

1 RUTAN & TUCKER, LLP
Brandon L. Sylvia (State Bar No. 261027)
2 bsylvia@rutan.com
Jonas Trevethan (State Bar No. 340465)
3 jtrevethan@rutan.com
18575 Jamboree Road, 9th Floor
4 Irvine, CA 92612
Telephone: 714-641-5100
5 Facsimile: 714-546-9035

6 Attorneys for Defendants
A.P. EXPRESS, LLC and A.P. EXPRESS WORLDWIDE,
7 LLC

8 Brendan Y. Joy (SBN 254959)
E-Mail: bjoy@fisherphillips.com
9 Victoria Shin (SBN 306347)
E-Mail: vshin@fisherphillips.com

10 FISHER & PHILLIPS LLP
444 South Flower Street, Suite 1500
11 Los Angeles, California 90071
Telephone: (213) 330-4500
12 Facsimile: (213) 330-4501

13 Attorneys for Defendant
DRE WORKFORCE, INC.

14
15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 FOR THE COUNTY OF LOS ANGELES

17 ANGELICA HERNANDEZ, individually, and
18 on behalf of all other aggrieved employees,

19 Plaintiff,

20 vs.

21 A.P. EXPRESS, LLC, a California limited
liability company; A.P. EXPRESS
22 WORLDWIDE, LLC, a California limited
liability company; DRE WORKFORCE, INC.,
23 a California corporation; and DOES 1 through
50, inclusive,

24 Defendants.
25

Case No. 22STCV26081

**STIPULATION AND AGREEMENT FOR
PAGA REPRESENTATIVE ACTION
SETTLEMENT**

ASSIGNED FOR ALL PURPOSES TO:
HON. ROBERT S. DRAPER; DEPT.: 78

Date Action Filed: August 11, 2022
Trial Date: None Set

1 This Stipulation and Agreement for Settlement of this PAGA Representative Action is made
2 and entered into by and between Plaintiff Angelica Hernandez ("Plaintiff"), Defendant DRE
3 Workforce, Inc. ("DRE"), and Defendants A.P. Express, LLC, and A.P. Express Worldwide, LLC
4 (collectively, "A.P. Express") (collectively with Plaintiff and DRE, the "Parties"), and is made in
5 compromise of disputed claims. The Parties agree that the above-entitled representative action shall
6 be settled on the terms and conditions set forth in this Stipulation, subject to the approval of the
7 Court pursuant to Section 2699(l) of the California Labor Code Private Attorneys General Act of
8 2004, Labor Code §§ 2698, *et seq.* ("PAGA").

9 **DEFINITIONS**

10 1. **"Action"** means and refers to *Angelica Hernandez v. A.P. Express, LLC, et al.*, Case
11 No. 22STCV26081, which is currently pending in the Los Angeles County Superior Court.

12 2. **"Aggrieved Employees"** means all non-exempt employees who were employed
13 directly by A.P. Express, LLC or A.P. Express Worldwide, LLC or employed and placed by DRE
14 Workforce, Inc. to work at A.P. Express, LLC or A.P. Express Worldwide, LLC, in the state of
15 California, at any time from June 7, 2021 through March 30, 2023.

16 3. **"A.P. Express"** means Defendants A.P. Express, LLC and A.P. Express Worldwide,
17 LLC.

18 4. The terms **"Agreement," "Settlement,"** and **"Settlement Agreement"** mean this
19 Stipulation and Agreement for Settlement of this PAGA Representative Action, which the Parties
20 acknowledge sets forth all material terms and conditions of the Settlement between them, and which
21 is subject to Court approval pursuant to Section 2699(l) of the California Labor Code Private
22 Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*

23 5. **"Court"** means the Los Angeles County Superior Court.

24 6. **"Defendants"** mean Defendants A.P. Express, LLC, A.P. Express Worldwide, LLC,
25 and DRE Workforce, Inc.

26 7. **"DRE"** means Defendant DRE Workforce, Inc.

27 8. **"Effective Date"** of this Agreement shall be the later of: (i) the 61st day after service
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1 of notice of entry of the Final Order and Judgment, if no appeal, review, or writ has been filed; or
2 (ii) if an appeal, review, or writ is sought from the Final Order and Judgment, the day after the Final
3 Order and Judgment is affirmed or the appeal, review, or writ is dismissed or denied, and the Final
4 Order and Judgment are no longer subject to further judicial review. The Effective Date is
5 conditioned upon all of the following occurring: (a) this Agreement has been signed by the Parties,
6 PAGA Counsel, and Defendants' counsel; and (b) the Court has entered the Final Order and
7 Judgment.

8 9. **"Final Order and Judgment"** means the proposed order granting approval of the
9 Settlement and entering Judgment, in a form substantially similar to that attached to this Agreement
10 as Exhibit A.

11 10. **"General Release Payment"** means the amount the Court authorizes to be paid to
12 Plaintiff, up to \$5,000, as compensation for Plaintiff's general release of all claims Plaintiff may
13 have, or may have had, against Defendants, including those under Section 1542 of the California
14 Civil Code.

15 11. **"Gross Settlement Amount"** means a maximum total of \$300,000.00, which
16 includes all payments owing as a result of this Agreement, including: the Net Settlement Fund;
17 Representative Plaintiff's General Release Payment; Settlement Administration Costs; and PAGA
18 Counsel Attorneys' Fees and Costs as awarded by the Court.

