

1 Shaun Setareh (SBN 204514)
shaun@setarehlaw.com
2 Thomas Segal (SBN 222791)
thomas@setarehlaw.com
3 Farrah Grant (SBN 293898)
farrah@setarehlaw.com
4 SETAREH LAW GROUP
420 N. Camden Drive, Suite 100
5 Beverly Hills, California 90210
Telephone (310) 888-7771
6 Facsimile (310) 888-0109

7 Attorneys for Plaintiff
Andres Garcia
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9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SANTA CLARA
12

13 ANDRES GARCIA, on behalf of himself and
all others similarly situated

14 Plaintiff,

15 v.

16 DHL EXPRESS (USA), INC., an Ohio
corporation; and DOES 1 through 50,
inclusive,

17 Defendants
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Case No. 22CV407813

Assigned for All Purposes to the Honorable
Theodore C. Zayner, Department 19

**DECLARATION OF SHAUN SETAREH IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND
CERTIFICATION OF SETTLEMENT
CLASS**

Date: January 7, 2026

Time: 1:30 p.m.

Place: Department 19

Complaint Filed: December 6, 2022

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I, Shaun Setareh, declare as follows:

1. I am an attorney in good standing duly admitted to the State Bar of California, the principal attorney at Setareh Law Group, counsel of record for Plaintiff Andres Garcia (“Plaintiff”) in this action against Defendant EXCEL INC. DBA DHL SUPPLY CHAIN. (“Defendant”) (Plaintiff and Defendant, collectively, the “Parties”). This declaration is made in support of Plaintiff’s Motion for Preliminary Approval of the Class Action Settlement and Certification of Settlement Class.

2. Except for those matters stated on information and belief, which I am informed and believe are true and correct, I have personal knowledge of all matters set forth herein. If called as a witness, I could and would competently testify thereto.

3. I received my undergraduate degree from UCLA in 1996 and my law degree from Loyola Law School in 1999. Since being admitted to the State Bar of California in 1999, I have actively practiced civil litigation for the entirety of that time period.

4. Setareh Law Group and I, as its principal attorney, are well-experienced class action attorneys. I, along with the senior attorney assigned to this case, Thomas Segal, have considerable experience in class action litigation. I, and the attorneys at Setareh Law Group, have been involved as lead class counsel, co-lead class counsel, and other levels of involvement in over 100 wage-and-hour, consumer, and antitrust class action cases. Because of this, Setareh Law Group has more than 250 Westlaw citable opinions, including the following noteworthy appellate decisions:

State Appellate Decisions

a. *Troester v. Starbucks Corporation, et al.*, 5 Cal.5th 829 (2018) (reversed summary judgment in favor of Defendants, issuing a landmark published decision that clarified and rejected the application of the widely adopted federal *de minimis* doctrine to California’s wage-and-hour laws). Due to the significance and importance of this seminal victory before the California Supreme Court, I received the California Lawyer of the Year or “CLAY” award from the Daily Journal for my work on the case.

b. Allen v. Labor Ready Southwest, Inc. (Cal. App. 2 Dist., 2013) 2013 WL 1910293 (reversing an Order from the Superior Court of Los Angeles County compelling

1 Plaintiff's claims to arbitration, finding that Defendant waived the right to compel
2 arbitration by litigating the merits of Plaintiff's arbitrable federal and state claims).

- 3 c. *LaCour vs. Marshalls of CA, LLC et al.*, 94 Cal. App. 5th 1172 (2023) (Court of Appeal
4 reversed the trial court's order granting Defendants' Motion for Judgment on the
5 Pleadings in a representative PAGA action).

6 *Ninth Circuit Decisions*

- 7 d. *Troester v. Starbucks Corp.*, 738 Fed. Appx. 562 (9th Cir. 2018) (Ninth Circuit opinion
8 following the California Supreme Court answering the Ninth Circuit's certified
9 question).
- 10 e. *Gilberg v. California Check Cashing Stores, LLC*, 913 F.3d 1169 (9th Cir. 2019)
11 (vacated district court's summary judgment in favor of Defendants and remanded for
12 further proceedings, holding that Defendants' Fair Credit Reporting Act disclosure form
13 lacked sufficient clarity in a published opinion).
- 14 f. *Ortiz v. Randstad Inhouse Services, LLC et al.*, 2024 WL 1070823 (9th Cir. 2024)
15 (Ninth Circuit held that warehouse workers are covered by the Federal Arbitration Act's
16 transportation worker exception and affirmed the District Court's order denying
17 Defendants' Motion to Compel Arbitration in a wage and hour class action).
- 18 g. *Rodriguez v. U.S. Healthworks*, 813 Fed. Appx. 315 (9th Cir. 2020) (reversed district
19 court's summary judgement in favor of Defendants with instructions to remand the
20 action to state court).
- 21 h. *Harris v. KM Industrial, Inc.*, 980 F.3d 694 (9th Cir. November 13, 2020) (affirmed the
22 district court's granting of Plaintiff's motion to remand, holding in a published opinion
23 that Defendants had failed to establish by a preponderance of the evidence that the
24 amount in controversy exceeded \$5 million as required under the Class Action Fairness
25 Act for removal).
- 26 i. *Parsittie v. Schneider Logistics, Inc. et al.*, Case No. 20-55470 (9th Cir. June 9, 2021)
27 (reversed the district court's dismissal of Plaintiff's meal and rest break claims, holding
28 that Plaintiff's security check allegations were sufficient to state a claim for break-time

violations and remanding for further proceedings).

- j. *Ahlstrom v. DHI Mortg. Co., Ltd., L.P.*, 21 F.4th 631 (9th Cir. December 29, 2021) (reversed the district court's ruling compelling claims to arbitration, holding that parties cannot delegate issues of formation of an arbitration agreement to the arbitrator for determination).
- k. *Allen v. Bedolla*, 787 F.3d 1218 (9th Cir. June 2, 2015) (affirming the district court's Order denying objector's motion to intervene and remanding to the district court where settlement was granted final approval. Final approval was upheld on a subsequent appeal in the 9th Cir. [see *Bedolla v. Allen*, 736 Fed. Appx. 614 (9th Cir. May 18, 2018)]).

Class Counsel Appointments. The following is a sampling of class actions in which the Setareh Law Group and I have been appointed as class counsel:

Federal Cases

- l. *Cerdenia v. USA Truck, Inc.*, U.S. District Court, Central District of California, Case No. 10-CV-1489-JVS (granted final approval in an action on behalf of truck drivers for meal and rest period violations, off-the-clock pre- and post-shift work, and unauthorized wage deductions).
- m. *Fronza v. Staffmark*, U.S. District Court, Northern District of California, Case No. 15-CV-02315-MEJ (granted final approval in a case involving alleged uncompensated security checks for warehouse workers).
- n. *Garcia v. Am. Gen. Fin. Mgmt. Corp.*, U.S. District Court, Central District of California, Case No. 09-CV-1916 (granted final approval in a case filed on behalf of account managers in case involving, among other things, alleged overtime miscalculations and meal and rest period violations).
- o. *Jones v. Shred-It USA, Inc.*, U.S. District Court, Central District of California, Case No. 11-CV-00526 (granted final approval in a case brought on behalf of customer service representatives and balers for alleged off-the-clock work and meal and rest period violations).
- p. *O'Neill v. Genesis Logistics, Inc.*, U.S. District Court, Northern District of California,

1 Case No. 08-CV-4707 (granted final approval in a case involving claims for failure to
2 provide meal periods to employees who worked as drivers delivering goods to 7-11
3 stores throughout California and failure to pay final wages in a timely manner to
4 terminated employees).

5 q. *Padilla v. UPS*, U.S. District Court, Central District of California, Case No. 08-CV-
6 1590 (granted final approval in a case involving claims for failure to provide meal
7 periods to part time employees engaged in sort operations and failure to pay final wages
8 in a timely manner to terminated employees).

9 r. *Pitre v. Wal-Mart Stores, Inc.*, U.S. District Court, Central District of California, Case
10 No. 17-cv-01281-DOC (granting class certification in a highly contested Action against
11 Wal-Mart for a class of almost 5,000,000 in a Fair Credit Reporting Act action).

12 s. *Utne v. Home Depot U.S.A., Inc.*, U.S. District Court, Northern District of California,
13 Case No. 16-cv-01854-RS (granting class certification in a highly contested Action
14 against Home Depot in connection with uncompensated off-the-clock work occurring
15 at the start of all employee shifts and at the end of closing shifts).

16 t. *Vang v. Burlington Coat Factory Warehouse Corp.*, U.S. District Court, Central District
17 of California Case No. 09-CV-8061 (granted final approval in a case involving, among
18 other things, vacation pay forfeitures, failures to provide meal and rest periods, and
19 failures to pay overtime wages based on employee misclassification).

20 u. *Wilson v. TE Connectivity*, Northern District of California Case No. 3:14-cv-04872-
21 EDL (granted class certification through contested motion in case on behalf of
22 manufacturing facility employees subject to auto-deduction of meal breaks).

