Gypsum Supply, Inc.

23
24
25 Dated: 1/19/2023, 2023

[Signature]
Defendant Gypsum Management and Supply, Inc.

26
27 **APPROVED AS TO FORM AND CONTENT:**

1
2 Dated: January 25, 2023


Jonathan M. Genish
Counsel for Angel Garcia and the Putative Class

3
4 Dated: _____, 2023

Jordan S. Esensten
Counsel for Christian Melendez, Jack Mahan,
Athena Neri, and the Putative Class

5
6 Dated: _____, 2023

Ian M. Silvers
Counsel for Christian Melendez, Jack Mahan,
Athena Neri, and the Putative Class

7
8 Dated: _____, 2023

Joseph Lavi
Counsel for Eduardo Lopez Lopez and the
Putative Class

9
10 Dated: _____, 2023

Elizabeth Staggs Wilson
Counsel for Defendants

1
2 Dated: _____, 2023

Jonathan M. Genish
Counsel for Angel Garcia and the Putative Class

3
4 Dated: 1/24/2023 _____, 2023

Jordan S. Esensten
Jordan S. Esensten
Counsel for Christian Melendez, Jack Mahan,
Athena Neri, and the Putative Class

5
6
7 Dated: _____, 2023

Ian M. Silvers
Counsel for Christian Melendez, Jack Mahan,
Athena Neri, and the Putative Class

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10 Dated: _____, 2023

Joseph Lavi
Counsel for Eduardo Lopez Lopez and the
Putative Class

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14 Dated: _____, 2023

Elizabeth Staggs Wilson
Counsel for Defendants

1
2 Dated: _____, 2023

Jonathan M. Genish
Counsel for Angel Garcia and the Putative Class

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4 Dated: 1/24/2023, 2023

Jordan E. Esensten
Jordan S. Esensten
Counsel for Christian Melendez, Jack Mahan,
Athena Neri, and the Putative Class

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Dated: _____, 2023

Jonathan M. Genish
Counsel for Angel Garcia and the Putative Class

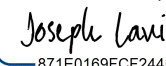
Dated: _____, 2023

Jordan S. Esensten
Counsel for Christian Melendez, Jack Mahan,
Athena Neri, and the Putative Class

Dated: _____, 2023

Ian M. Silvers
Counsel for Christian Melendez, Jack Mahan,
Athena Neri, and the Putative Class

Dated: January 26, 2023, 2023


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Joseph Lavi
Counsel for Eduardo Lopez Lopez and the
Putative Class

Dated: _____, 2023

Elizabeth Staggs Wilson
Counsel for Defendants

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2 Dated: January 25, 2023



Jonathan M. Genish
Counsel for Angel Garcia and the Putative Class

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5 Dated: _____, 2023

Jordan S. Esensten
Counsel for Christian Melendez, Jack Mahan,
Athena Neri, and the Putative Class

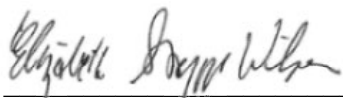
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Ian M. Silvers
Counsel for Christian Melendez, Jack Mahan,
Athena Neri, and the Putative Class

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10 Dated: _____, 2023

Joseph Lavi
Counsel for Eduardo Lopez Lopez and the
Putative Class

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14 Dated: February 3, 2023



Elizabeth Staggs Wilson
Counsel for Defendants

EXHIBIT B

April 25, 2022

Via Online Electronic Submission

California Labor & Workforce Development Agency
PAGAfilings@dir.ca.gov

RE: *Angel Garcia v. J&B Investments Inc., et al.*

Dear PAGA Administrator:

Our office represents Angel Garcia (“Employee”), who was employed by J&B Investments Inc. dba J&B Materials Inc., Pacific Gypsum Supply Inc., and Gypsum Management and Supply, Inc. (including any and all affiliates, subsidiaries, parents, directors, officers, and employees) (collectively referred to as “Employer”) as a non-exempt, hourly-paid Drywall Stocker from approximately August 2019 to approximately October 2021 in the State of California. This letter shall serve as notice, and a request, pursuant to the Private Attorneys General Act of 2004 (“PAGA”) (California Labor Code § 2699.3), of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

