

SETTLEMENT AGREEMENT AND RELEASE OF PAGA CLAIM

This Settlement Agreement and Release of PAGA Claim ("Settlement Agreement") is made by and between Plaintiff Viviana Botello ("Plaintiff"), on behalf of herself and as a representative for the California Labor & Workforce Development Agency ("LWDA") and A Train Staffing LLC ("A Train"), who may collectively be referred to herein as the "Parties," and each may be individually referred to as a "Party."

A. Definitions

The following terms, when used in this settlement agreement, shall have the following meanings:

1. "Action" or "Lawsuit" means *Viviana Botello v. A Train Staffing LLC, et al.* Superior Court of the State of California for the County of San Bernardino, Case No.: CIVSB2218549.
2. "Agreement," "Stipulation," or "Settlement Agreement," mean this Settlement Agreement and Release of PAGA Claim, including any attached Exhibits.

3. "Attorneys' Fees and Costs" means the amount of Two Hundred and Thirty-Three Thousand and One Hundred Dollars and Zero Cents (\$233,100) (thirty-three and one-third percent of the Settlement Amount) which shall be allocated to Plaintiff's Counsel for attorneys' fees, and costs not to exceed the amount of \$17,000, all of which shall be paid out of the Gross Settlement Amount. This Settlement is not conditioned on approval of the Attorneys' Fees and Costs; in other words, this Settlement shall remain in full force and effect if the Court awards less than the requested Attorneys' Fees and Costs. If less than \$233,100 is awarded for Attorneys' Fees and/or less than \$17,000 in Costs by the Court, any difference shall return to the Net Settlement Amount.

4. "Court" (or "Judge") means the San Bernardino County Superior Court, the Honorable Jessica Morgan, Judge Presiding.

5. "Defendants" means A Train Staffing LLC and World Class Distribution Inc. ("WCD"). WCD is not a party to this Agreement, but is a beneficiary of the releases contained in this Agreement.

6. "Defendants' Counsel" means J. Rod Betts and Kelly Kagan of Quarles & Brady LLP, Counsel for Defendants.

7. "Effective Date" means the date that the Gross Settlement Amount is fully-funded by Defendant A Train.

8. "Eligible Pay Period" means any full pay period worked by a PAGA Employee during the PAGA Release Period.

9. "Final Approval Date" means the date that the Court enters the Final Order and Judgment.

10. "Final Order and Judgment" means the Court's order approving this Private Attorneys General Act of 2004 ("PAGA") Settlement and Final Judgment. The Final Order and Judgment will be

submitted, substantially in the form attached hereto as **Exhibit 1**, in connection with the Stipulation for Approval of this Settlement.

11. "Gross Settlement Amount" means the maximum settlement amount that Defendant A Train will pay in connection with this Settlement, which is Seven Hundred Thousand Dollars (\$700,000). This is a non-reversionary Settlement; no portion of the Gross Settlement Amount will return to Defendant A Train under any circumstances.

12. "LWDA Settlement Proceeds" means the seventy-five percent (75%) of the Net Settlement Amount that shall be paid to the Labor Workforce and Development Agency ("LWDA").

13. "Net Settlement Amount" means the amount that remains after deducting Attorneys' Fees and Costs, Settlement Administration Costs, and the Service Award, from the Gross Settlement Amount.

14. "Notice" means the notice that will be sent to the PAGA Employees with payment after the Final Order and Judgment is entered by the Court. The Notice will be sent to PAGA Employees substantially in the form attached hereto as **Exhibit 2**. The Notice will also be sent in Spanish.

15. "LWDA Notices" means the notices submitted on June 15, 2022 and February 27, 2023 by Plaintiff, to the LWDA notifying the LWDA of alleged violations by Defendants.

16. "PAGA Employees" means all non-exempt employees who were employed directly by A Train Staffing LLC and placed by A Train Staffing LLC to work at the Fontana and Chino, California WCD distribution centers, at any time from June 19, 2021 through November 30, 2023.

17. "PAGA Employees Settlement Proceeds Fund" means the twenty-five percent (25%) of the Net Settlement Amount that shall be paid to the PAGA Employees.

18. "PAGA Representative Claims" means any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, action or causes of action contingent or accrued during the time period from June 19, 2021, through November 30, 2023, arising out of or reasonably related to the PAGA claim and factual allegations asserted in the operative complaint and/or the LWDA Notices, including, but not limited to, the following claims: 1) failure to provide meal periods; 2) failure to provide rest periods, 3) failure to pay overtime wages, 4) failure to pay minimum wages, 5) failure to timely pay wages during employment; 6) failure to pay all wages due to discharged and quitting employees, 7) failure to furnish accurate itemized wage statements, 8) failure to maintain required records, 9) failure to provide and give notice of supplemental COVID-19 sick leave, 10) failure to provide suitable seating; (11) failure to reimburse for necessary expenditures incurred in the discharge of duties; and (12) failure to provide notice of and implementation of an alleged illegal quota system in violation of California Labor code Section 2100-2112. This release shall include a release for PAGA claims under California Labor Code Sections 201-203, 204, 210, 226, 226.3, 226.7, 246, 248.1, 248.2, 248.6, 248.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2100-2112, 2802, 2810.3, and 2810.5, and the applicable IWC Wage Order sections 3, 4, 7, 11, 12, and 14. This release shall include a release for claims under the California Unfair Competition Law, California Business & Professional Code sections 17200, *et seq.*

19. "PAGA Settlement" or "Settlement" means the settlement of the Action as memorialized in this Agreement.