19 12. **"LWDA Payment"** means a payment to the California Labor Workforce and
20 Development Agency in an amount equal to 75% of the PAGA Payment Amount.

21 13. **"Net Settlement Fund"** and **"PAGA Payment Amount"** mean the Gross Settlement
22 Amount less all of the following: PAGA Counsel's Attorneys' Fees and Costs, Representative
23 Plaintiff's General Release Payment, and Settlement Administration Costs. It is comprised of the
24 LWDA Payment and the PAGA Aggrieved Employee Payment.

25 14. **"PAGA Aggrieved Employee Payment"** means a payment of 25% of the PAGA
26 Payment Amount, which the Parties have agreed to pay the Aggrieved Employees out of the Gross
27 Settlement Amount in connection with the settlement of the PAGA Claim.

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1 15. **“PAGA Claim”** means the claim for civil penalties under the California Labor Code
2 Private Attorneys General Act of 2004 (Cal. Lab. Code sections 2698 *et seq.*, “PAGA”) alleged in
3 the Action.

4 16. **“PAGA Counsel”** means Scott Ernest Wheeler and Justin Wheeler of the Law Office
5 of Scott Ernest Wheeler.

6 17. **“PAGA Period”** means June 7, 2021 through March 30, 2023.

7 18. **“Parties”** means Plaintiff, DRE, and A.P. Express.

8 19. **“Released Claims”** means all claims, demands, rights, liabilities, and causes of
9 action that were, or could have been asserted based on the facts alleged in the Action, pursuant to
10 the California Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*,
11 based on all civil penalties under California Labor Code Sections 2699 *et seq.* and claims for
12 Defendants’ alleged: failure to provide meal periods; failure to provide rest breaks; failure to pay
13 overtime wages; failure to pay minimum wages; failure to pay all wages owed to discharged and
14 quitting employees; failure to furnish accurate itemized wage statements; failure to maintain
15 required records; failure to pay COVID-19 supplemental sick leave; failure to provide suitable
16 seating; failure to indemnify employees for necessary business expenses; failure to provide notice
17 of material terms of employment; unlawful consumer background reports; violations of California
18 Labor Code sections 201, 202, 203, 204, 226, 226.3, 226.7, 246, 248.1, 248.2, 248.6, 248.7, 510,
19 512, 558, 1024.5, 1174, 1174.5, 1194, 1197, 1198, 2802, 2810.5, 2698 *et seq.*, the applicable IWC
20 Wage Order provisions; and primary rights alleged in Plaintiff’s Complaint and in Plaintiff’s PAGA
21 Notice dated June 2, 2022 and amended PAGA Notice dated September 8, 2022.

22 20. **“Released Parties”** means Defendants and their respective current and former
23 parents or subsidiaries, predecessors or successors, holding companies, affiliated companies or
24 entities, owners, investors, shareholders, members, partners, officers, directors, managers,
25 employees, agents, attorneys, insurers, and assigns.

26 21. **“Representative Plaintiff”** or **“Plaintiff”** means Plaintiff Angelica Hernandez.

27 22. **“Settlement Administrator”** shall mean Phoenix Settlement Administrators, or a
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1 neutral third-party administrator chosen by the Parties, subject to approval by the Court.

2 RECITALS

3 23. On June 3, 2022, Plaintiff sent a PAGA Notice to the Labor Workforce and
4 Development Agency ("LWDA"), with a copy to Defendants. On September 8, 2022, Plaintiff sent
5 an amended PAGA Notice to the LWDA, with a copy to Defendants.

6 24. On August 11, 2022, Plaintiff filed a Complaint in Los Angeles County Superior
7 Court, in a case styled *Angelica Hernandez v. A.P. Express, LLC, et al.*, Case No. 22STCV26081
8 (the "Action").

9 25. The Action asserts a PAGA Claim for civil penalties and seeks an award of
10 reasonable attorneys' fees and costs.

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

20 27. The Parties enter into this Settlement Agreement on a conditional basis. In the event
21 the Court does not enter a Final Order and Judgment as defined in this Settlement Agreement, this
22 Settlement Agreement will be deemed null and void *ab initio* and will be of no force or effect
23 whatsoever, and will not be referred to or utilized for any purpose whatsoever.

24 28. Defendants deny all of the claims in the Action, and do not waive, but rather
25 expressly reserve, all rights to challenge all such claims and allegations upon all legal, procedural
26 and factual grounds should this Settlement Agreement not become final. This Settlement
27 Agreement reflects a compromise reached to end litigation.

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29. The Parties stipulate and agree to the following terms of this Settlement Agreement with the intent that this Agreement finally disposes of the Action with prejudice.