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State Cases

v. *Sandoval v. Rite Aid Corp.*, Los Angeles County Superior Court, Case No. BC431249 (granted class certification through contested motion in case on behalf of former pharmacy employees based on late final wage payments in violation of Labor Code §§ 201–203; subsequently granted final approval of class action settlement).

w. *Valencia v. SCIS Air Security Corp.*, Los Angeles Superior Court, Case No. BC421485 (granted class certification through contested motion in case on behalf of former security workers based on late final wage payments in violation of Labor Code §§ 201–203; subsequently granted preliminary approval of proposed class action settlement).

5. I am the owner and managing attorney of Setareh Law Group. All strategic decisions regarding the selection of clients to represent and the major strategic decisions for each client fall to me to make or approve. I bear all of the risk associated with the operation of a law firm. As a result, my scope of responsibility is substantially greater than an attorney of equal years of experience who does not bear these additional obligations.

6. As the above shows, the Setareh Law Group and I have substantial experience in wage-and-hour class action litigation, including actions alleging failure to provide meal and/or rest periods, failure to pay wages, failure to provide accurate wage statements, failure to provide timely final wage payments, and other related claims. We are knowledgeable about the applicable law and have worked diligently to investigate and identify the potential claims in this action. I will continue to commit my firm's resources to further the interests of the Class. Setareh Law Group and I have no known conflicts of interest with Plaintiff or with absent Class Members.

Parties

7. Defendant is an international company handling logistics across state lines to various countries and throughout the nation. Plaintiff Andres Garcia worked for Defendant as an hourly non-exempt employee in Fontana, California from approximately May 2021 to December 2021.

Complaints

8. On December 6, 2022, Plaintiff filed the putative class and representative action complaint against Defendant in Santa Clara Superior Court, entitled *Andres Garcia v. DHL Express*

1 (USA), Inc., Case No. 22CV407813. The Complaint alleged eight causes of action for: (1) failure to
2 provide meal periods, (2) failure to provide rest periods, (3) failure to pay hourly wages, (4) failure
3 to pay vacation wages, (5) failure to provide accurate itemized wage statements, (6) failure to timely
4 pay all final wages, (7) failure to pay wages without discount, and (8) statutory unfair competition.

5 9. On December 6, 2022, Plaintiff provided notice by electronic upload to the Labor and
6 Workforce Development Agency (“LWDA”) and written notice by certified mail to DHL Express
7 (USA), Inc. of his intent to pursue civil penalties under California Labor Code section 2698, *et seq.*
8 (“PAGA”) for alleged violations of the California Labor Code.

9 10. On February 9, 2023, Plaintiff filed a First Amended Complaint adding a cause of
10 action for civil penalties under PAGA.

11 11. Defendant DHL Express (USA), Inc. represented that the correct name of Defendant
12 is Excel Inc. dba DHL Supply Chain. On April 24, 2023, Plaintiff submitted an amended PAGA letter
13 to the Labor & Workforce Development Agency to name Excel Inc. dba DHL Supply Chain and
14 clarify claims and allegations based on information learned and theories developed through the course
15 of the litigation.

16 12. On June 29, 2023, Plaintiff filed his Second Amended Complaint adding Defendant
17 Excel Inc. dba DHL Supply Chain to the Action.

18 *Factual Allegations*

19 13. Plaintiff alleges that Plaintiff and putative class members’ meal and rest breaks were
20 sometimes interrupted, not afforded, restricted and/or shortened. Additionally, Plaintiff alleges that Defendant
21 did not pay employees for all the off-the-clock work performed, including time spent going through security
22 checks and time spent clocking in. Plaintiff further asserts he and the putative class members were not provided
23 with all vacation pay to which they were legally entitled. Moreover, Plaintiff alleges that individuals who were
24 paid with pay cards sometimes incurred fees when using the pay cards. Plaintiff asserts that Defendant failed
25 to properly factor in non-discretionary bonuses and shift differential pay when calculating the regular rate of
26 pay. Finally, Plaintiff alleges that because of these discrepancies in hours worked as reported, Defendant
27 failed to provide accurate wage statements and also failed to timely pay all wages owed on separation of
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employment to him and other former employees.

14. Defendant denies all of Plaintiff's allegations and contends it has fully complied with all applicable laws and regulations in connection with its employment of Plaintiff and the employees he seeks to represent. Defendant asserts that this case is controlled by an arbitration agreement. Defendant further contends that Plaintiff cannot establish the requirements to certify a class. Defendant also contends that Plaintiff's claims are incapable of being manageably tried as a class or PAGA representative action. Defendant asserts that it provides meal periods to employees and authorizes and permits them to take rest periods, and pays meal and rest period premiums, in accordance with applicable law. Defendant asserts that to prove whether any particular employee was not provided the opportunity to take a meal or rest periods on any given day would require an individualized inquiry that would prevent this issue from being resolved on a class and/or representative basis. Defendant asserts that it paid employees for time spent going through security checks, and that checks only took a few seconds. Defendant has contended that it did not have a purported policy of not paying required compensation, but rather a policy of paying compensation and of requiring employees to report any unpaid compensable time, and that any failures to report by employees cannot be legally charged to Defendant and, in any event, involve such highly individualized circumstances as to prevent class certification and representative action treatment should this case be litigated. Defendant contends that it paid employees all owed vacation pay. Defendant asserts that employees are only paid by pay card at the time of termination, and all other payments were by direct deposit. Furthermore, Defendant asserts that no payment was required to withdraw funds from the pay cards.

Discovery and Mediation

15. Plaintiff and Defendant engaged in informal discovery prior to resolving the Action. Leading up to the mediation, the Parties engaged in informal discovery and exchange of information and documents. In preparation for mediation, Plaintiff requested and Defendant provided substantial informal discovery, including production of policy documents, a sampling of timekeeping and payroll data, and other information requested by Plaintiff.

1 16. From the data and other documents obtained from Defendant pertaining to the Class and
2 Defendant's policies, Plaintiff's expert was able to analyze the data sampling, and Plaintiff was then able
3 to thoroughly assess the merits of each claim.

4 17. The Parties agreed to mediate Plaintiff's alleged wage and hour and PAGA claims and
5 selected Todd Smith to serve as mediator. The case settled following acceptance of a mediator's
6 proposal at the end of the full-day mediation on July 12, 2024.

7 18. A true and correct copy of the Joint Stipulation of Class and PAGA Settlement and Release
8 (the "Settlement") executed by the Parties is attached hereto as **Exhibit 1**. A true and correct copy of the
9 Notice of Class Action Settlement is attached as **Exhibit A** to the Settlement.

10 19. I believe that the Settlement is in the best interest of the class members based on our
11 investigation and discovery, our detailed understanding of the issues raised, and the outcome of extensive
12 settlement negotiations.

13 20. Each of the Parties, represented by its respective counsel, recognized the risk of an adverse
14 result in the Action. The parties agreed to settle the case and resolve all claims against Defendant. I
15 believe the proposed settlement is fair, reasonable, and adequate in light of the complexities of the case,
16 the uncertainties of further litigation, and that it represents a fair and reasonable recovery for the
17 Settlement Class. The Parties do not have any agreements regarding the proposed Settlement that are not
18 reflected in the Settlement.

19 At the time of mediation, Defendant provided certain data points that included a sampling of
20 payroll data for the putative class during the relevant class period. This enabled Plaintiff's damages expert
21 to review the data and to prepare a comprehensive damage analysis for the purposes of mediation.

22 The following chart provides the estimated potential recovery on a class basis that Plaintiff
23 believes he could reasonably achieve *if he were to prevail on all his causes of action*:

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Plaintiff's Estimated Potential Recovery		
Assumptions During Class Period (based on time/payroll data provided by Defendant)		
<u>Average Regular Rate of Pay:</u> \$20.43/hour		
<u>Workweeks:</u> 703,500; <u>Shifts per Week:</u> 4.4; <u>Total Shifts:</u> 3,095,400		
Cause of Action	Estimated Potential Recovery	Calculations for Estimated Potential Recovery
Off-the-Clock Work	\$5,059,121	3,095,400 Shifts x 5 minutes Off-the-Clock Work Per Shift x \$20.43 Avg. Rate
Meal Period Premiums	\$5,375,316	2,631,090 Shifts Where Meal Periods Required using Meal Period violation rate of 10% x \$20.43 Avg. Reg. Rate
Rest Period Premiums	\$6,260,663	3,064,446 Shifts where Rest Periods Required using Rest Period violation rate of 10% x \$20.43 Avg. Reg. Rate
Vacation Wages	\$491,872	6,019 terminated putative class members assuming each entitled to 4 hours of unprovided vacation pay x \$20.43 Avg. Reg. Rate
Pay Card	\$30,095	Assuming all 6,019 terminated putative class members received pay cards and assuming each individual incurred card fees of \$5.00
<i>Sub-Total Potential (Excluding Wage Statement Violations, Waiting Time Penalties and PAGA)</i>¹	\$17,217,067	

¹ Civil penalties are estimated and interest is not included in this analysis. This is proper because, first, PAGA penalties are discretionary (see Lab. Code § 2699(e)(2) (the court in its discretion “may award a lesser amount than the maximum civil penalty amount specified by this part...”), and courts evaluate the strength of a proposed settlement without taking potential penalties or interest into consideration. (See *Rodriguez v. West Publishing Corp.* (9th Cir. 2000) 563 F.3d 948, 955; see also *Miller v. CEVA Logistics U.S.A., Inc.* (E.D. Cal. Feb. 19, 2015) 2015 WL 729638, at *7(court utilized calculation of a defendant’s exposure exclusive of interest and penalties to determine whether the settlement fell within the range of possible approval).)