20. "PAGA Release Period" means June 19, 2021 through November 30, 2023.

21. "Parties" means Plaintiff and A Train collectively.

22. "Plaintiff" means Viviana Botello.

23. "Plaintiff's Counsel" means Scott E. Wheeler and Justin A. Wheeler of the Law Office of Scott E. Wheeler.

24. "Released Parties" means A Train Staffing LLC, World Class Distribution Inc. and any parent, subsidiary, affiliate, predecessor or successor, and all agents, employees, officers, directors and attorneys.

25. "Settlement" means the collective settlement of the PAGA Representative Claims as memorialized in this Agreement.

26. "Settlement Administrator" means Phoenix Settlement Administrators. The Settlement Administrator will agree to enter into a confidentiality agreement by which it agrees to maintain as confidential the information so designated by Defendants and not to disseminate any designated information without the written approval of Defendants. The Settlement Administrator will be responsible for, *inter alia*, sending Notice and payments to PAGA Employees and the LWDA and distributing other payments as set forth in this Agreement.

27. "Settlement Administration Costs" means the amount of \$11,500 which shall be paid to the Settlement Administrator for performing the duties provided under the Settlement. The Settlement Administration Costs shall be paid from the Gross Settlement Amount. The Settlement Administration Costs shall be no more than \$11,500 and if less than \$11,500 is approved for Settlement Administration costs, the difference shall return to the Net Settlement Amount.

28. "Service Award" means the amount of \$7,000.00 which shall be allocated to Plaintiff, subject to Court approval, in recognition for her efforts in prosecuting the case, obtaining the benefit of the Settlement, and as consideration for Plaintiff's released claims, which includes a broad general release, against Defendants. The Service Award shall be paid from the Gross Settlement Amount. This Settlement is not conditioned on approval of the Service Award; in other words, this Settlement shall remain in full force and effect if the Court awards less than the requested \$7,000.00. If less than \$7,000.00 is awarded to Plaintiff, the difference shall return to the Net Settlement Amount.

General

1. On August 23, 2022, Plaintiff filed the Action in the San Bernardino Superior Court, pursuant to the PAGA, alleging failure to provide required meal periods, failure to provide required rest breaks, failure to pay overtime and minimum wages, failure to discharge and quitting employees, failure to furnish accurate itemized statements, failure to maintain required records, failure to

provide supplemental COVID-19 sick leave, failure to provide suitable seating, and failure to indemnify employees for necessary expenditures incurred in discharge of duties. Thereafter, plaintiff filed a PAGA claim with the LWDA asserting that Defendants failed to provide notice of and implemented an alleged illegal quota system in violation of Labor Code sections 2100-2112.

2. The Parties have conducted a thorough investigation into the facts of the Action and have informally exchanged extensive data and information, as well as pertinent documents, relating to the underlying alleged violations. After attending a full-day mediation with GIG Kyriacou, Esq., the Parties reached the Settlement, which each Party believes is fair, reasonable, and adequate. The Parties understand, acknowledge, and agree that this Settlement Agreement constitutes a compromise of Representative Plaintiffs and the Aggrieved Employees' PAGA Claim, and that it is the desire and intention of the Parties to effect a final and complete resolution of the PAGA Claim that the Representative Plaintiff and the Aggrieved Employees have against Defendants or any persons or companies affiliated with Defendants.

3. Defendants deny all of the allegations and claims asserted in the Lawsuit and deny that they have committed any misconduct, statutory or regulatory violation, wrongdoing, or any other actionable conduct of any kind.

4. The Parties have conducted a thorough investigation into the facts of the Action. This included, *inter alia*, conducting extensive informal discovery that involved the exchange of information and documents relating to the PAGA Representative Claims. A Train produced documents consisting of employee handbooks and policy documents, etc. A Train also produced a random and statistically significant sample of the electronic time and payroll records for Aggrieved Employees. Based on the foregoing data and on their own independent investigation and evaluation, Plaintiff's Counsel is of the opinion that the settlement with Defendants for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the LWDA and PAGA Employees in light of all known facts and circumstances, including the risk of significant delay, uncertainty associated with litigation, various defenses asserted by Defendants, and potential appellate issues. Defendants and counsel for Defendants also agree that the settlement is fair.

5. The Parties understand, acknowledge, and agree that this Agreement constitutes a compromise of Plaintiff's PAGA Representative Claims and that it is the desire and intention of the Parties to effect a final and complete resolution of the Action, including the PAGA Representative Claims, against Defendants. The Parties further acknowledge that this Agreement is a compromise of disputed claims and that nothing in this Agreement shall be construed as an admission of liability by Defendants.

6. Under California Law, the State may assess and collect civil penalties from employers for violations of certain provisions of the California Labor Code. (*See* Cal. Lab. Code §§ 2698 *et seq.*) Under PAGA, however, if an "aggrieved employee" "give[s] written notice by certified mail to the [State] and the employer of the specific provision of the [Labor Code] alleged to have been violated," and the State thereafter decides not to investigate, as was the case here, or does investigate and determines that a citation against the employer should not be issued, the employee may, "as an alternative" to enforcement by the State, act as a proxy or agent of the state's labor law enforcement agencies and bring a civil action under PAGA to recover civil penalties "on behalf of himself or herself and other current or former employees."