TERMS AND CONDITIONS

30. **Settlement Payments and Calculation of Claims.** Subject to final Court approval and the conditions specified in this Agreement, and in consideration of the mutual covenants and promises set forth in this Agreement, Defendants agree to pay their respective share of the Gross Settlement Amount of \$300,000.00. For the avoidance of doubt, Defendants shall not be required to pay any amount over \$300,000.00 for this Settlement. The following table summarizes the allocation of the Gross Settlement Amount:

Gross Settlement Amount of \$300,000.00 Is Broken Down As Follows:

- **\$176,280.32** for the PAGA Payment Amount (Net Settlement Fund)
 - **\$132,210.24** for the LWDA Payment
 - **\$44,070.08** for the PAGA Aggrieved Employee Payment
- PAGA Counsel Attorneys' Fees not to exceed **\$100,000.00**
- PAGA Counsel Costs not to exceed **\$13,769.67**
- Up to **\$5,000.00** for Named Plaintiff Angelica Hernandez's General Release Payment
- Settlement Administration Costs, not to exceed **\$4,950.00**

31. **Settlement Escalator.** The Settlement is based on the assumption that there were no more than 12,834 pay periods worked by the Aggrieved Employees during the PAGA Period. Should the actual number of pay periods during the PAGA Period exceed 12,834 by more than 10%, each Defendant will have the independent choice to either: (a) pay a proportional increase in the Gross Settlement Amount for each additional pay period over 10% of 12,834; or (b) modify the end date of the PAGA Period to a date prior to March 30, 2023, to avoid incurring the pro rata increase. The Parties agree that any increase to the Gross Settlement Amount made pursuant to this provision will increase the applicable attorneys' fees payable to Plaintiff's counsel such that the attorneys' fees remains one-third of the adjusted Gross Settlement Amount. The pay period value shall be calculated by dividing the Gross Settlement Amount by 12,834.

32. **Apportionment of Gross Settlement Amount.** The Parties agree, subject to Court approval and the conditions specified in this Agreement, that the Gross Settlement Amount shall be

1 apportioned as follows:

2 a. Settlement Administration Fees And Costs: The fees and costs associated
3 with settlement administration (*e.g.*, preparing and mailing payments to the Aggrieved Employees,
4 tax documentation, etc.) (the “Settlement Administration Costs”) will be paid from the Gross
5 Settlement Amount and are estimated to be \$4,950. The Parties agree to use Phoenix Settlement
6 Administrators as the Settlement Administrator.

7 b. PAGA Counsel’s Attorneys’ Fees And Costs: The Parties agree that, subject
8 to the Court’s review and approval, PAGA Counsel will be paid from the Gross Settlement Fund an
9 amount that is up to one third of the Gross Settlement Amount for attorneys’ fees (\$100,000.00),
10 plus actual litigation costs not to exceed \$13,769.67.

11 c. Representative Plaintiff’s General Release Payment: The Parties agree that,
12 subject to the Court’s review and approval, Representative Plaintiff will receive a \$5,000.00 General
13 Release Payment, which will be paid from the Gross Settlement Fund.

14 d. Net Settlement Fund/PAGA Payment Amount: After deducting PAGA
15 Counsel’s Attorneys’ Fees and Costs, Settlement Administration Costs, and Representative
16 Plaintiff’s General Release Payment from the Gross Settlement Amount, the remaining amount will
17 comprise the Net Settlement Fund/PAGA Payment Amount. The Net Settlement Fund/PAGA
18 Payment Amount is comprised of the LWDA Payment and the PAGA Aggrieved Employee
19 Payment. The Net Settlement Fund of approximately \$177,000 shall be allocated 75% to the LWDA
20 Payment, which is estimated to total \$132,750.00 (\$177,000.00 x 75%). The remaining 25% of the
21 Net Settlement Fund, estimated to total \$44,250.00, shall be allocated to the PAGA Aggrieved
22 Employee Payment to be paid to the Aggrieved Employees on a *pro rata* basis as noted below,
23 which shall be referred to as each Aggrieved Employee’s “Individual PAGA Payment.”

24 Example:

25 Aggrieved Employee A was actively employed during the PAGA Period for 25 pay periods.
26 All Aggrieved Employees were actively employed a combined total of 100,000 pay periods during
27 the PAGA Period. Aggrieved Employee A’s Individual PAGA Payment would be calculated as
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1 follows:

- 2 ➤ 25 pay periods for Aggrieved Employee A ÷ 100,000 total pay periods for all
3 Aggrieved Employees = 0.025%.
- 4 ➤ Aggrieved Employee A is entitled to an Individual PAGA Payment in an amount that
5 is 0.025% of the PAGA Aggrieved Employee Payment.¹

6 e. Taxes and Reporting: The Individual PAGA Payments will be treated as non-
7 wage income to the Aggrieved Employees and reported by the Settlement Administrator on IRS
8 Form 1099.

9 33. **Release By Aggrieved Employees And State Of California.**

10 a. Terms Of Release: In exchange for the consideration recited in this
11 Settlement Agreement, Representative Plaintiff, as the representative for the State of California and
12 all Aggrieved Employees, and on behalf of their current, former, and future heirs, executors,
13 administrators, attorneys, agents, and assigns will forever completely release and discharge the
14 Released Parties of any and all Released Claims, including for civil penalties under Labor Code
15 § 558 and Labor Code §§ 2698 *et. seq.* The Aggrieved Employees and the State of California are
16 deemed by operation of the Final Order and Judgment to have agreed not to sue or otherwise make
17 a claim against any of the Released Parties for any Released Claims.

18 b. No Claims Based On Stipulation And Agreement. No Aggrieved Employee
19 will have any claim against any of the Released Parties, Defendants' counsel, the Representative
20 Plaintiff, or PAGA Counsel, based on errors in administering claims or performing the mailing and
21 skip-tracing requirements of the Settlement Administrator under this Agreement.