Wage Statement Violations	\$17,587,500	351,750 pay periods times \$50 penalty amount
Waiting Time Penalties	\$27,667,838	6,019 terminated employees x 7.5 hours a day x \$20.43 Avg. Reg. Rate x 30 days penalty
Sub-Total Potential (Excluding PAGA)	\$62,472,405	
PAGA Penalties	\$10,552,500	\$100 per pay period for violation of Labor Code section 226.7 (rest breaks) with 351,750 pay periods assuming 10% of pay periods had a violation. \$3,517,500. \$100 per pay period for violation of Labor Code section 226.7 (meal breaks) with 351,750 pay periods assuming 10% of pay periods had a violation. \$3,517,500. \$100 per pay period penalty for violation of Labor Code section 226(a) for failure to provide accurate wage statements with 351,750 pay periods assuming 10% of pay periods had a violation. \$3,517,500.
TOTAL	\$73,024,905	

Consequently, the settlement of \$4,947,000.00 represents about **28.7%** of the estimated \$17,217,067 exposure for claims for damages under the Labor Code, assuming these amounts could be proven at trial. Given the amount of the settlement as compared to the potential value of the claims in this case, the settlement is fair and reasonable. Clearly, the goals of this litigation have been met. Courts regularly approve settlements where the recovery is less than one quarter of the maximum potential realistic recovery. (*E.g., Bravo v. Gale Triangle*, 2017 WL 708766 at *9 (C.D. Cal. 2017) (approving settlement where recovery was 7.5% of projected maximum recovery amount); *Officers for Justice v. Civil Service Com'n of City & County of S.F.*, 688 F.2d 615, 628 (9th Cir. 1982).)

Despite a total potential recovery of a little more than 73 million on his class and PAGA claims,

1 Plaintiff recognizes the challenges he faces in certifying a class action and establishing liability on the
2 underlying wage and hour claims. Plaintiff estimates that their likelihood of prevailing on all their causes
3 of action (on the derivative Labor Code section 203 and 226 claims, in particular) is extremely low and
4 thus their likelihood of recovering 73 million or anything close to that amount on behalf of a class is very
5 unlikely.

6 There is a risk that the class action causes of action could be compelled to arbitration as Defendant
7 alleges an arbitration agreement applies. Plaintiff adamantly denies that the arbitration agreement is
8 controlling, because Plaintiff is subject to a statutory exemption to the Federal Arbitration Act for
9 transportation workers, meaning workers who move goods in the channels of foreign or interstate
10 commerce. Plaintiff worked at a distribution warehouse, moving goods that arrived from foreign
11 countries, and then preparing those foods to be sent out of state. Additionally, Plaintiff asserts that the
12 PAGA claims will not proceed in arbitration as the arbitration agreement specifies that PAGA is not
13 covered by the Arbitration Agreement. Drawn out litigation regarding arbitration is avoided through this
14 settlement. For those claims, if any, that are certified for class treatment, Plaintiff must prevail at a trial
15 on the merits. In addition to having to prove that Plaintiff and other workers were not paid for all hours
16 worked, Plaintiff must establish willfulness with respect to his waiting time penalties claim under Labor
17 Code Section 203 as well as a knowing and intentional violation under Labor Code Section 226 for wage
18 statement penalties.

19 With respect to the claims asserted on behalf of the Settlement Class in this case, there are
20 significant risks that support the reduced compromise amount. These risks include, but are not limited to,
21 the following:

22 (i) The risk that Plaintiff would be unable to establish liability for allegedly unpaid straight
23 time and overtime wages. *See Duran v. U.S. Bank Nat'l Ass'n* (2014) 59 Cal.4th 1, 39 & fn. 33 ("*Duran*"),
24 citing *Dilts v. Penske Logistics, LLC* (S.D. Cal. 2014) 2014 WL 205039 (dismissing certified off-the-
25 clock claims based on proof at trial).

26 (ii) The risk that Plaintiff would not be able to prove liability for alleged failure to provide
27 compliant meal periods and rest breaks; or that to establish liability for the failure to provide compliant
28 meal periods and rest breaks would require an individualized inquiry that would prevent these issues from

1 being resolved on a class and/or collective basis. For example, Plaintiff alleged that he and Class
2 Members were not provided with meal breaks of at least 30 minutes for each 5 hour work period due to
3 (1) chronically understaffing each work shift with not enough workers; (2) imposing so much work on
4 each employee such that it made it unlikely that an employee would be able to take their breaks if they
5 wanted to finish their work on time; and (3) security checks cutting meal breaks short.

6 (iv) The risk that Defendant's challenged employment policies might not ultimately support
7 class certification or a class-wide liability finding, *see, Duran*, 59 Cal.4th at 14 & fn. 28 (citing Court of
8 Appeal decisions favorable on class certification issue without expressing opinion as to ultimate viability
9 of proposition). Defendant has contended, for example, that it did not have a purported policy of not
10 paying required compensation, but rather a policy of paying compensation and of requiring employees to
11 report any unpaid compensable time, and that any failures to report by employees cannot be legally
12 charged to Defendant and, in any event, involve such highly individualized circumstances as to prevent
13 class and representative action should this case be litigated. *See, e.g., Morillion v. Royal Packing Co.*
14 (2000) 22 Cal.4th 575, 585 (employer not required to pay employees for time spent performing work of
15 which the employer had no knowledge).

16 (v) For the same reasons, liability, damages recovery, and certification risks are heightened
17 given: (1) the risk that uncertainties pertaining to the ultimate legality of Defendant's policies and
18 practices could preclude class-wide awards of statutory penalties under Labor Code section 226(e); (2)
19 the risk that individual differences between settlement Class Members could be construed as pertaining
20 to liability, and not solely to damages, *see, Duran*, 59 Cal.4th at 19; and (3) the risk that class or collective
21 treatment could be deemed improper as to one or more claims except for settlement purposes.

22 (vi) The risk that any civil penalties award under PAGA could be reduced by the Court in its
23 discretion, which would materially impact the recovery by the Class. *See* Labor Code section 2699(e)(1).

24 (vii) The risk that lengthy appellate litigation could ensue as to both liability and certification
25 issues, with associated litigation risk and costs, further enhances the value of a confirmed settlement as
26 opposed to unpredictable litigation.

27 (viii) Although the PAGA penalties calculated by Plaintiff's expert amounts to an extravagant
28 \$10,552,500, that amount is not likely to bear fruit in this case. Most significantly, the ultimate decision

1 as to the amount of penalties is always up to the discretion of the Court. Labor Code § 2699(e)(2) states:
2 “In any action by an aggrieved employee seeking recovery of a civil penalty available under subdivision
3 (a) or (f), a court may award a lesser amount than the maximum civil penalty amount specified by this
4 part if, based on the facts and circumstances of the particular case, to do otherwise would result in an
5 award that is unjust, arbitrary and oppressive, or confiscatory.” Subdivision (a) states, “Notwithstanding
6 any other provision of law, any provision of this code that provides for a civil penalty to be assessed and
7 collected by the Labor and Workforce Development Agency or any of its departments, divisions,
8 commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be
9 recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and
10 other current or former employees pursuant to the procedures specified in Section 2699.3.” Subdivision
11 (f) specifies the penalties in instances where the underlying statute does not specify any civil penalty. In
12 other words, where the facts and circumstances of the particular case demonstrate that an unreduced award
13 would be “unjust, arbitrary and oppressive, or confiscatory,” the court (or arbitrator) may reduce the award
14 so as to ameliorate any such finding.

15 (ix) The risk that the Court would find that security checks occurred while employees were
16 clocked in. This is further compounded by the individualized inquiry that could be necessary to make this
17 determination for each employee based on his or her particular circumstances, including but not limited to co-
18 workers, employees, site, and working conditions.

19 In these respects, Defendant strongly denies any liability and the propriety of class certification
20 for any reason other than settlement. Continued litigation of this lawsuit presented Plaintiff and Defendant
21 with substantial legal risks that were (and continue to be) very difficult to assess.

22 In light of the uncertainties of protracted litigation, the Settlement amount reflects a fair and
23 reasonable recovery for the Class Members. The Settlement amount is, of course, a compromise figure.
24 By necessity, it took into account risks related to liability, damages, class action certification, and all the
25 defenses asserted by Defendant as to all such matters. Moreover, each settlement Class Member will be
26 given the opportunity to opt out of the Settlement, allowing those who think they have claims that are
27 greater than the benefits they can receive under this Settlement to pursue their own claims.

28 21. Plaintiff’s claims are typical of those of the class members. Like Class Members, Plaintiff

1 was an hourly non-exempt employee of Defendant in California. Plaintiff alleges he was not paid for all
2 hours worked, was not provided with compliant meal periods and rest breaks, did not receive accurate
3 wage statements, was not paid all wages owed on termination and was paid wages via a pay card that had
4 fees. *See Classen, supra*, 145 Cal. App. 3d at 46 (representative plaintiffs need not have all claims or
5 identical interests with class members; they need only have claims that are “typical of the class”); *see also*
6 *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal. App. 3d 1341, 1347 (representative
7 plaintiffs need not suffer all of the exact same damages as every class member). Accordingly, Plaintiff
8 pursues claims typical of the class he seeks to represent. Plaintiff has no conflict of interest with the
9 Settlement Class Members and has agreed to place the Class’s interests above his own. Setareh Law
10 Group also has no conflicts of interest with the Settlement Class Members.