Id. “[C]ivil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the state and 25 percent to the aggrieved employees.” *Id.*

7. California Labor Code § 2699(1)(2) provides that the trial court shall “review and approve any settlement of any civil action filed pursuant to this part.” Plaintiff will submit this Settlement Agreement to the LWDA concurrently with the filing of a Motion for Approval of the settlement with the Court.

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

C. Terms of Settlement

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

2. The Gross Settlement Amount will be distributed in the following manner:

a. **Settlement Administration Costs:** The costs associated with settlement administration (e.g. preparing and mailing payments to LWDA and PAGA Employees, tax documentation, etc.) shall be paid from the Settlement Amount and shall not exceed \$11,500.00. The Parties agree to use Phoenix Settlement Administrators as the Settlement Administrator. The Parties and their counsel represent that they do not have any involvement in the governance or work of the Settlement Administrator.

b. **Attorneys’ Fees and Costs:** The Parties agree that, subject to the Court’s review and approval, Plaintiff’s Counsel will be paid one-third of the Gross Settlement Amount as attorneys’ fees, or \$233,100, payable to the Law Office of Scott Ernest Wheeler, plus reasonable litigation costs not to exceed \$17,000.00, incurred in connection with work performed to litigate the Action and obtain Court approval of the Settlement, which will be paid from the Settlement Amount.

c. **Service Award to Plaintiff.** The Parties agree that, subject to the Court’s review and approval, Plaintiff will be paid a service award of Seven Thousand Dollars (\$7,000.00), which will be paid from the Gross Settlement Amount.

d. **Net Settlement Amount:** After deducting Settlement Administration Costs, Attorneys’ Fees and Costs, and the Service Award from the Gross Settlement Amount, the remainder forms the Net Settlement Amount (which totals \$431,400 if the amounts set forth above are approved by the Court). The Net Settlement Amount shall be allocated seventy-five percent (75%) to the California Labor & Workforce Development Agency (“LWDA Settlement Proceeds”), which is estimated to total approximately \$323,550. The remaining twenty-five percent (25%) of the Net Settlement Amount, which is estimated to total approximately \$107,850, shall be paid to the PAGA Employees on a *pro rata* basis

("PAGA Employees Settlement Proceeds Fund"), which shall be determined based on the number of Eligible Pay Periods that he or she worked for A Train during the PAGA Release Period and shall be calculated as follows:

- e. The PAGA Employees Settlement Proceeds Fund will be divided by the total number of Eligible Pay Periods worked by all PAGA Employees during the PAGA Release Period, and the resulting figure will be referred to as the "Multiplier." Each PAGA Employee's *pro rata* share of the PAGA Employees Settlement Proceeds Fund will be determined by multiplying the Eligible Pay Periods that the PAGA Employee worked by the Multiplier. That amount shall be referred to as the PAGA Employee's "Individual Share." **Taxes and Reporting:** The PAGA Employees' Individual Share will be treated as non-wage income and reported by the Settlement Administrator on IRS Form 1099 (if applicable) to the respective PAGA Employee and applicable governmental authorities.

D. Release as to the PAGA Representative Claims

1. Plaintiff, as the representative for the State of California, and on behalf of all Aggrieved Employees, will forever completely release and discharge the Released Parties with respect to any claim for the recovery of civil penalties under the California Private Attorneys General Act, California Labor Code § 2698, *et seq.* only. It is expressly understood and agreed that this settlement includes a release of all the PAGA Representative Claims, from any and all claims, debts, liabilities, demands, obligations, guaranties, costs, expenses, attorneys' fees, damages, action or causes of action contingent or accrued during the time period from June 19, 2021, through November 30, 2023, arising out of or reasonably related to the PAGA claim and factual allegations asserted in the operative complaint and/or the LWDA letters, including, but not limited to, the following claims: 1) failure to provide meal periods; 2) failure to provide rest periods; 3) failure to pay overtime wages; 4) failure to pay minimum wages; 5) failure to timely pay wages during employment; 6) failure to pay all wages due to discharged and quitting employees; 7) failure to furnish accurate itemized wage statements; 8) failure to maintain required records; 9) failure to provide and give notice of supplemental COVID-19 sick leave; 10) failure to provide suitable seating; (11) failure to reimburse for necessary expenditures incurred in the discharge of duties; and (12) failure to provide notice of and implementation of an alleged illegal quota system in violation of Labor Code sections 2100-2112. This release shall include a release for PAGA claims under California Labor Code Sections 201-203, 204, 210, 226, 226.3, 226.7, 246, 248.1, 248.2, 248.6, 248.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2100-2112, 2802, 2810.3, and 2810.5, and the applicable IWC Wage Order sections 3, 4, 7, 11, 12, and 14. This release shall include a release for claims under the California Unfair Competition Law, California Business & Professional Code sections 17200, *et seq.* The release shall be effective as of the Effective Date, and it shall apply to claims within the above scope impacting Aggrieved Employees arising within the PAGA Release Period.

2. In accordance with California law as stated in *inter alia Arias v. Superior Court* (2009) 46 Cal.4th 969, 985, a judgment in "a representative action brought by an aggrieved employee under the Labor Code Private Attorneys General Act of 2004 . . . is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding," which the Final Order shall so reflect. Accordingly, the Final Order and Judgment shall be binding on all PAGA Employees (including all nonparty aggrieved employees) as to all the PAGA Representative Claims. A statement to this effect shall be included in the Notice sent to the PAGA Employees. The Final Order shall

not bind nor release the PACA Employees of any individual wage claims (or other individual claims), unless such claim is subject to res judicata, issue preclusion, or collateral estoppel.