22 34. **General Release By Representative Plaintiff.**

23 a. Terms Of Release: In exchange for the consideration recited in this
24 Settlement Agreement, including the Representative General Release Payment, the Representative
25 Plaintiff, on behalf of herself and on behalf of her current, former, and future heirs, executors,
26 administrators, attorneys, agents, and assigns, does hereby and forever release, waive, acquit and
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28 ¹ The Individual PAGA Payment will be rounded to the nearest penny with .5 rounded up.

1 discharge the Released Parties from all claims (known or unknown) which she has, had or might
2 otherwise have had against the Released Parties, from the beginning of time to the date she signs
3 this Agreement, regarding any aspect of her employment including, but not limited to, the Released
4 Claims, any common law or statutory torts, any federal, state or governmental constitution, statute,
5 regulation or ordinance, and any claim for wages, tips or any other compensation or benefit.

6 b. California Civil Code Section 1542: Upon the Effective Date, the
7 Representative Plaintiff will be deemed to have, and by operation of the Final Order and Judgment
8 will have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions,
9 rights, and benefits of section 1542 of the California Civil Code which provides as follows:

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

13 c. No Other Actions. The Representative Plaintiff is deemed by operation of
14 the Final Order and Judgment to have agreed not to sue or otherwise make any claim against any of
15 the Released Parties based upon any action, event, or occurrence prior to the date she signs this
16 Settlement Agreement.

17 35. **Request For Final Order And Judgment.**

18 a. Upon execution of this Agreement, the Representative Plaintiff shall
19 promptly file a motion or application with the Court requesting approval of this Settlement by
20 submitting a proposed Final Order and Judgment, in a form substantially similar to Exhibit A.

21 b. The Representative Plaintiff shall not file the motion or application
22 requesting final approval or final judgment with the Court until Defendants have reviewed and
23 approved it, which approval will not be unreasonably withheld.

24 c. On the date Representative Plaintiff files the motion or application discussed
25 in this Paragraph, Plaintiff will also submit to the LWDA a notice of the Settlement enclosing a
26 copy of the Settlement Agreement. Plaintiff's notice of the Settlement to the LWDA will comply
27 with the notice requirements of PAGA.
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1 36. **Settlement Funding.**

2 a. Upon the Court entering the Final Order and Judgment, and within 7 days
3 after the Effective Date, the Settlement Administrator shall send Defendants' counsel electronic
4 wiring instructions to fund the Gross Settlement Fund.

5 b. Within 30 days after the Effective Date, Defendants shall wire to the
6 Settlement Administrator their respective share of the Gross Settlement Amount (the "Funding
7 Date").

8 c. Within 14 days after the Funding Date, the Settlement Administrator shall
9 issue all payments required by this Agreement (the "Payment Date").

10 37. **PAGA List.**

11 a. Within 30 days after the Effective Date, Defendants will provide a PAGA
12 List to the Settlement Administrator which will identify all Aggrieved Employees by name, social
13 security number, and last known home address ("PAGA List"). The PAGA List will also contain
14 the number of pay periods credited to each Aggrieved Employee.

15 38. **List Of Individual Settlement Amounts.**

16 a. Within 20 days after the Settlement Administrator receives the PAGA List,
17 the Settlement Administrator will provide to PAGA Counsel and Defendants' counsel a Proceeds
18 List reflecting the Individual PAGA Payment for each Aggrieved Employee ("Proceeds List"). The
19 Proceeds List provided to PAGA Counsel will not include the Aggrieved Employees' names, social
20 security numbers or contact information.

21 39. **PAGA Payments To Aggrieved Employees.**

22 a. On the Payment Date, the Settlement Administrator will mail to each
23 Aggrieved Employee, via first-class United States Mail, the following: (a) the PAGA Settlement
24 Notice in English and Spanish, attached as Exhibit B to this Agreement; and (b) their Individual
25 PAGA Payment (collectively, the "PAGA Packet").

26 b. Prior to mailing, the Settlement Administrator will update all addresses using
27 the National Change of Address System (NCOA). In the event that a PAGA Packet is returned to
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1 the Settlement Administrator with a forwarding address, the Settlement Administrator will re-send
2 the PAGA Packet to the forwarding address identified. If no forwarding address is provided, then
3 the Settlement Administrator will promptly conduct a “standard search,” sometimes called, “Skip
4 Trace” or “Credit Header” searches, to locate a better address. If a better address is found, the
5 Settlement Administrator will promptly re-send the PAGA Packet. If a better address is not found
6 or the PAGA Packet is ultimately returned without a forwarding address, neither the Settlement
7 Administrator, Defendants, or PAGA Counsel shall be required to take further action.

8 c. Aggrieved Employees shall have 180 calendar days after the date the PAGA
9 Packet is mailed to them to cash their settlement payment checks. If any Aggrieved Employee’s
10 check is not cashed within that period, the settlement payment check will be voided and a stop-
11 payment will be issued. Neither Defendants, Defendants’ counsel, Plaintiff, nor PAGA Counsel
12 will have any liability for lost or stolen settlement payment checks, forged signatures on settlement
13 payment checks, unauthorized negotiation of settlement payment checks, or failure to timely cash a
14 settlement payment check within the 180 day period.

15 d. Any unpaid cash residue or unclaimed Aggrieved Employee funds, plus any
16 accrued interest that has not otherwise been distributed pursuant to order of the Court, shall be
17 transmitted to the California State Controller’s office in the name of the Aggrieved Employee.