11 *Service Award*

12 22. The requested service award of \$10,000 to Plaintiff Andres Garcia is warranted. Plaintiff
13 spent considerable time speaking with his counsel, gathering documents, participating in discussions
14 regarding settlement, and reviewing the Settlement. Plaintiff also took on the risk of facing a potential
15 costs award and the risk that being involved in litigation would be viewed unfavorably by potential
16 employers.

17 *Attorneys’ Fees*

18 23. The amount of Class Counsel’s fee request (33¹/₃% of the Gross Settlement Amount) is
19 reasonable as a percentage of the settlement fund. I have been awarded attorneys’ fees equaling
20 approximately one-third of the fund in several recent wage and hour class actions, including, but not
21 limited to: *O’Brien v. Optima Network Services, Inc.*, San Bernardino County Superior Court, Case No.
22 CIVRS1107056 (one-third of settlement fund); *Noyd v. The Cristcat Group, et al.*, Los Angeles County
23 Superior Court, Case No. BC439558 (one-third of settlement fund); *Perez v. Southwest Dealer Services,*
24 *Inc.*, Los Angeles County Superior Court, Case No. BC439253 (one-third of settlement fund); *Alvarez v.*
25 *Gary Grace Enterprises, LP*, Marin County Superior Court, Case No. CIV1002553 (one-third of
26 settlement fund); *Calderon v. Greatcall, Inc.*, San Diego Superior Court, Case No. 37-2010-00093743-
27 CU-OE-CTL (one-third of settlement fund); *Butler v. Lexxiom, Inc.*, San Bernardino County Superior
28 Court, Case No. CIVRS1001579 (one-third of settlement fund); *Huynh v. Carefusion Resources, LLC, et*

1 al, San Diego County Superior Court, Case No. 37-2009-00103277-CU-OE-CTL (one-third of settlement
2 fund); *Stucker v. L'Oreal USA S/D, Inc.*, Los Angeles County Superior Court, Case No. BC456080 (one-
3 third of settlement fund); *Sandoval v. Thrifty Payless, Inc.*, Los Angeles County Superior Court, Case No.
4 BC431249 (one-third of settlement fund); *Tucker v. Maly's West, Inc.*, Los Angeles County Superior
5 Court, Case No. BC483920 (one-third of settlement fund); *Tiwari v. Merrill's Packaging*, San Mateo
6 Superior Court, Case No. 519070 (one-third of settlement fund); *Montgomery v. Del Monte Corp., et al*,
7 Kings County Case No. 13C0204 (one-third of settlement fund); *Adams v. Medical Staffing Network, et*
8 *al*, Sacramento County Case No. 34-2012-00137491-CU-OE-GDS (33% of gross settlement fund).

9 *Settlement Administrator*

10 24. The Parties propose Simpluris, Inc. ("Simpluris") as the administrator in this matter. The
11 parties obtained bids from no less than four established class action settlement administrators: Phoenix,
12 Simpluris, CPT and ILYM. Ultimately, Simpluris was selected due their experience and because they had
13 the most competitive bid. Simpluris is an experienced class action settlement administrator. Based on
14 my experience, Simpluris' bid of a capped fee at \$43,000 is reasonable for a settlement of this size.

15 *LWDA Notice*

16 25. After filing the Motion for Preliminary Approval, my firm will upload copies of the
17 Settlement and the Motion for Preliminary Approval of Class Action Settlement and Certification of
18 Settlement Class to the California Labor Workforce and Development Agency ("LWDA").

19 *Class Size*

20 26. Defendant estimates that there are approximately 11,856 Class members.

21 *Cy Pres*

22 27. The Parties propose the State Bar Justice Gap Fund as the cy pres. I do not have any
23 interest or involvement in the governance or work of the State Bar Justice Gap Fund.

24
25 I declare under the penalty of perjury of the laws of the State of California that the foregoing is
26 true and correct to the best of my knowledge. Executed June, ¹⁰ 2025 in Beverly Hills, California.

27 
ID NooEb1xmr6SMvLn81hHkuPDW

28 Shaun Setareh

Exhibit 1

JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT AND RELEASE

This Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement,” “Agreement” or “Settlement Agreement”) is made and entered into by and between Plaintiff Andres Garcia (“Plaintiff”), individually, on behalf of all others similarly situated, and on behalf of the State of California with respect to PAGA Employees pursuant to the Private Attorneys General Act, and Defendant Exel Inc. dba DHL Supply Chain (USA) (“Defendant”) (collectively, Plaintiff and Defendant are referred to as the “Parties” and individually they are referred to as “Party”).

This Joint Stipulation of Class Action and PAGA Settlement and Release shall be binding on Plaintiff, Settlement Class Members (as defined herein), the State of California with respect to PAGA Employees (as defined herein), and on Defendant, subject to the terms and conditions hereof and the approval of the Court.

RECITALS

1. On December 6, 2022, Plaintiff provided notice by electronic upload to the Labor and Workforce Development Agency (“LWDA”) and written notice by certified mail to DHL Express (USA), Inc. of his intent to pursue civil penalties under California Labor Code section 2698, *et seq.* (“PAGA”) for alleged violations of the California Labor Code. On December 6, 2022, Plaintiff filed a Class Action Complaint against DHL Express (USA), Inc., thereby commencing a putative class action entitled *Andres Garcia v. DHL Express (USA), Inc.*, in the Superior Court of California for the County of Santa Clara, Case No. 22CV407813 for alleged violations of the California Labor Code (the “Action”). On February 9, 2023, Plaintiff filed a First Amended Complaint adding a cause of action for civil penalties under the PAGA. On April 24, 2023, Plaintiff provided notice by electronic upload to the LWDA and written notice by certified mail to Defendant of his amended PAGA Notice which was amended simply to include Defendant (“PAGA Notice”). On June 29, 2023, Plaintiff filed a Second Amended Complaint adding Defendant to the Action (hereinafter, the “Complaint”).

2. Defendant denies all material allegations set forth in the Complaint in the Action and has asserted numerous affirmative defenses in the Action. Notwithstanding, in the interest of avoiding further litigation, Defendant desires to fully and finally settle the Action, the Released Class Claims, and the Released PAGA Claims.

3. Class Counsel diligently investigated the claims against Defendant, including any and all applicable defenses and the applicable law. The investigation included, *inter alia*, the exchange of information, data, and documents, and review of Defendant's employment and operations policies, practices, and procedures.

4. On July 12, 2024, the Parties participated in mediation with Todd Smith, Esq. (the “Mediator”), a respected mediator of complex wage and hour actions, and with the assistance of the Mediator’s evaluations, the Parties reached the settlement that is memorialized herein. The settlement discussions were conducted at arm’s-length, and the Settlement is the result of an informed and detailed analysis of Defendant’s potential liability and exposure in relation to the costs and risks associated with continued litigation. Based on the documents produced, as well as Class Counsel’s own independent investigation and evaluation, Class Counsel believe that the settlement with Defendant 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 Class Members, the State of California, and PAGA Employees in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation and various defenses asserted by Defendant.

5. The Parties expressly acknowledge that this Settlement Agreement is entered into solely for the purpose of compromising significantly disputed claims and that nothing herein is an admission of liability or wrongdoing by Defendant. If for any reason the Settlement Agreement is not approved, it will be of no force or effect, and the Parties shall be returned to their original respective positions.

DEFINITIONS

6. The following definitions are applicable to this Settlement Agreement. Definitions contained elsewhere in this Settlement Agreement will also be effective:

a. “Amended PAGA Notice” means Plaintiff’s December 4, 2024 amended LWDA letter which was amended to include violations of California Labor Code §§ 6400 *et seq.*, 210, 404, 558.1, and 2802, as well as including Defendant’s failure to pay Plaintiff and other aggrieved employees at least the legal minimum wage or the applicable overtime wage for all hours worked (in violation of Labor Code sections 510, 558, 1182.12, 1194, 1194.2, 1197, and 1198) due to Defendant’s policy and practice of requiring Plaintiff and aggrieved employees to work through their meal periods, wait in line to clock in

without proper pay, including time spent in line completing temperature screening, or otherwise requiring employees to work off-the-clock, including any time lost or inaccurately recorded due to an inability to access the Kronos electronic timekeeping system, or other timekeeping systems.

b. “Attorneys’ Fees and Costs” means attorneys’ fees for Class Counsel’s litigation and resolution of the Action and all actual costs incurred and to be incurred by Class Counsel in the Action, as set forth below.

c. “Class Counsel” means Shaun Setareh, Thomas Segal, and Farrah Grant of Setareh Law Group.

d. “Class List” means a complete list of all Class Members that Defendant will diligently and in good faith compile from its records and provide to the Settlement Administrator. The Class List will be formatted in a readable Microsoft Office Excel spreadsheet and will include each Class Member’s last-known full name, mailing address, telephone number, Social Security Number, dates worked as a non-exempt employee of Defendant in California during the Class Period and PAGA Period (if applicable), and such other information as is necessary for the Settlement Administrator to calculate Workweeks (as defined herein).

e. “Class Member(s)” or “Class” means all current and former non-exempt employees employed by Defendant Exel Inc. dba DHL Supply Chain (USA) in California at any time during the Class Period. This definition excludes the employees who meet all of the following conditions: (1) were hired by Defendant prior to 2015; and (2) who worked during the Class Period on or after December 15, 2021.

f. “Class Notice” means the Notice of Class Action Settlement, substantially in the form attached as “**Exhibit A.**”

g. “Class Period” means the time period from June 1, 2020, through August 1, 2024.

h. “Class Representative” or “Plaintiff” means Andres Garcia.

i. “Class Settlement” means the settlement and resolution of all Released Class Claims.

j. “Court” means the Superior Court of California for the County of Santa Clara.

k. “Defendant” means Exel Inc. dba DHL Supply Chain (USA)

1 l. “Defendant’s Counsel” means Christopher Boman, Boris Sorsher, and Harrison
2 Zator of Fisher & Phillips LLP.