E. Release by Named Plaintiff Only

1. Release and Covenant Not to Sue

a. In consideration for the terms and provisions of the Agreement, Plaintiff, for herself, and for her heirs, assigns, partners, executors, conservators, administrators, agents, employees, attorneys, past and present (collectively, "Plaintiff Affiliates"), hereby fully and without limitation releases, covenants not to sue, and forever discharges the Released Parties, their respective subsidiaries, divisions, affiliated companies, affiliated partnerships, trustees, directors, officers, supervisors, shareholders, partners, agents, designees, employees, legal and equitable owners, members, associates, representatives, consultants, insurers, reinsurers, attorneys, heirs, assigns, executors, beneficiaries, and administrators, predecessors and successors, past and present, (collectively "Defendants Released"), both individually and collectively, from any and all rights, claims, contracts, agreements, debts, demands, liabilities, actions, and causes of action, whether in law or in equity, suits, damages, liabilities, losses, attorneys' fees, costs, and expenses, of whatever nature whatsoever, known or unknown, fixed or contingent, suspected or unsuspected ("Released Claims"), that Plaintiff or the Plaintiff Affiliates now have, or may ever have, against Defendants, or any of Defendants Releaseds, for any matter, occurring on or before the Effective Date of this Agreement.

b. Without limiting the generality of the foregoing, Plaintiff acknowledges that the foregoing general release applies to any and all claims she or the Plaintiff Affiliates now have, or may ever have, against Defendants, or any of Defendants Releaseds, that arise out of or are in any way related to any alleged violation of any federal or state law that regulates any aspect of the employer-employee relationship, including any claims for any alleged violations of any federal or state employment discrimination, harassment, and retaliation laws, including the California Fair Employment and Housing Act (which prohibits discrimination, harassment, and retaliation based upon one's actual or perceived ancestry, race, religion, sex, sexual orientation, gender, gender identity, gender expression, age, color, national origin, disability, medical condition, military or veteran status and marital status), the California Family Rights Act, Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, and the Family Medical Leave Act; as well as the Equal Pay Act, the Fair Labor Standards Act, the Employee Retirement Income Security Act of 1974, the California Business and Professions Code, the California Labor Code, and the California wage orders; as well as any claims for any alleged violation of public policy or retaliation; any claims for wages, hours, unpaid overtime, failure to pay minimum wage, failure to pay for downtime or waiting time, failure to provide meal or rest breaks or pay one hour's wages in lieu thereof, failure to indemnify for all work related expenditures and losses, and all related statutory claims, including but not limited to, alleged violation of California Labor Code sections 201, 202, 203, 204, 210, 221, 226, 226.2, 226.3, 226.7, 247.5, 248, 248.1, 248.2, 248.6, 300, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1199, 2802, 2926, and 2927, California Business and Professions Code sections 17000 and 17200

et. seq., the relevant Wage Orders issued by the Industrial Welfare Commission, Civil Code sections 52 and 52.1, or any other claim for any statutory penalty that could have been asserted under California law that arise from the allegations as described, any claims concerning or related to meal and/or rest breaks, inaccurate wage statements, any other employment-related claims under any federal, state, or local law, statute, regulation, or ordinance; and any and all common-law causes of action, including breach of contract, breach of implied contract, breach of the covenant of good faith and fair dealing, fraud, misrepresentation, unfair competition, unfair business practices, false advertising, negligence, defamation, infliction of emotional distress, invasion of privacy, and wrongful termination, which arise from any and all events occurring on or before the Effective Date of this Agreement, including without limitation, all claims arising from action or inaction by Defendants, or any of Defendants Releasees.

c. **Promise Not to Prosecute:** Plaintiff agrees that neither she nor any of her agents or representatives shall, at any time hereafter, commence, maintain or prosecute any action, suit, proceeding, investigation, complaint, claim, grievance, or charge with any court, arbitrator, or any other body or person, whether Federal, State, contractual or otherwise, on his behalf, except in response to governmental agency or court inquiries or as compelled by legal process, against Defendants or any Defendants Releasees, based in whole or in part upon, or arising out of or in any way connected with, any of the Released Claims. Plaintiff further agrees that neither she nor any of her agents or representatives, including any of her attorneys, shall, at any time hereafter, aid, represent, or otherwise assist others in prosecuting such action, suit, proceeding, investigation, complaint, claim, grievance, or charge on her behalf, except for the PAGA claim, and except in response to governmental agency or court inquiries or as compelled by legal process, against Defendants or the Defendants Releasees, based in whole or in part upon, or arising out of or in any way connected with, any of the Released Claims, including damages or liability of any kind, including the cost of defense and reasonable attorneys' fees arising out of or in connection with, any action, suit, proceeding, investigation, complaint, claim, grievance, or charge commenced, maintained, or prosecuted by her contrary to the terms of this Agreement.

d. Notwithstanding the generality of the foregoing, Plaintiff also understands and agrees that she is not waiving any right or claim that cannot be waived as a matter of law, such as the right to file a charge with or participate in an investigation by a governmental administrative agency.