18 40. **Payments Of General Release Payment, Attorneys’ Fees And Costs, And The**
19 **LWDA Settlement Payment.**

20 a. On the Payment Date, the Settlement Administrator will pay from the Gross
21 Settlement Fund the Representative Plaintiff’s General Release Payment as awarded by the Court.
22 The payment will be made by sending to PAGA Counsel a check payable to “Angelica Hernandez”
23 in the amount of the Court-approved General Release Payment. This payment is conditional upon
24 PAGA Counsel providing Defendants’ counsel with a completed Form W-9 for the Representative
25 Plaintiff.

26 b. On the Payment Date, the Settlement Administrator will pay from the Gross
27 Settlement Fund to PAGA Counsel its Court-approved Attorneys’ Fees and Costs. Such payment
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1 is conditional upon PAGA Counsel providing the Settlement Administrator with a completed Form
2 W-9.

3 c. On the Payment Date, the Settlement Administrator will pay the LWDA
4 Payment from the Net Settlement Fund by issuing a check in the approximate amount of
5 \$132,750.00 payable to "California Labor Workforce and Development Agency."

6 41. **Deadlines.**

7 a. If any deadline specified in this Agreement falls on a Saturday, Sunday, or
8 Court holiday, the deadline will be automatically extended to the next regular business day. Unless
9 specified otherwise, all references to "days" shall mean calendar days.

10 42. **Enforcement And Continuing Jurisdiction Of The Court.**

11 a. Pursuant to the Parties agreement, this Settlement Agreement will be
12 approved by the Court and will be enforceable by the Court pursuant to California Code of Civil
13 Procedure section 664.6. Even after the entry of the Final Order and Judgment, this Court will have
14 and retain continuing jurisdiction over the Action and over all Parties and the Aggrieved Employees,
15 to the fullest extent necessary or convenient to enforce and effectuate the terms and intent of this
16 Settlement Agreement and all matters provided for in it, and to interpret it.

17 43. **Mutual Full Cooperation.**

18 a. The Parties will fully cooperate with each other to accomplish the terms of
19 this Settlement Agreement, including, but not limited to, execution of such documents and taking
20 such other action as may be reasonably necessary or convenient to implement it.

21 44. **Non-Admission Of Liability.**

22 a. The Parties enter into this Agreement to resolve the dispute that has arisen
23 between them and to avoid the burden, expense and risk of continued litigation. In entering into this
24 Agreement, Defendants do not admit, and specifically deny, that they have violated any federal,
25 state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or any
26 other applicable laws, regulations or legal requirements; violated or breached any duty; engaged in
27 any misrepresentation or deception; or engaged in any other unlawful conduct with respect to the
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1 Action. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations
2 connected with it, shall be construed as an admission or concession by Defendants of any such
3 violations or failures to comply with any applicable law. Except as necessary in a proceeding to
4 enforce the terms of this Agreement, this Agreement and its terms and provisions shall not be offered
5 or received as evidence in any action or proceeding to establish any liability or admission on the
6 part of Defendants or to establish the existence of any condition constituting a violation of, or a non-
7 compliance with, federal, state, local or other applicable law.

8 45. **Effective Date Of Defendants' Obligations Under This Agreement.**

9 a. Defendants' obligations under this Settlement Agreement will become final
10 and effective only upon the occurrence of the Effective Date. In the event that any of the conditions
11 specified in this Settlement Agreement are not satisfied, or in the event that this Settlement does not
12 obtain approval of the Court for any reason, all matters covered by this Agreement will be null and
13 void. In such event, neither this Agreement nor any negotiations leading to this Settlement will be
14 used or construed by or against any Party as a determination, admission, or concession of any issue
15 of law or fact in the litigation; and the Parties do not waive, and instead expressly reserve, their
16 respective rights regarding the prosecution and defense of the Action, including all available
17 defenses and affirmative defenses, and to challenge any claim, as if this Settlement Agreement never
18 existed.

19 46. **Nullification.**

20 a. If: (1) the Court should for any reason fail to enter the Final Order and
21 Judgment; or (2) the Court's Final Order and Judgment is reversed or modified as to any material
22 term as defined above, or declared or rendered void as to any material term as defined above, then
23 (a) the Settlement Agreement shall become null and void; (b) the Parties will revert to their
24 respective positions immediately prior to reaching the settlement; and (c) Defendants will be
25 responsible for any Settlement Administration Costs.

26 47. **Invalidation.**

27 a. Invalidation of any material term of this Settlement Agreement will invalidate
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1 this Agreement in its entirety unless the Parties subsequently agree in writing that the remaining
2 provisions will remain in full force and effect.