3 m. “Effective Date” means the date by when all of the following events have
4 occurred: (1) the Settlement Agreement has been executed by all Parties, Class Counsel, and
5 Defendant’s Counsel; (2) the Court has given preliminary approval to the Settlement; (3) the Class
6 Notice has been mailed to the Class Members, providing them with an opportunity to object to the terms
7 of the Class Settlement or opt out of the Class Settlement; (4) the Court has had a Final Approval
8 Hearing and entered a Final Approval Order and Judgment; (5) sixty-five (65) calendar days have passed
9 since the Court entered a Final Approval Order and Judgment; and (6) in the event there are written
10 objections to the Class Settlement filed prior to the Final Approval Hearing which are not later
11 withdrawn or denied, the later of the following events: five (5) business days after the period for filing
12 any appeal, writ, or other appellate proceeding opposing the Court’s Final Approval Order and Judgment
13 has elapsed without any appeal, writ, or other appellate proceeding having been filed, or, if any appeal,
14 writ, or other appellate proceeding opposing the Court’s Final Approval Order and Judgment has been
15 filed, five (5) business days after any appeal, writ, or other appellate proceedings opposing the Court’s
16 Final Approval Order and Judgment has finally and conclusively been dismissed with no right to pursue
17 further remedies or relief.

18 n. “Employer Taxes” means the employer’s share of taxes and contributions in
19 connection with the wages portion of Individual Settlement Shares, which shall be paid by Defendant
20 in addition to the Gross Settlement Amount.

21 o. “Enhancement Payment” means the amount to be paid to Plaintiff in recognition
22 of his efforts and work in prosecuting the Action.

23 p. “Final Approval” means the determination by the Court that the Settlement is fair,
24 reasonable, and adequate, and entry of the Final Approval Order and Judgment based thereon.

25 q. “Final Approval Hearing” means the hearing at which the Court will consider and
26 determine whether the Settlement should be granted Final Approval.

27 r. “Gross Settlement Amount” means the amount of Four Million Nine Hundred
28 Forty-Seven Thousand Dollars and Zero Cents (\$4,947,000.00) to be paid by Defendant in full resolution

1 of all Released Class Claims, Released PAGA Claims, and the Action, as provided herein, which includes
2 all Attorneys' Fees and Costs to be paid to Class Counsel, Enhancement Payment to be paid to Plaintiff,
3 PAGA Amount to be paid to the LWDA and PAGA Employees, Net Settlement Amount to be paid to the
4 Settlement Class Members, and Settlement Administration Costs to be paid to the Settlement
5 Administrator. Defendant shall pay the Employer Taxes in addition to the Gross Settlement Amount.
6 No amount of the Gross Settlement Amount will revert to Defendant. The Gross Settlement Amount
7 may increase to the extent provided in Paragraph 36.

8 s. "Individual PAGA Payment(s)" means the *pro rata* share of the PAGA Employee
9 Amount that a PAGA Employee may be eligible to receive for the PAGA Settlement, to be calculated
10 in accordance with Paragraph 15.

11 t. "Individual Settlement Payment(s)" means the net payment of each Settlement
12 Class Member's Individual Settlement Share, after reduction for the employee's share of taxes and
13 withholdings with respect to the wages portion of the Individual Settlement Share, as provided in
14 Paragraph 14.

15 u. "Individual Settlement Share" means the *pro rata* share of the Net Settlement
16 Amount that a Class Member may be eligible to receive for the Class Settlement, to be calculated in
17 accordance with Paragraph 14.

18 v. "LWDA Payment" means the amount of One Hundred Eighty-Seven Thousand
19 Five Hundred Dollars and Zero Cents (\$187,500.00), i.e., 75% of the PAGA Amount, that the Parties
20 have agreed to pay to the California Labor and Workforce Development Agency ("LWDA") for the
21 PAGA Settlement, as set forth in Paragraph 13.

22 w. "Net Settlement Amount" means the Gross Settlement Amount less the Court-
23 approved Enhancement Payment, Settlement Administration Costs, PAGA Amount, and Attorneys' Fees
24 and Costs.

25 x. "Objection" means a Class Member's valid and timely written objection to the
26 Class Settlement, which must: (a) contain the case name and number of the Action; (b) contain the
27 objecting Class Member's full name; (c) contain a written statement of all grounds for the objection
28 accompanied by any legal and factual support for such objection; and (d) contain a statement whether the

1 objector intends to appear at the Final Approval Hearing. Any Settlement Class Member who does not
2 submit a timely written objection to the Settlement, or who fails to otherwise comply with the specific and
3 technical requirements of this Paragraph, will be foreclosed from objecting to the Settlement and seeking
4 any adjudication or review of the Settlement, by appeal or otherwise.

5 y. “PAGA Amount” means the allocation of Two Hundred Fifty Thousand Dollars
6 and Zero Cents (\$250,000.00) from the Gross Settlement Amount as civil penalties pursuant to the
7 Private Attorneys General Act, California Labor Code section 2698 *et seq.*, for the settlement and
8 resolution of the Released PAGA Claims. Seventy-five percent (75%) of the PAGA Amount, or
9 \$187,500.00, will be paid to the LWDA (i.e., the LWDA Payment) and the remaining twenty-five
10 percent (25%), or \$62,500.00, will be distributed to PAGA Employees (i.e., the PAGA Employee
11 Amount).

12 z. “PAGA Employees” means all current and former non-exempt employees
13 employed by Defendant Exel Inc. dba DHL Supply Chain (USA) in California at any time during the
14 PAGA Period.

15 aa. “PAGA Employee Amount” means the amount of Sixty-Two Thousand Five
16 Hundred Dollars and Zero Cents (\$62,500.00), i.e., 25% of the PAGA Amount, to be distributed to
17 PAGA Employees on a *pro rata* basis based on their Workweeks during the PAGA Period.

18 bb. “PAGA Period” means the time period from December 6, 2021, through August
19 1, 2024.

20 cc. “PAGA Settlement” means the settlement and resolution of Released PAGA
21 Claims.

22 dd. “Parties” means Plaintiff and Defendant, collectively, and “Party” means any of
23 the Plaintiff or Defendant.

24 ee. “Preliminary Approval” means entry of the Court order granting preliminary
25 approval of the Settlement Agreement.

26 ff. “Released Class Claims” means any and all claims, actions, or cause of action
27 alleged in the Complaint or that could have been alleged based upon the facts alleged in the Complaint,
28 arising during the Class Period, including and not limited to, for failure to properly pay overtime,

1 including a failure to pay overtime premiums at the regular rate of pay and failure to pay minimum wages
2 (including, but not limited to, any time lost or inaccurately recorded due to an inability to access the
3 Kronos timekeeping system, or other timekeeping systems), failure to provide compliant meal periods and
4 associated premiums including a failure to pay premiums at the regular rate of pay, failure to provide
5 compliant rest periods and associated premiums including a failure to pay premiums at the regular rate of
6 pay, failure to pay vested vacation wages, failure to timely pay wages upon termination, during
7 employment, and associated waiting-time penalties, failure to provide compliant wage statements, failure
8 to pay wages without discount, failure to keep requisite payroll records, failure to return deposits, failure
9 to reimburse necessary business expenses, in violation of California Labor Code sections 200, 201, 202,
10 203, 204, 210, 212, 223, 226(a), 226.7, 226.7(b), 227.3, 404, 510, 512(a), 558, 558.1, 1194, 1194.2, 1197,
11 1197.1, 1198, 1199, 2802, violation of California Business and Professions Code section 17200 *et seq.*
12 based on the aforementioned, and any other applicable provisions of state or federal law, including the
13 applicable Industrial Wage Orders, based on the facts alleged in the Action.