2. In addition to the Release of the PAGA Representative Claims, Plaintiff agrees to release all known and unknown claims, including a release under Civil Code Section 1542. To effect a full and complete general release as described above, Plaintiff expressly waives and relinquishes all rights and benefits of section 1542 of the Civil Code of the State of California and does so understanding and acknowledging the significance and consequence of specifically waiving section 1542. Section 1542 of the Civil Code of the State of California states as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her would have materially affected his or her settlement with the debtor or released party.

Thus, notwithstanding the provisions of section 1542, and to implement a full and complete release and discharge of the Released Parties, Plaintiff expressly acknowledges this release is intended to include in its effect, without limitation, all claims Plaintiff does not know or suspect to exist in Plaintiff's favor at the time of signing this Agreement, and Plaintiff expressly acknowledges that this Agreement contemplates the extinguishment of any such claims. Plaintiff warrants Plaintiff has read this Agreement, including this waiver of California Civil Code section 1542, and that Plaintiff has consulted with or had the opportunity to consult with counsel of Plaintiff's choosing about this Agreement and specifically about the waiver of section 1542, and Plaintiff warrants that Plaintiff understands this Agreement and the section 1542 waiver, and Plaintiff freely and knowingly enters into this Agreement. Plaintiff further acknowledges that Plaintiff later may discover facts different from or in addition to those Plaintiff now knows or believes to be true regarding the matters released or described in this Agreement, and even so Plaintiff agrees that the release contained in this Agreement shall remain effective in all respects notwithstanding any later discovery of any different or additional facts. Plaintiff expressly assumes any and all risk of any mistake in connection with the true facts involved in the matters, disputes or controversies released or described in this Agreement or with regard to any facts now unknown to Plaintiff relating thereto.

Plaintiff's general release shall become effective on the Effective Date.

The general release set forth in Paragraph E of this Agreement applies only to Plaintiff. It does not apply to any PAGA Employees.

F. Settlement Approval and Implementation Procedures

1. Pursuant to California Labor Code § 2699(1)(2), or otherwise for the purposes of obtaining court approval of the Settlement, Plaintiff will file a Stipulation for Approval, separate declaration(s) advocating that the Settlement is fair, adequate, and reasonable, and any other documents in support of approval of the Settlement. Defendants shall not oppose the filing of any of these documents. Defendants shall also reasonably cooperate with any efforts to obtain approval of this Settlement.

2. No later than thirty (30) calendar days after the Final Approval Date, Defendants shall send to the Settlement Administrator a list of all PAGA Employees including each PAGA Employee's: (1) full name; (2) last known address; (3) social security number; and (4) the number of Eligible Pay Periods they worked as a non-exempt employee, directly employed by A Train Staffing LLC and placed by A Train Staffing LLC to work at the Fontana and Chino, California WCD distribution centers, at any time from June 19, 2021 through November 30, 2023 (the "PAGA Employees List"). This information shall be treated as and remain confidential and shall be used solely to manage the notice and payment process described herein, and it shall not be disclosed to anyone other than the Settlement Administrator, except to applicable taxing authorities, or pursuant to express written authorization of Defendants, the individual in question, or by order of the Court.

3. No later than thirty (30) calendar days after the Court approves this Settlement, Defendant A Train shall fund one-half (1/2) of the Gross Settlement Amount by wire transferring to the Settlement Administrator Three-Hundred and Fifty Thousand Dollars and Zero Cents (\$350,000) of the Gross Settlement Amount, and within ninety (90) days after the first payment is made, Defendant A Train shall fund the remaining one-half (1/2) portion of the Gross Settlement Amount by wire transferring to the Settlement Administrator Three-Hundred and Fifty Thousand Dollars and Zero Cents (\$350,000). The Settlement Administrator will hold all payments in an interest-bearing account until the full Gross Settlement Amount is received. Any interest earned will go to the Net Settlement Amount for the benefit of the State of California and Aggrieved employees.

4. The Settlement Administrator will perform all settlement administration duties, including (i) performing a National Change of Address ("NCOA") search to update the addresses of the PAGA Employees, (ii) issuing the Notice and payments to the PAGA Employees, (iii) issuing any required IRS forms, and (iv) issuing payment to the LWDA and Plaintiff's Counsel, and (v) issuing payment to itself as provided in this Agreement. The Settlement Administrator shall issue the Notice and payments to the PAGA Employees along with required IRS forms and issue payment to the LWDA for PAGA penalties, a Service Award to Plaintiff, and Attorneys' Fees and Costs to Plaintiff's Counsel, no later than ten (10) calendar days after it receives the full Gross Settlement Amount from Defendant A Train. The Settlement Administrator will skip trace and re-mail all returned, undelivered mail within ten (10) calendar days of receiving notice that a notice was undeliverable.

5. PAGA Employees shall have one hundred and eighty (180) calendar days after the mailing to cash or deposit their settlement checks. If any PAGA Employee's check is not cashed or deposited within that period, the check will be voided and a stop-payment will be issued. Any funds in the Settlement Administrator's account as a result of a failure to timely cash a settlement check shall be paid to the State of California Controller's Unclaimed Property division. Neither Defendants, Defendants' Counsel, Plaintiff's Counsel nor Plaintiff will have any liability for lost or stolen settlement checks, forged signatures on settlement checks, unauthorized negotiation of settlement checks or failure to timely cash a settlement check within the 180-day period.

6. Upon the Effective Date, the Parties will: (i) be bound by the terms and conditions of this Agreement, and the releases set forth therein; and (ii) be deemed to have waived all objections and oppositions to the fairness, reasonableness, and adequacy of the settlement and the Court's Final Order and Judgment.