Employee intends to bring a representative action seeking penalties for violations of the California Labor Code, which are recoverable under PAGA, and all other remedies available under PAGA, including an amount sufficient to recover underpaid wages pursuant to Labor Code section 558. Employee seeks these remedies on behalf of the State of California and all aggrieved employees. The aggrieved employees on whose behalf Employee will file a PAGA cause of action includes all current and former hourly paid and/or non-exempt employees who worked for Employer in the State of California during the relevant statutory period (referred to herein as “Aggrieved Employees”).

As set forth below, Employer has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 227.3, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 1770, et seq., 2800, and 2802 and Industrial Welfare Commission Wage Orders including *inter alia*, Wage Order 16.

Failure to Pay Minimum Wages

Employer violated California Labor Code sections 1194, 1197, and 1197.1 by failing to pay Employee and other Aggrieved Employees at least minimum wages for all hours worked. Employee and other Aggrieved Employees were required to perform work duties off-the-clock, including, but not limited to, time spent driving between job sites and responding to work-related phone calls and text messages. By failing to pay Employee and other Aggrieved Employees any wages for off-the-clock work, Employer violated Labor Code sections 1194, 1197, and 1197.1, which require employers to pay at least the legal minimum wage to their employees.

Failure to Pay Overtime Wages

California Labor Code sections 510 and 1198 require employers to pay no less than one and one-half times the regular rate of pay of the employee for hours worked in excess of eight (8) hours in one workday, for hours worked in excess of forty (40) hours in one workweek, and for the first eight (8) hours worked on the seventh day of work in any one workweek, and to pay no less than twice the regular rate of pay of the employee for hours worked in excess of twelve (12) hours in one workday and for any work in excess of eight (8) hours on any seventh day of a workweek. During the relevant time period, Employee and other Aggrieved Employees worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week without the appropriate overtime compensation because Employer failed to pay them for off-the-clock work as described above and failed to correctly calculate the regular rate of pay for purposes of overtime compensation by failing to include non-discretionary bonuses and/or incentives. Therefore, Employee and the other Aggrieved Employees were entitled to receive certain wages for overtime compensation, but were not paid correctly for all overtime hours worked.

Failure to Pay Prevailing Wage

California Labor Code sections 1770 *et seq.* require employers to pay the prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed to all workers employed on public works. California Labor Code section 1772 provides that workers employed by contractors or subcontractors in the execution of any contract for public work be deemed to be employed upon public work. California Labor Code section 1774 provides that the contractor to whom the contract is awarded and any subcontractor under him, shall not pay less than the specified prevailing rates of wages to all workmen employed in the execution of the contract. During the relevant time period, Employer failed to pay its non-union employees the prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed to all workers employed on public works.

Failure to Pay Vacation Wages Upon Termination

California Labor Code § 227.3 establishes that where an employer policy provides for paid vacations and an employee has not used earned or accrued vacation time, all earned and accrued vacation shall be paid to the employee as wages at his or her final rate of pay immediately upon termination of the employment relationship. During the relevant time period, Employer failed to pay Aggrieved Employees all earned, accrued, and unused vacation time upon the termination of their employment. Employer failed to pay out vacation wages at the correct rate of pay by failing to include all sources of remuneration in the final rate. Instead, Employer paid out vacation at an employee's base hourly rate of pay.

Failure to Provide Meal Periods and Rest Periods

California law requires employers to provide their employees with an opportunity to take an uninterrupted meal period of no less than thirty (30) minutes before the end of the fifth hour of work when an employee works more than five (5) hours in a day. Cal. Lab. Code §§ 226.7, 512(a). A second meal period of no less than thirty (30) minutes must be provided before the end of the tenth hour of work when an employee works more than ten (10) hours in a day. Cal. Lab. Code §§ 226.7, 512(a). Further, an uninterrupted rest period of no less than ten (10) minutes must be provided for every four hours, or major fraction thereof, worked. Cal. Lab. Code § 226.7. When an employer fails to provide a meal or rest period, an hour of pay at the employee's regular rate of compensation is owed to the employee. Cal. Lab. Code § 226.7(c).