14 gg. “Released PAGA Claims” means all claims for civil penalties under the Private
15 Attorneys General Act, California Labor Code section 2698, *et seq.* that were alleged in the PAGA
16 Notice, the Amended PAGA Notice, and Complaint in the Action or that reasonably could have been
17 alleged based on the factual allegations in the PAGA Notice, the Amended PAGA Notice, and
18 Complaint in the Action, arising during the PAGA Period, against any of the Released Parties, for
19 violations of the California Labor Code, including *inter alia* sections 200, 201, 202, 203, 204, 210, 212,
20 223, 226(a), 226.7, 226.7(b), 227.3, 404, 510, 512(a), 558, 558.1, 1194, 1194.2, 1197, 1197.1, 1198, 1199,
21 2800, 2802, 6400 *et seq.*, and applicable Industrial Welfare Commission Wage Order for failure to
22 properly pay overtime including a failure to pay overtime premiums at the regular rate of pay, failure to
23 pay minimum wages, failure to provide compliant meal periods and associated premiums including a
24 failure to pay premiums at the regular rate of pay, failure to provide compliant rest periods and associated
25 premiums including a failure to pay premiums at the regular rate of pay, failure to pay vested vacation
26 wages, failure to timely pay wages upon termination, during employment, and associated waiting-time
27 penalties, failure to provide compliant wage statements, failure to pay wages without discount, failure to
28 keep requisite payroll records, failure to return deposits, and failure to reimburse necessary business

1 expenses.

2 hh. “Released Parties” means Defendant, its respective parents, subsidiaries,
3 divisions, affiliates, predecessors, successors in interest, or related entities, or the officers, directors,
4 shareholders, trustees, representatives, members, managers, employees, attorneys, agents, assigns,
5 insurers, re-insurers, of any of them. Plaintiff and Class Counsel agree to dismiss named Defendant
6 DHL Express (USA), Inc. from the Action, without prejudice, prior to filing any settlement approval
7 motion.

8 ii. “Request for Exclusion” means a Class Member’s valid and timely written letter
9 indicating a request to be excluded from the Class Settlement, which must: (a) contain the case name
10 and number of the Action; (b) contain the requesting Class Member’s full name and signature; (c)
11 contain a clear written statement indicating that the Class Member seeks exclusion from the Class
12 Settlement; and (d) be submitted by mail to the Settlement Administrator at the specified address,
13 postmarked on or before the Response Deadline. The date of the postmark on the return mailing
14 envelope on the submission will be the exclusive means to determine whether a Request for Exclusion
15 has been timely submitted.

16 jj. “Response Deadline” means the deadline by which Class Members must submit
17 a Request for Exclusion, Objection, and/or Workweeks Dispute, which shall be the date that is forty-
18 five (45) calendar days from the initial mailing of the Class Notice by the Settlement Administrator,
19 unless the 45th day falls on a Sunday or Federal holiday, in which case the Response Deadline will be
20 extended to the next day on which the U.S. Postal Service is open; in the event that a Class Notice is re-
21 mailed to a Class Member, the Response Deadline for that Class Member shall be extended by fifteen
22 (15) calendar days from the initial Response Deadline.

23 kk. “Settlement Administrator” means Simpluris, Inc. or any other third-party class
24 action settlement administrator agreed to by the Parties and approved by the Court for purposes of
25 administering this Settlement. The Parties and their counsel each represent that they do not have any
26 financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement
27 Administrator that could create a conflict of interest.

28 ll. “Settlement Administration Costs” means the costs payable from the Gross

1 Settlement Amount, subject to Court approval, to the Settlement Administrator for administering this
2 Settlement, as set forth in Paragraph 12.

3 mm. “Settlement Class Members” or “Settlement Class” means all Class Members who
4 do not submit a timely and valid Request for Exclusion.

5 nn. “Workweeks” means the number of weeks each Class Member was employed by
6 Defendant as a non-exempt employee in California for at least one day, during the Class Period.

7 oo. “Workweeks Dispute” means a Class Member’s written letter disputing the pre-
8 printed information on the Class Notice as to the number of Workweeks credited to them, which must:
9 (a) contain the case name and number of the Action; (b) contain the disputing Class Member’s full name
10 and signature; (c) clearly state that the Class Member disputes the number of Workweeks credited to
11 him or her and what he or she contends is the correct number to be credited to him or her; (d) attach any
12 documentation that he or she has to support the dispute; and (e) be submitted by mail to the Settlement
13 Administrator at the specified address, postmarked on or before the Response Deadline.

14 **CLASS CERTIFICATION**

15 7. For the purposes of this Settlement only, the Parties stipulate to the certification of the
16 Class.

17 8. The Parties agree that certification for the purpose of settlement is not an admission that
18 certification is proper under California Code of Civil Procedure section 382. Should, for whatever
19 reason, the Court not grant Final Approval, the Parties’ stipulation to class certification as part of the
20 Settlement shall become null and void *ab initio* and shall have no bearing on, and shall not be admissible
21 in connection with, the issue of whether or not certification would be appropriate as to any of the claims
22 asserted by Plaintiff against Defendant in a non-settlement context. Defendant expressly reserves the
23 right to oppose class certification and/or proactively move to deny certifications should the Settlement
24 Agreement be modified or reversed on appeal or otherwise not become final.

25 **TERMS OF AGREEMENT**

26 NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements set
27 forth herein, the Parties agree, subject to the Court’s approval, as follows:

28 9. Funding and Disbursement of the Gross Settlement Amount. Within fifteen (15) calendar

1 days after the Effective Date, the Settlement Administrator will provide the Parties with an accounting
2 estimate of the amounts to be paid by Defendant pursuant to the terms of the Settlement and establish a
3 qualified settlement account for administration of the Settlement. Within forty-five (45) calendar days
4 after the Effective Date, Defendant will make a one-time deposit of the Gross Settlement Amount and
5 Employer Taxes into the settlement account to be established by the Settlement Administrator. Within
6 seven (7) calendar days of the funding of the Gross Settlement Amount, the Settlement Administrator will
7 issue payments due under the Settlement and approved by the Court, as follows: (a) Individual
8 Settlement Payments to Settlement Class Members; (b) Individual PAGA Payments to PAGA
9 Employees; (c) LWDA Payment to the LWDA; (d) Enhancement Payment to Plaintiff; (e) Attorneys'
10 Fees and Costs to Class Counsel; and (f) Settlement Administration Costs to itself (the Settlement
11 Administrator). The Settlement Administrator will also undertake filings and remittances in connection
12 with the employee's share of taxes on the wages portion of Individual Settlement Shares and the
13 Employer Taxes, that are necessary for administration of the Settlement.

14 10. Attorneys' Fees and Costs. Class Counsel will request and Defendant will not oppose
15 attorneys' fees of up to one-third (i.e., 1/3) of the Gross Settlement Amount (i.e., up to \$1,649,000.00 if
16 the Gross Settlement Amount is \$4,947,000.00) and reimbursement of actual costs and expenses
17 associated with Class Counsel's litigation and settlement of the Action, supported by declaration, in an
18 amount not to exceed Thirty-Five Thousand Dollars and Zero Cents (\$35,000.00), both of which will be
19 paid from the Gross Settlement Amount subject to Court approval. These amounts will cover any and
20 all work performed and any and all costs incurred by Class Counsel in connection with the litigation
21 and settlement of the Action, including without limitation all work performed and costs incurred to date,
22 and all work to be performed and all costs to be incurred in connection with obtaining the Court's
23 approval of this Settlement Agreement, including any objections raised and any appeals necessitated by
24 those objections. Class Counsel shall be solely and legally responsible for correctly characterizing this
25 compensation for tax purposes and for paying any taxes on the amounts received. Any portion of the
26 requested Attorneys' Fees and Costs not awarded to Class Counsel shall be a part of the Net Settlement
27 Amount for the benefit of Settlement Class Members.

28 11. Enhancement Payment. In recognition of his efforts and work in prosecuting the Action,

Defendant agrees not to oppose or impede any application or motion for an Enhancement Payment to Plaintiff in the amount of up to Ten Thousand Dollars and Zero Cents (\$10,000.00). The Enhancement Payment, which will be paid from the Gross Settlement Amount subject to Court approval, will be in addition to any Individual Settlement Payment and Individual PAGA Payment (if applicable) that he is eligible to receive pursuant to the Settlement. The Settlement Administrator will issue an IRS Form 1099 to Plaintiff for the Enhancement Payment, and Plaintiff shall be solely and legally responsible for correctly characterizing this compensation for tax purposes and for paying any and all taxes on the amounts received. Should the Court not approve the Enhancement Payment to Plaintiff, or approve it in an amount that is less than that set forth above, Plaintiff shall not have the right to revoke this Agreement, and it will remain binding, and the difference between the amount approved by the Court (if any) and the amount allocated toward the Enhancement Payment will be part of the Net Settlement Amount for the benefit of Settlement Class Members.

12. Settlement Administration Costs. The Settlement Administrator will be paid for the reasonable costs of administration of the Settlement and distribution of payments under the Settlement, which is currently estimated not to exceed One Hundred Thousand Dollars and Zero Cents (\$100,000.00). These costs, which will be paid from the Gross Settlement Amount subject to Court approval, will include, *inter alia*, translating the Class Notice to English and Spanish, printing, distributing, and tracking Class Notices and other documents for the Settlement, calculating and distributing payments due under the Settlement, issuing of 1099 and W-2 IRS Forms and all required tax reporting, filings, withholdings, and remittances, providing necessary reports and declarations, and other duties and responsibilities set forth herein to process this Settlement, and as requested by the Parties. To the extent actual Settlement Administration Costs are greater than the estimated amount stated herein, such excess amount will be deducted from the Gross Settlement Amount, subject to approval by the Court. Any portion of the estimated, designated, and/or awarded Settlement Administration Costs which are not in fact required to fulfill payment to the Settlement Administrator to undertake the required settlement administration duties, will be part of the Net Settlement Amount for the benefit of Settlement Class Members.