3 48. **No Publicity.**

4 a. Plaintiff and her counsel agree that the terms of this Settlement Agreement
5 (including, but not limited to, the Gross Settlement Amount), the negotiations leading to the
6 execution of this Settlement Agreement, and the Settlement Agreement itself, shall not be discussed
7 with or publicized or promoted to the media (including, without limitation, legal periodicals and
8 publications such as "Jury Verdicts," or disclosure of the Settlement Agreement on any web site of
9 Plaintiff's counsel), or the public at large, without the advance written consent of Defendants. The
10 Parties intend this Paragraph 48 to prohibit Plaintiff and her counsel from discussing, answering
11 questions about, promoting or publicizing the Settlement Agreement, its terms, or the negotiations
12 leading to the Settlement Agreement with anyone other than the Court or those individuals necessary
13 to effectuate the terms of the Agreement. Notwithstanding the foregoing, Plaintiff and her counsel
14 (1) may tell the public in general only that certain claims "have been resolved by the Parties," and
15 (2) may disclose the terms of the Settlement Agreement (a) in appropriate filings with the Court in
16 this case; (b) where required by law (e.g., income tax returns); (c) Plaintiff's counsel may refer to
17 the Action for purposes of class or representative counsel qualifications; and (d) to accountants or
18 other tax professionals for the purpose of preparing tax returns.

19 49. **Entire Agreement.**

20 a. This Settlement Agreement constitutes the entire integrated agreement
21 between the Parties relating to the Action, and no oral representations, warranties, or inducements
22 have been made to any party concerning this Settlement Agreement other than the representations,
23 warranties, and covenants contained and memorialized in this Settlement Agreement.

24 50. **Authorization To Act.**

25 a. PAGA Counsel warrants and represents that they are authorized by the
26 Representative Plaintiff, and counsel of record for Defendants warrants that they are authorized by
27 Defendants, to take all appropriate action required or permitted to be taken by such Parties pursuant
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1 to this Settlement Agreement to effectuate its terms, and to execute any other documents required
2 to effectuate the terms of this Settlement Agreement, except for any documents, including but not
3 limited to this Settlement Agreement, that are required to be executed by the Parties.

4 51. **Modification Only In Writing.**

5 a. This Settlement Agreement may be amended or modified only by a written
6 instrument signed by all Parties or their successors in interest.

7 52. **Binding On Successors.**

8 a. This Settlement Agreement is binding upon and will inure to the benefit of
9 the Parties to this Agreement, as well as their respective attorneys, past, present, and future
10 predecessors, successors, shareholders, officers, directors, employees, agents, trustees,
11 representatives, administrators, fiduciaries, assigns, insurers, executors, partners, parent
12 corporations, subsidiaries, and related or affiliated entities.

13 53. **No Prior Assignments.**

14 a. The Aggrieved Employees are deemed by operation of the Final Order and
15 Judgment to represent, covenant, and warrant that they have not directly or indirectly assigned,
16 transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any
17 portion of any liability, claim, demand, cause of action, or rights released and discharged by this
18 Agreement.

19 54. **Governing Law.**

20 a. All terms of this Settlement Agreement will be governed by and interpreted
21 according to the laws of the State of California, without giving effect to conflicts of laws principles.

22 55. **Counterparts.**

23 a. This Settlement Agreement may be executed in one or more counterparts.
24 All executed counterparts and each of them will be deemed to be one and the same instrument.
25 Counsel for the Parties will exchange among themselves any signed counterparts.

26 56. **Headings For Convenience Only.**

27 a. The descriptive headings of any paragraphs or sections of this Settlement
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1 Agreement are inserted for convenience of reference only and do not constitute a part of this
2 Settlement Agreement.

3 57. **Construction Of This Agreement.**

4 a. The Parties agree that the terms and conditions of this Settlement Agreement
5 are the result of arms-length negotiations between the Parties and that this Settlement Agreement
6 will not be construed in favor of or against any Party by reason of the extent to which any Party, or
7 her or its counsel participated in the drafting of this Agreement. This Settlement Agreement
8 constitutes the entire agreement between the Parties. Except as expressly provided in this
9 Agreement, this Settlement Agreement has not been executed in reliance upon any other oral or
10 written representations or terms and no such extrinsic oral or written representations or terms will
11 modify, vary, or contradict the terms of this Settlement Agreement. In entering this Settlement
12 Agreement, the Parties explicitly recognize California Civil Code section 1625 and California Code
13 of Civil Procedure section 1856(a), which provide that a written agreement is to be construed
14 according to its terms and may not be varied or contradicted by extrinsic evidence. The
15 Representative Plaintiff and Defendants had available to them the advice and assistance of
16 independent counsel. As such, neither Representative Plaintiff nor Defendants may claim that any
17 ambiguity in this Settlement Agreement should be construed against the other.

18 58. **Corporate Signatories.**

19 a. Any person executing this Settlement Agreement or any related document on
20 behalf of a corporate signatory warrants and promises for the benefit of all Parties that such person
21 has been duly authorized by such corporation to execute this Settlement Agreement or any related
22 document.

23 59. **Representation By Counsel.**

24 a. All of the Parties hereto acknowledge that they have been represented by
25 counsel throughout all negotiations which preceded the execution of this Settlement Agreement and
26 that this Agreement has been executed with the consent and advice of counsel.