G. Miscellaneous Provisions.

1. **Additional PAGA Pay Periods.** It is currently estimated that Aggrieved Employees worked 52,745 Pay Periods between June 19, 2021, and June 30, 2023 (estimated at 69,000 as of November 30, 2023). Plaintiff will provide Defendants with ten (10) days notice of her intent to file a Motion for Approval of the PAGA Settlement. The PAGA settlement amount will increase proportionally if the number of Pay Periods between June 19, 2021, and November 30, 2023, is 10% more than 69,000. For example, if the number of Pay Periods is 13% higher than 69,000, the Gross Settlement Amount would increase by 3%.

2. **Publicity.** Except as otherwise allowed in this paragraph, Plaintiff and her counsel agree that they have not and will not publish information about the Action or the Settlement, and shall not report on the Action or the Settlement in any medium or in any publication, and shall not post or report anything regarding the claims of Plaintiff or the Aggrieved Employees, or the Settlement on their websites, and shall not contact any reporters or media regarding the Settlement. Nothing herein will restrict Plaintiff's Counsel from filing necessary motions or communicating with the Court to obtain approval of this Settlement, or from including publicly available information regarding this Settlement in future judicial submissions regarding Plaintiff's Counsel's qualifications and experience.

3. **Voiding the Agreement:** The Settlement Agreement shall be voidable and unenforceable as to all Parties herein at the option of either Party if (a) the Court should for any reason fail to approve this Settlement in the form agreed to by the Parties, or (b) the Court should for any reason fail to enter a judgment, or (c) the approval of the Settlement and judgment is reversed, modified or declared or rendered void. In that event, then neither the Settlement nor any of the related negotiations or proceedings shall be of any force or effect, and all parties to the Settlement shall stand in the same position, without prejudice, as if the Settlement had been neither entered into nor filed with the Court. Any fees already incurred by the Settlement Administrator shall be paid by A Train.. Notwithstanding the foregoing, the Parties shall attempt in good faith to cure any perceived defects in the Settlement to facilitate approval.

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

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

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

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

8. **No Admission:** Defendants deny any and all liability to Plaintiff and/or the PAGA Employees in this Lawsuit, as to any and all causes of action that were asserted or that might have been asserted in this Action. Nonetheless, Defendants desire to settle and compromise the matters at issue in the Operative Complaint to avoid further substantial expense and the inconvenience and distraction of protracted and burdensome litigation. Defendants also have taken into account the uncertainty and risks inherent in litigation and, without conceding any infirmity in the defenses that it has asserted or could assert against Plaintiff and the PAGA Employees, have determined that it is desirable and beneficial that

Plaintiffs and the PACA Employees' claims be settled in the manner and upon the terms and conditions set forth in this Agreement.

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

10. **Enforcement Actions:** Except as otherwise provided in this Settlement Agreement, in the event that one or more of the Parties to this Settlement Agreement institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement Agreement or to declare rights and/or obligations under this Settlement Agreement, the successful Party or Parties shall be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs incurred in connection with any enforcement actions.

11. **Notices:** All notices shall be provided by United States mail and electronic mail. Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third calendar day after mailing by United States mail and electronic mail, addressed as follows:

To Plaintiff:

Scott E. Wheeler
Justin A. Wheeler
Law Office of Scott Ernest Wheeler
250 West First Street, Suite 216
Claremont, California 91711
Telephone: (909) 621-4988
E-mail: sew@scottwheelerlawoffice.com
jaw@scottwheelerlawoffice.com

To Defendants:

J. Rod Betts
rod.betts@quarles.com
Kelly Kagen
Kelly.Kagan@quarles.com
QUARLES & BRADY LLP
101 West Broadway, Ninth Floor
San Diego, California 92101-8285
Telephone: 619-237-5200

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

13. **Captions and Interpretations:** Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital.

14. **Modification:** This Settlement Agreement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by all of the Parties hereto.

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

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

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

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

19. **Entire Agreement:** This Agreement sets forth the entire agreement between the Parties hereto and fully supersedes any and all prior and/or supplemental understandings, whether written or oral, between the Parties concerning the subject matter of this Agreement. Any modification to this Agreement must be in writing and signed by the Parties.

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

11/3/2023

Dated:

By:

DocuSigned by:

Viviana Botello

178A3CA32D4142B...

VIVIANA BOTELLO

Dated: 11/3/2023

APPROVED AS TO FORM:

Dated: November 3, 2023

Dated: 11/3/2023

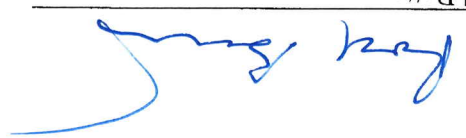
By: Heather Clande

Title: CR/CSO
A TRAIN STAFFING LLC

LAW OFFICE OF SCOTT ERNEST WHEELER

By: 
Scott E. Wheeler
Justin A. Wheeler

Counsel for Plaintiff, Viviana Botello

QUARLES & BRADY LLP
By: 
J. Rod Betts
Kelly Kagan

Counsel for Defendants, A Train Staffing LLC and
World Class Distribution Inc.