13. PAGA Amount. Subject to approval by the Court, the Parties agree that the amount of

Two Hundred Fifty Thousand Dollars and Zero Cents (\$250,000.00) from the Gross Settlement Amount will be allocated toward civil penalties under the Private Attorneys General Act, California Labor Code section 2698, *et seq.* (i.e., the PAGA Amount), of which seventy-five percent (75%), or \$187,500.00, will be paid to the LWDA (i.e., the LWDA Payment) and twenty-five percent (25%) or, \$62,500.00, will be distributed to PAGA Employees (i.e., the PAGA Employee Amount) on a *pro rata* basis, based on Workweeks during the PAGA Period (i.e., the Individual PAGA Payment).

14. Individual Settlement Share Calculations. Individual Settlement Shares will be calculated and apportioned from the Net Settlement Amount based on the Class Members' number of Workweeks during the Class Period, as follows:

a. After Preliminary Approval of the Settlement, the Settlement Administrator will divide the estimated Net Settlement Amount by the Workweeks of all Class Members during the Class Period to yield the "Estimated Workweek Value," and multiply each Class Member's individual Workweeks during the Class Period by the Estimated Workweek Value to yield his or her estimated Individual Settlement Share.

b. After Final Approval of the Settlement, the Settlement Administrator will divide the final Net Settlement Amount by the Workweeks of all Settlement Class Members during the Class Period to yield the "Final Workweek Value," and multiply each Settlement Class Member's individual Workweeks during the Class Period by the Final Workweek Value to yield his or her Individual Settlement Share.

15. Individual PAGA Payment Calculations. Individual PAGA Payments will be calculated and apportioned from the PAGA Employee Amount based on the PAGA Employees' number of Workweeks during the PAGA Period as follows: The Settlement Administrator will divide the PAGA Employee Amount, i.e., 25% of the PAGA Amount, by the total number of Workweeks of all PAGA Employees during the PAGA Period to yield the "PAGA Workweek Value," and multiply each PAGA Employee's individual Workweeks during the PAGA Period by the PAGA Workweek Value to yield his or her Individual PAGA Payment.

16. Settlement Awards Do Not Trigger Additional Benefits. All payments made under the Settlement shall be deemed to be paid to the payee solely in the year in which such payments actually

are issued to the payee. It is expressly understood and agreed that payments made under this Settlement shall not in any way entitle Plaintiff, Settlement Class Members, or PAGA Employees to additional compensation or benefits under any new or additional compensation or benefits, or any bonus, contest, or other compensation or benefit plan or agreement in place during the Class Period, nor will it entitle Plaintiff, Settlement Class Members, or PAGA Employees to any increased retirement, 401K benefits or matching benefits, or deferred compensation benefits. It is the intent of this Agreement that the Individual Settlement Payments and Individual PAGA Payments provided for in this Agreement are the sole payments to be made by Defendant to the Settlement Class Members and PAGA Employees in connection with this Agreement (notwithstanding any contrary language or agreement in any benefit or compensation plan document that might have been in effect during the Class Period).

17. Notice of Proposed PAGA Settlement to LWDA. Pursuant to California Labor Code section 2699(l)(2), Class Counsel will submit a copy of this Settlement Agreement to the LWDA at the same time that it is submitted to the Court for preliminary approval.

18. Delivery of the Class List. Within twenty-one (21) calendar days of Preliminary Approval, Defendant will provide the Class List to the Settlement Administrator.

19. Notice by First-Class U.S. Mail.

a. Within fourteen (14) calendar days after receiving the Class List from Defendant, the Settlement Administrator will perform a search based on the United States Postal Service's National Change of Address Database or any other similar services available, such as provided by Experian, for information to update and correct for any known or identifiable address changes, and will mail a Class Notice in English and Spanish (in the form attached as **Exhibit A** to this Settlement Agreement) to all Class Members via U.S. mail, using the most current, known mailing addresses identified by the Settlement Administrator.

b. With respect to Class Notices that are returned as undeliverable on or before the Response Deadline, the Settlement Administrator will search for an alternate address by way of skip-trace and re-mail the Class Notice within five (5) calendar days to an alternate address if one is located.

c. Dispute Regarding Workweeks. The Class Notice will include the procedure by which a Class Member may dispute the number of Workweeks allocated to him or her by submitting a

1 timely and valid Workweeks Dispute. The date of the postmark on the return mailing envelope will be
2 the exclusive means to determine whether a dispute has been timely submitted. Absent evidence
3 rebutting the accuracy of Defendant's records and data as they pertain to the number of Workweeks to
4 be credited to a disputing Class Member, Defendant's records will be presumed correct and
5 determinative of the dispute. The Settlement Administrator will evaluate the information and/or
6 documents submitted by the Class Member and the Settlement Administrator will resolve and determine
7 the number of Workweeks that the disputing Class Member should be credited with under the
8 Settlement. The Settlement Administrator's decision on such disputes will be final and non-appealable.

9 20. Settlement Checks.

10 a. The Settlement Administrator will be responsible for undertaking appropriate
11 deductions, required tax reporting, and issuing the Individual Settlement Payments by way of check to
12 the Settlement Class Members and the Individual PAGA Payments by way of check to the PAGA
13 Employees in accordance with this Settlement Agreement. When issuing payments, the Settlement
14 Administrator may combine the Individual Settlement Payment and Individual PAGA Payment into one
15 check if the intended recipient for both payments is one individual.

16 b. For any Class Member whose Individual Class Payment check or Individual
17 PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit
18 the funds represented by such checks to a mutually agreeable cy pres beneficiary subject to court
19 approval.

20 c. The Settlement Administrator shall undertake amended and/or supplemental tax
21 filings and reporting, required under applicable local, state, and federal tax laws, that are necessitated
22 due to the cancellation of any Individual Settlement Payment or Individual PAGA Payment checks.
23 Settlement Class Members whose Individual Settlement Payment checks are canceled shall,
24 nevertheless, be bound by this Settlement Agreement and the Final Approval Order and Judgment will
25 have claim preclusive impact with respect to them and all Settlement Class Members with respect to the
26 Class Settlement. The Final Approval Order and Judgment will have claim preclusive impact on the
27 PAGA Employees with respect to the PAGA Settlement irrespective of whether their Individual PAGA
28 Payment checks are canceled.

1 21. Procedures for Requesting Exclusion from the Class Settlement. Any Class Member
2 wishing to be excluded from the Class Settlement must submit a timely and valid Request for Exclusion
3 to the Settlement Administrator, by mail, on or before the Response Deadline. The date of the postmark
4 on the return mailing envelope will be the exclusive means to determine whether a Request for Exclusion
5 has been timely submitted. The Settlement Administrator will certify jointly to Class Counsel and
6 Defendant's Counsel, the number of timely and valid Requests for Exclusion that were submitted, and
7 also identify the individuals who submitted them, in a declaration that is to be filed with the Court in
8 advance of the Final Approval Hearing. Any Class Member who submits a timely and valid Request
9 for Exclusion is prohibited from making any objection to the Class Settlement. Any Class Member who
10 submits a timely and valid Request for Exclusion will not be bound by the Class Settlement and will not
11 be issued an Individual Settlement Payment. If 10% or more Class Members exercise their rights to
12 exclude themselves and opt out from the Settlement, Defendant may, in its sole discretion, unilaterally
13 withdraw from and terminate the Settlement no later than five (5) business days prior to the date of the
14 Final Approval Hearing. In the event of Defendant's withdrawal, no Party may use the fact that the
15 Parties agreed to the resolution for any reason. If Defendant withdraws, Defendant shall pay the incurred
16 administration costs as of the date of the voiding of the Settlement. All PAGA Employees will be bound
17 by the PAGA Settlement and will be issued an Individual PAGA Payment, irrespective of whether they
18 submit a Request for Exclusion.

19 22. Procedures for Objecting to the Class Settlement. Class Members who have not opted
20 out of the Class Settlement (i.e., Settlement Class Members) may object to the Class Settlement. To
21 object to the Class Settlement, Settlement Class Members must submit a timely and complete Objection
22 to the Settlement Administrator, by mail, on or before the Response Deadline. The Objection must be
23 signed by the Settlement Class Member and contain all information required by this Settlement
24 Agreement. The postmark date will be deemed the exclusive means for determining that the Objection
25 is timely. At no time will any of the Parties or their counsel seek to solicit or otherwise encourage Class
26 Members to object to the Settlement Agreement or appeal from the Final Approval Order and Judgment.
27 Settlement Class Members may also present their objection orally at the Final Approval Hearing,
28 irrespective of whether they submit a written Objection. The Settlement Administrator will certify

1 jointly to Class Counsel and Defendant's Counsel the Objections that were timely submitted, and also
2 attach them as exhibits to a declaration that is to be filed with the Court in advance of the Final Approval
3 Hearing.