Employer failed to provide Employee and the other Aggrieved Employees with an opportunity to take timely, uninterrupted meal and rest periods of the requisite length. In addition to failing to provide meal periods and rest periods in compliance with the California Labor Code and applicable IWC Wage Order, Employer failed to issue meal period and rest period premiums on each occasion that a meal period or rest period was not provided. On those occasions when Employer did pay meal and/or rest period premiums, it failed to do so at the correct rate. On occasions when meal period and/or rest period premiums were paid, Employer paid them at the base hourly rate of pay rather than at the regular rate of compensation. Employer failed to include all non-discretionary payments for work performed by Employee and the other Aggrieved Employees in the regular rate of compensation when issuing meal and/or rest period premiums, as required by California Labor Code § 226.7(c).

Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those

wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, Employer failed to pay Employee and other Aggrieved Employees all wages due to them, including minimum wages, overtime wages, and meal and rest period premium wages, within any time period specified by California Labor Code section 204.

Failure to Timely Pay Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. During the relevant time period, Employer failed to pay Aggrieved Employees all wages due to them upon termination of their employment, including minimum wages, overtime wages, meal period premiums, and rest period premiums. In addition, Employer failed to pay Aggrieved Employees their last paycheck within any of the time limits required by Labor Code sections 201 and 202.

Failure to Keep Accurate Payroll Records

California Labor Code section 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years. During the relevant time period, Employer failed to keep accurate and complete payroll records showing the actual hours worked daily and the wages paid, to Employee and other Aggrieved Employees. By way of example, Employer failed to keep records of all hours worked by Employee and the other Aggrieved Employees, including time spent working prior to clocking-in and time spent working after clocking-out.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code section 226(a) requires an employer semimonthly or at the time of each payment of wages to furnish wage statements to its employees setting forth, *inter alia*, (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,

(5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, and (8) the name and address of the legal entity that is the employer. Employer failed to provide wage statements to Employee and other Aggrieved Employees stating, *inter alia*, the correct name and address of the legal entity that is the employer, the total hours worked (including time spent working off-the-clock) at the correct hourly rates of pay, the correct amount of wages earned, the correct amount of meal period premium wages, and the correct amount of rest period premium wages.

Failure to Reimburse Necessary Business Expenses

Labor Code sections 2800 and 2802 require employers to indemnify their employees for all necessary business expenses that they incur in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During the relevant time period, Employee and other Aggrieved Employees incurred necessary business-related expenses and costs that were not fully reimbursed by Employer. These costs include, but are not limited to, safety shoes, personal protective equipment, tools, and the use of personal cell phones and vehicles.

This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3. By law, an employee alleging a violation of one of the above referenced sections must notify his or her employer and the Labor and Workforce Development Agency (LWDA) before he or she can invoke the provisions of Sections 2699, et seq., by seeking redress in court. Labor Code § 2699.3(a)(1). The LWDA must then notify the employer and the employee within 60 calendar days regarding whether it intends to investigate the alleged violation. Labor Code § 2699.3(a)(2)(B). If the LWDA advises it will not investigate, or if no notice is provided within 65 calendar days, the employee may file a lawsuit invoking the provisions under Labor Code § 2699. Labor Code § 2699.3(a)(2)(A). It is the intention of this law firm to file a civil complaint and to bring the appropriate claims under Labor Code § 2699 should your office not address these matters within this time. Should you require anything further or have questions, please do not hesitate to contact us.

BLACKSTONE LAW



Jill J. Parker, Esq.

Cc: By U.S. Certified Mail, Return Receipt Requested

J&B Investments Inc. dba J&B Materials Inc.
6505 Crystallaire Dr.
San Diego, California 92120

Pacific Gypsum Supply, Inc.
1165 North Johnson Avenue
El Cajon, California 92020

Gypsum Management and Supply, Inc.
100 Crescent Centre Parkway, Suite 800
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