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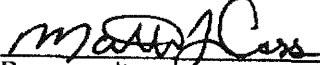
1 IT IS SO AGREED:

2 Dated: 4-19-23

ANGELICA HERNANDEZ
Angelica Hernandez

4 Dated:
5 4/26/2023

A.P. EXPRESS, LLC and A.P. EXPRESS
WORLDWIDE, LLC

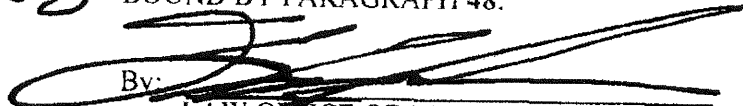
6 
7 By: Matthew J. Cess
8 Its: Company Representative

8 Dated: DRE Workforce, Inc.

10 By:
11 Its:

12 Dated: 4/19/23

APPROVED AS TO FORM AND AGREEMENT TO BE
BOUND BY PARAGRAPH 48:

14 By: 

LAW OFFICE OF SCOTT ERNEST WHEELER
Scott Ernest Wheeler
Attorneys for Plaintiff Angelica Hernandez and the
Aggrieved Employees

17 Dated: April 26, 2023

APPROVED AS TO FORM:

19 By: 

RUTAN & TUCKER, LLP
Brandon L. Sylvia
Attorneys for Defendants A.P. Express, LLC and
A.P. Express Worldwide, LLC

22 Dated:

APPROVED AS TO FORM:

24 By:

FISHER & PHILLIPS, LLP
BRENDAN JOY
Attorneys for Defendant DRE Workforce, Inc.

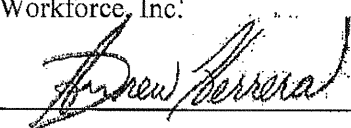
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IT IS SO AGREED:

Dated: _____
Angelica Hernandez

Dated: A.P. EXPRESS, LLC and A.P. EXPRESS
WORLDWIDE, LLC

By: _____
Its: _____

Dated: DRE Workforce, Inc.
By: 
Its: _____

Dated: APPROVED AS TO FORM AND AGREEMENT TO BE
BOUND BY PARAGRAPH 48:

By: _____
LAW OFFICE OF SCOTT ERNEST WHEELER
Scott Ernest Wheeler
Attorneys for Plaintiff Angelica Hernandez and the
Aggrieved Employees

Dated: APPROVED AS TO FORM:

By: _____
RUTAN & TUCKER, LLP
Brandon L. Sylvia
Attorneys for Defendants A.P. Express, LLC and
A.P. Express Worldwide, LLC

Dated: APPROVED AS TO FORM:

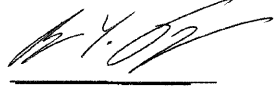
By: 
FISHER & PHILLIPS, LLP
BRENDAN JOY
Attorneys for Defendant DRE Workforce, Inc.

Exhibit A

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ANGELICA HERNANDEZ, individually, and
on behalf of all other aggrieved employees,

Plaintiff,

vs.

A.P. EXPRESS, LLC, a California limited
liability company; A.P. EXPRESS
WORLDWIDE, LLC, a California limited
liability company; DRE WORKFORCE, INC.,
a California corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No. 22STCV26081

**[PROPOSED] ORDER GRANTING
APPROVAL OF PAGA SETTLEMENT
AND ENTERING JUDGMENT**

ASSIGNED FOR ALL PURPOSES TO:
HON. ROBERT S. DRAPER; DEPT.: 78

Date Action Filed: August 11, 2022
Trial Date: None Set

1 **[PROPOSED] ORDER AND JUDGMENT**

2 The Court has before it the Stipulation and Agreement for PAGA Representative Action
3 Settlement (“Settlement Agreement”), submitted by Plaintiff Angelica Hernandez (“Plaintiff”) and
4 Defendants A.P. Express, LLC, A.P. Express Worldwide, LLC, and DRE Workforce, Inc.
5 (“Defendants”) (collectively, the “Parties”), indicating that they have reached a settlement that will
6 resolve this matter in its entirety.

7 Having received and considered the Settlement Agreement, the supporting papers filed by
8 Plaintiff,¹ and the evidence and arguments received by the Court, the Court grants approval of the
9 Settlement and **HEREBY ORDERS AND MAKES THE FOLLOWING DETERMINATIONS:**

10 1. Except as otherwise defined in this Order and Judgment (“Order”), all capitalized
11 terms have the same meaning as defined in the Settlement Agreement that is attached as Exhibit A
12 to this Order.

13 2. The California Labor Workforce and Development Agency (“LWDA”) has been
14 provided notice of the Settlement in accordance with PAGA, California Labor Code § 2699(1)(2),
15 (1)(4). In particular, on the date Plaintiff filed her motion seeking approval of the Settlement with
16 the Court, she submitted to the LWDA a notice of the Settlement enclosing a copy of the Settlement
17 Agreement. Plaintiff’s notice of the Settlement to the LWDA complied with the notice requirements
18 of PAGA.

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

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

23 5. The PAGA Settlement Notice to Aggrieved Employees, attached as Exhibit B to this
24 Order, fairly and adequately describes the Action, the approved Settlement, and is the best notice
25 practicable under the circumstances.

26 6. The Court finds that each Aggrieved Employee, in accordance with the Settlement,
27

28 ¹ The Court has also reviewed and considered the records and files of this case, as well as all documents submitted in connection with the Parties’ Stipulation for Approval of 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 \$5,000. 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 \$4,950.00.

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 \$100,000.00 and
12 costs of \$13,769.67, 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 Settlement
22 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 for 180 calendar days after issuance. Funds remaining from any checks for Individual PAGA

1 Payments uncashed after 180 calendar days will be dispersed to the California State Controller's
2 Unclaimed Property fund in the name(s) of the employee(s) who did not cash their checks, in
3 accordance with the terms of the Settlement Agreement.

4 16. Upon completion of the Settlement, the Settlement Administrator will provide
5 written certification of the completion to the Court and counsel for the Parties, which shall be filed
6 with the Court on or before _____.