EXHIBIT 1

LAW OFFICE OF SCOTT E. WHEELER
Scott E. Wheeler (SBN 187998)
Justin A. Wheeler (SBN 342226)
250 West First Street, Suite 216
Claremont, California 91711
Telephone: (909) 621-4988
Facsimile: (909) 621-4622
Email: sew@scottwheelerlawoffice.com
jaw@scottwheelerlawoffice.com
Attorney for Plaintiff and the other Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO JUSTICE CENTER**

Case No.: CIVSB2218549
[Hon. Jessica Morgan, Dept. S-26]
**[PROPOSED] ORDER GRANTING
APPROVAL OF PAGA SETTLEMENT
AND ENTERING JUDGMENT**
Action Filed: August 23, 2022
Trial Date: None Set

VIVIANA BOTELLO, individually, and on
behalf of all others aggrieved employees,
Plaintiffs,
WORLD CLASS DISTRIBUTION INC., a
California corporation; A TRAIN
STAFFING LLC, a California limited
liability company; and DOES 1 through 50,
inclusive,
Defendants.

[PROPOSED] ORDER AND JUDGMENT

The Court has before it the Motion for Approval of PAGA Settlement, submitted by Plaintiff Viviana Botello ("Plaintiff") and Defendants A Train Staffing LLC and World Class Distribution, Inc. ("Defendants") (collectively, the "Parties"), indicating that they have reached a settlement that will resolve this matter in its entirety. The Stipulation, and therefore this Order and Judgment incorporates the following defined terms.

Having received and considered the Settlement Agreement, the supporting papers filed by Plaintiff¹, the Court grants approval of the Settlement and **HEREBY ORDERS AND MAKES THE FOLLOWING DETERMINATIONS:**

1. Except as otherwise defined in this Order and Judgment ("Order"), all capitalized terms have the same meaning as defined in the Settlement Agreement.

2. The California Labor Workforce and Development Agency ("LWDA") has been provided notice of the Settlement in accordance with PAGA, California Labor Code § 2699(1)(2), (1)(4). In particular, on the date Plaintiff filed her motion seeking approval of the Settlement with the Court, she submitted to the LWDA a notice of the Settlement enclosing a copy of the Settlement Agreement. Plaintiff's notice of the Settlement to the LWDA complied with the notice requirements of PAGA.

3. The Court has jurisdiction over the subject matter of this litigation, over all Aggrieved Employees, and over those persons undertaking affirmative obligations under the Settlement.

4. The Settlement is approved under Labor Code § 2699(1)(2).

5. The PAGA Settlement Notice to Aggrieved Employees, fairly and adequately describes the Action, the approved Settlement, and is the best notice practicable under the circumstances.

6. The Court finds that each Aggrieved Employee, in accordance with the Settlement,

¹ The Court has also reviewed and considered the records and files of this case, as well as all documents submitted in connection with Plaintiff's Motion for Approval of the PAGA Settlement, including the Declaration of Scott E. Wheeler.

1 releases all Released Claims against the Released Parties.

2 7. The Gross Settlement Amount and the methodology used to calculate the PAGA

3 Payment and Individual PAGA Payments set forth in the Settlement Agreement are approved.

4 8. The Court approves the General Release Payment to Plaintiff in the amount of

5 \$7,000. The Court authorizes the Settlement Administrator to make this payment, in accordance

6 with the terms of the Settlement Agreement.

7 9. The Court approves Phoenix Settlement Administrators to act as the Settlement

8 Administrator. The Court awards the Settlement Administrator in this Action its actual fees and

9 costs in accordance with the terms of the Settlement Agreement, not to exceed \$11,500.

10 10. The Court approves the Law Office of Scott Ernest Wheeler as PAGA Counsel.

11 11. The Court awards PAGA Counsel attorneys' fees in the amount of \$233,100 and

12 costs of \$_____, which the Court finds to be fair and reasonable. The Court authorizes the

13 Settlement Administrator to make these payments, in accordance with the terms of the Settlement

14 Agreement.

15 12. The Court authorizes the Settlement Administrator to calculate the PAGA Payment

16 Fund, inclusive of the LWDA Payment and PAGA Aggrieved Employee Payment (which is

17 comprised of the Individual PAGA Payments), in accordance with the terms of the Settlement

18 Agreement.

19 13. The Court finds that payment to the LWDA of 75% of the PAGA Payment as its

20 share of the settlement of PAGA civil penalties is fair and reasonable. The Court authorizes the

21 Settlement Administrator to pay the LWDA payment, in accordance with the terms of the

22 Settlement Agreement.

23 14. The Court finds that payment to the PAGA Aggrieved Employee Payment of 25%

24 of the PAGA Payment as the Aggrieved Employees' share of the settlement of civil penalties is fair

25 and reasonable. The Court authorizes the Settlement Administrator to pay the PAGA Aggrieved

26 Employee Payment, in accordance with the terms of the Settlement Agreement.

27 15. Checks for Individual PAGA Payments sent to Aggrieved Employees shall be valid

28

HONORABLE JESSICA MORGAN
JUDGE OF THE SUPERIOR COURT

DATED: _____, 2023

IT IS SO ORDERED:

Agreement and this Order.

20. The Court enters final judgment in accordance with the terms of the Settlement Court 3.769(h).

19. This document shall constitute a Judgment for purposes of California Rule of Court directs that a judgment shall be entered in accordance with the terms of this Order.

18. Plaintiff's Motion for Approval of the PAGA Settlement is hereby granted and the the scheduled Hearing Re: Distribution.