7 17. Without affecting the finality of this order and entry of judgment, the Court retains
8 exclusive and continuing jurisdiction over the Action for purposes of supervising, administering,
9 implementing, and enforcing this Order and the Settlement.

10 18. Nothing in this Order or the Settlement shall be construed as an admission or
11 concession by any party. The Settlement and this resulting Order and entry of judgment simply
12 represent a compromise of disputed allegations.

13 19. The Court enters final judgment in accordance with the terms of the Settlement
14 Agreement and this Order.

15 20. Plaintiff is directed to submit a copy of this Order and entry of judgment to the
16 LWDA within 10 days of the date of this Order and entry of judgment.

17 **IT IS SO ORDERED:**

18 DATED: _____, 2023

Honorable Robert S. Draper
Judge of the Superior Court

Exhibit B

Exhibit B

[Date], 2023

Phoenix Settlement Administrators
[Phoenix Settlement Administrators Street Address]
[City, State Zip]

[Employee Name]
[Employee Street Address]
[City, State Zip]

Re: PAGA Settlement Payment

Dear Current or Former Employee of A.P. Express, LLC, A.P. Express Worldwide, LLC (collectively, "A.P. Express"), and/or DRE Workforce, Inc. ("DRE"):

You have received this notice because A.P. Express's or DRE's records indicate that you have worked for A.P. Express or DRE at some time between June 7, 2021 through March 30, 2023. This notice relates to the settlement of a lawsuit styled *Angelica Hernandez v. A.P. Express, LLC, et al.*, Los Angeles County Superior Court Case No. 22STCV26081 (the "Lawsuit").

In the Lawsuit, Plaintiff Angelica Hernandez ("Plaintiff") seeks civil penalties pursuant to the California Private Attorneys General Act ("PAGA"), a law which allows Plaintiff to attempt to recover penalties on behalf of the State of California and on behalf of employees who Plaintiff claims were "aggrieved" by alleged wage and hour violations on the part of A.P. Express and DRE, including: failure to provide meal periods; failure to provide rest breaks; failure to pay overtime wages; failure to pay minimum wages; failure to pay all wages owed to discharged and quitting employees; failure to furnish accurate itemized wage statements; failure to maintain required records; failure to pay COVID-19 supplemental sick leave; failure to provide suitable seating; failure to indemnify employees for necessary business expenses; failure to provide notice of material terms of employment; and unlawful consumer background reports.

A.P. Express and DRE strongly dispute Plaintiff's allegations and maintains that they have fully complied with all applicable wage and hour laws. The Court has not issued any ruling regarding the merits of the Lawsuit. Nonetheless, to avoid the cost and distraction of litigation, A.P. Express and DRE have made a business decision to settle the Lawsuit, the settlement of which has been approved by the Court. As part of the Settlement, A.P. Express and DRE agreed to pay a certain amount of penalties under PAGA. Under the PAGA statutes, penalties are divided between the State of California and aggrieved employees, with the State receiving 75 percent of the penalties. Under the Settlement, Plaintiff and the State have released the following claims on behalf of the aggrieved employees:

All claims, demands, rights, liabilities, and causes of action that were, or could have been asserted based on the facts alleged in the Action, pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, et seq., based on all civil penalties under California Labor Code Sections 2699 et seq. and claims for Defendants' alleged: failure to provide meal periods; failure to provide

rest breaks; failure to pay overtime wages; failure to pay minimum wages; failure to pay all wages owed to discharged and quitting employees; failure to furnish accurate itemized wage statements; failure to maintain required records; failure to pay COVID-19 supplemental sick leave; failure to provide suitable seating; failure to indemnify employees for necessary business expenses; failure to provide notice of material terms of employment; unlawful consumer background reports; violations of California Labor Code sections 201, 202, 203, 204, 226, 226.3, 226.7, 246, 248.1, 248.2, 248.6, 248.7, 510, 512, 558, 1024.5, 1174, 1174.5, 1194, 1197, 1198, 2802, 2810.5, 2698 et seq., the applicable IWC Wage Order provisions; and primary rights alleged in Plaintiff's Complaint and in Plaintiff's PAGA Notice dated June 2, 2022 and amended PAGA Notice dated September 8, 2022.

The Released Parties include A.P. Express, DRE, and each of their respective current and former parents or subsidiaries, predecessors or successors, holding companies, affiliated companies or entities, owners, investors, shareholders, members, partners, officers, directors, managers, employees, agents, attorneys, insurers, and assigns.

The enclosed settlement check represents your portion of the Court-approved PAGA settlement. You will not be retaliated against for cashing your check. Checks that are not cashed within 180 calendar days of issuance will be voided and the funds will be distributed to the California State Controller's Unclaimed Property Fund in the name of the employee who did not cash the check.

Regardless of what you do with the settlement check, you will have released claims for penalties arising under PAGA as asserted in the Lawsuit.

If you have any questions about this notice, please contact the Settlement Administrator, Phoenix Settlement Administrators, at _____.

THIS NOTICE IS NOT AN EXPRESSION OF ANY OPINION BY THE COURT AS TO THE MERITS OF THE CLAIMS OR DEFENSES BY EITHER SIDE IN THE LAWSUIT. PLEASE DO NOT CONTACT THE COURT REGARDING THE CASE.