Administrators Re: Distribution of the Settlement Funds shall be filed ten (10) court days before _____ at _____ a.m. / p.m. in Department S-26. A report from Phoenix Settlement

17. A Hearing Re: Distribution with the terms of the Settlement is set for relating thereto.

but not limited to all matters related to the Settlement and the determination of all controversies and all claims, asserted in, arising out of, or related to the subject matter of the lawsuit, including administration and consummation of the Settlement, to enforce the terms of the judgment, and any 16. This Court shall retain jurisdiction with respect to all matters related to the accordance with the terms of the Settlement Agreement.

Unclaimed Property fund in the name(s) of the employee(s) who did not cash their checks, in Payments uncashed after 180 calendar days will be dispersed to the California State Controller's for 180 calendar days after issuance. Funds remaining from any checks for Individual PAGA

EXHIBIT 2

NOTICE OF SETTLEMENT OF PAGA REPRESENTATIVE ACTION

VIVIANA BOTELLO V. A TRAIN STAFFING LLC AND WORLD CLASS DISTRIBUTION INC.
San Bernardino County Superior Court Case No. CIVSB2218549

Aggrieved Employee
Address
Address

Enclosed is a check in the amount of \$_____, which is your settlement payment for a portion of the civil penalties agreed to be paid in the settlement of a lawsuit entitled *Botello v. A Train Staffing LLC, et al.*, San Bernardino County Superior Court Case No. CIVSB2218549 (the "Action"). The settlement check shall remain valid for one hundred eighty (180) calendar days from the date the check is mailed. If your check remains uncashed after that time, it shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property laws in your name.

You are receiving this check in connection with a Court-approved settlement (the "Settlement") in the Action brought on a representative basis under the California Labor Code Private Attorneys General Act of 2004, California Labor Code §§ 2698, *et seq.* ("PAGA"). The Settlement provides for of the settlement of claims for civil penalties only for purported violations of the California Labor Code on behalf of all non-exempt employees who were employed directly by A Train Staffing LLC ("A Train") and placed by A Train to work at the Fontana and Chino, California World Class Distribution Inc. ("WCD") (collectively "Defendants") distribution centers during the PAGA Period ("Eligible Employees"), which is any time from June 19, 2021 through November 30, 2023.

According to the Company's records, you are an Eligible Employee and are therefore entitled to a share of the Settlement based upon the Court-approved allocation. The PAGA statute provides that 75% of any recovery pursuant to the Settlement be paid to the State of California and 25% of any recovery be paid to the allegedly "aggrieved employee" group, which in this case is the group of Eligible Employees. Each Eligible Employee's share from the 25% portion of the settlement allocated to the "aggrieved employee" group is based on a formula that takes into account the number of pay periods in which an Eligible Employee was employed by A Train and assigned to the Fontana and Chino, California WCD distribution centers during the PAGA Period.

The Court has not made a determination about Plaintiff's allegations. This Notice is not to be understood as an expression of any opinion by the Court as to the merits of the claim. The Defendants deny all claims and allegations in the Action, deny they owe any penalties, and maintains that it has fully complied with all applicable Labor Code provisions. Nevertheless, to avoid further costs and time in defending the Action, the Defendants have settled the Action.

The Settlement resolves all claims for civil penalties and extinguishes your right to bring, or to be represented by another person in, a PAGA lawsuit against the Defendants that are predicated on the facts and legal theories that were alleged or could have been reasonably alleged in the Action, or the letters submitted to the California Labor and Workforce Development Agency by the Plaintiff in the Action, during the PAGA Period, any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, action or causes of action contingent or accrued during the time period from June 19, 2021, through November 30, 2023, arising out of or reasonably related to the PAGA claim and factual allegations asserted in the operative complaint and/or the LWDA Notices, relating to the following claims: 1) failure to provide meal periods; 2) failure to provide rest periods; 3) failure to pay overtime wages; 4) failure to pay minimum wages; 5) failure to timely pay wages during employment; 6) failure to pay all wages due to discharged and quitting employees; 7) failure to furnish accurate itemized wage statements; 8) failure to maintain required records; 9) failure to provide and give notice of supplemental COVID-19 sick leave; 10) failure to provide suitable seating; (11) failure to

reimburse for necessary expenditures incurred in the discharge of duties; and (12) failure to provide notice of and implementation of an alleged illegal quota system. This release shall include a release for PAGA claims under California Labor Code Sections 201-203, 204, 210, 226, 226.3, 226.7, 246, 248.1, 248.2, 248.6, 248.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2100-2112, 2802, 2810.3, and 2810.5, and the applicable IWC Wage Order sections 3, 4, 7, 11, 12, and 14. This release shall include a release for claims under the California Unfair Competition Law, California Business & Professional Code sections 17200, *et seq.* (the "Released PAGA Claims"). This release applies to you, regardless of whether you cash your check, and regardless of whether this letter can be delivered to you. The Settlement does not affect the ability of an Eligible Employee to bring any other claims.

By an Order dated [Approval Date], the San Bernardino County Superior Court approved the Settlement of the Released PAGA claims. By approving the Settlement, the Court did not decide in favor of either Plaintiff or the Company.

PLEASE DO NOT CALL OR WRITE THE COURT OR OFFICE OF THE CLERK TO ASK QUESTIONS ABOUT THE SETTLEMENT. IF YOU HAVE ANY QUESTIONS, YOU MAY CALL OR WRITE TO THE SETTLEMENT ADMINISTRATOR AT:

[ADMIN NAME]
[ADDRESS]
[ADDRESS]
[ADDRESS]
[ADDRESS]