4 23. Reports by the Settlement Administrator Regarding Settlement Administration. The
5 Settlement Administrator will provide Defendant's Counsel and Class Counsel a weekly report which
6 certifies: (a) the number of Class Members who have submitted Workweeks Disputes; (b) the number
7 of Class Members who have submitted timely and valid Requests for Exclusion; (c) the number of Class
8 Members who have submitted timely and complete Objections; (d) the number of undeliverable Class
9 Notices; and (e) the number of re-mailed Class Notices. Additionally, the Settlement Administrator will
10 provide to counsel for both Parties any updated reports regarding the administration of the Settlement
11 Agreement as needed or requested, and immediately notify the Parties when it receives a request from
12 an individual or any other entity regarding inclusion in the Class and/or Settlement.

13 24. Certification of Completion. Upon completion of administration of the Settlement, the
14 Settlement Administrator will provide a written declaration under oath to certify such completion to the
15 Court and counsel for all Parties.

16 25. Treatment of Individual Settlement Payments and Individual PAGA Payments. Each
17 Individual Settlement Share will be allocated as follows: fifteen percent (15%) wages and eighty-five
18 percent (85%) penalties, interest, and fees. The portion allocated to wages will be reported on an IRS
19 Form W-2 and the portions allocated to penalties, interest, and fees will be reported on an IRS Form-
20 1099 by the Settlement Administrator. The Settlement Administrator will withhold the employee's share
21 of taxes and withholdings with respect to the wages portion of the Individual Settlement Shares, and
22 issue checks to Settlement Class Members for their Individual Settlement Payments (i.e., payment of
23 their Individual Settlement Share net of these taxes and withholdings). Each Individual PAGA Payment
24 will be allocated as one hundred percent (100%) penalties and will be reported on an IRS Form-1099
25 (if applicable) by the Settlement Administrator.

26 26. Administration of Taxes by the Settlement Administrator. The Settlement Administrator
27 will be responsible for issuing to Plaintiff, Settlement Class Members, PAGA Employees, and Class
28 Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid pursuant to

1 this Settlement Agreement. The Settlement Administrator will also be responsible for forwarding all
2 payroll taxes, contributions, and withholdings to the appropriate government authorities.

3 27. Tax Liability. Plaintiff, Class Counsel, Defendant, and Defendant's Counsel do not
4 intend anything contained in this Settlement Agreement, the Class Notice, or any other communications
5 to Class Members or PAGA Employees regarding the Settlement to constitute advice regarding taxes or
6 taxability, nor shall anything in this Settlement Agreement, the Class Notice, or any other
7 communication regarding the Settlement be relied on as such. Plaintiff, Settlement Class Members, and
8 PAGA Employees understand and agree that, except with respect to Employer Taxes, they will be solely
9 responsible for correctly characterizing any compensation received under the Settlement on their
10 personal income tax returns and paying any and all taxes due for any and all amounts paid to them under
11 the Settlement.

12 28. Circular 230 Disclaimer. EACH PARTY TO THIS SETTLEMENT AGREEMENT (FOR
13 PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS
14 SETTLEMENT AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER
15 PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS SETTLEMENT
16 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR
17 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS
18 INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE
19 OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF
20 UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS
21 AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS,
22 HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING
23 TAX ADVICE) IN CONNECTION WITH THIS SETTLEMENT AGREEMENT, (B) HAS NOT
24 ENTERED INTO THIS SETTLEMENT AGREEMENT BASED UPON THE RECOMMENDATION
25 OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND
26 (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
27 ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY
28 BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO

1 ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE
2 CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES
3 (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON
4 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
5 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED
6 BY THIS SETTLEMENT AGREEMENT.

7 29. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant
8 that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
9 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause
10 of action, or right herein released and discharged.

11 30. Releases of Claims.

12 a. Class Settlement Release. Upon the Effective Date and full funding of the Gross
13 Settlement Amount, Plaintiff and all Class Members who do not submit a timely and valid Request for
14 Exclusion (i.e., Settlement Class Members) will be deemed to have fully, finally, and forever released,
15 settled, compromised, relinquished, and discharged the Released Parties of and from all Released Class
16 Claims.

17 31. PAGA Settlement Release. Upon the Effective Date and full funding of the Gross
18 Settlement Amount, Plaintiff, the State of California with respect to PAGA Employees, and PAGA
19 Employees will be deemed to have fully, finally, and forever released, settled, compromised,
20 relinquished, and discharged the Released Parties of and from all Released PAGA Claims pertaining to
21 Plaintiff and the PAGA Employees.

22 32. General Release of Claims by Plaintiff. In addition, upon the Effective Date and full
23 funding of the Gross Settlement Amount, Plaintiff will be deemed to have fully released and discharged
24 the Released Parties of and from all claims arising from his employment with Defendant, separation of
25 employment from Defendant, and any acts that have or could have been asserted in any legal action or
26 proceeding against Defendant, whether known or unknown, arising under any federal, state, or local law,
27 or statute, including, *inter alia*, those arising under the California Labor Code, Fair Labor Standards Act,
28 Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, Employee Retirement Income

1 Security Act, National Labor Relations Act, California Corporations Code, California Business and
2 Professions Code, Orders of the California Industrial Welfare Commission, California Fair Employment
3 and Housing Act, California Constitution (all as amended), and law of contract and tort, as well as for
4 discrimination, harassment, retaliation, wrongful termination, lost wages, benefits, other employment
5 compensation, emotional distress, medical expenses, other economic and non-economic damages,
6 attorneys' fees and costs, arising on or before the date on which the Settlement is executed. With respect
7 to those claims released by Plaintiff in an individual capacity, Plaintiff acknowledges and waives any and
8 all rights and benefits available under California Civil Code Section 1542, which provides:

9 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR
10 RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR
11 AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER,
12 WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
13 DEBTOR OR RELEASED PARTY.

14 Plaintiff understands and agrees that claims or facts in addition to or different from those which are now
15 known or believed by him to exist may hereafter be discovered. Upon the Effective Date and full funding
16 of the Gross Settlement Amount, Plaintiff's intention to settle fully and release all claims they now have
17 against the Released Parties, whether known or unknown, suspected or unsuspected. The Enhancement
18 Payment will be paid to Plaintiff specifically in exchange for the general release of the Released Parties
19 from all claims, including those specified in this paragraph and a covenant not to sue the Released Parties.
20 Notwithstanding the above, the general release by Plaintiff shall not extend to claims for workers'
21 compensation benefits, claims for unemployment benefits, or other claims that may not be released by
22 law.

23 33. Duties of the Parties with Respect to Obtaining Preliminary Approval of the Settlement.

24 Upon execution of this Settlement Agreement, Plaintiff shall promptly obtain a hearing date for
25 Plaintiff's motion for preliminary approval of the Settlement, and submit this Settlement Agreement to
26 the Court in support of said motion. Defendant agrees not to oppose the motion for preliminary approval
27 of the Settlement consistent with this Settlement Agreement. Said motion shall apply to the Court for
28 the entry of an order ("Preliminary Approval Order"), which shall be mutually agreed upon by the

Parties, seeking the following:

- a. Conditionally certifying the Class for settlement purposes only;
- b. Granting Preliminary Approval of the Settlement;
- c. Preliminarily appointing Plaintiff as representative of the Class;
- d. Preliminarily appointing Class Counsel as counsel for the Class;
- e. Approving, as to form and content, the mutually-agreed upon and proposed Class Notice and directing its mailing to the Class by U.S. Mail;
- f. Approving the manner and method for Class Members to request exclusion from or object to the Class Settlement as contained herein and within the Class Notice; and
- g. Scheduling a Final Approval Hearing at which the Court will determine whether the Settlement should be finally approved as fair, reasonable, and adequate.

34. Duties of the Parties with Respect to Obtaining Final Approval of the Settlement. After the Response Deadline, and with the Court's permission, a hearing will be conducted on Plaintiff's motion for final approval of the Settlement (i.e., the Final Approval Hearing), to determine whether Final Approval of the Settlement should be granted, along with the amounts properly payable for Individual Settlement Payments, Individual PAGA Payments, LWDA Payment, Attorneys' Fees and Costs, Enhancement Payment, and Settlement Administration Costs. By way of said motion, Plaintiff will apply for the entry of the mutually-agreed-upon proposed order and judgment ("Final Approval Order and Judgment"), which will provide for, in substantial part, the following:

- a. Approval of the Settlement as fair, reasonable, and adequate, and directing consummation of its terms and provisions;
- b. Certification of the Settlement Class;
- c. Appointment of Plaintiff as representative of the Settlement Class;
- d. Appointment of Class Counsel as counsel for the Settlement Class;
- e. Approval of the application for Attorneys' Fees and Costs to Class Counsel;
- f. Approval of the application for Enhancement Payment to Plaintiff;
- g. Directing Defendant to fund all amounts due under the Settlement Agreement and ordered by the Court; and

1 h. Entering judgment in this Action, while maintaining continuing jurisdiction to
2 implement the Settlement, in conformity with California Rules of Court 3.769 and the Settlement
3 Agreement.

4 35. Effects of Termination of the Settlement. In the event that the Settlement Agreement is
5 not approved by the Court, such a development shall have the following effects:

6 a. The Settlement Agreement and all negotiations, statements, and proceedings
7 relating thereto shall be without prejudice to the rights of any of the Parties, all of whom shall be restored
8 to their respective positions in the Action prior to the execution of the Settlement Agreement;

9 b. Neither this Settlement Agreement, nor any ancillary documents, actions,
10 statements, or filings in furtherance of the Settlement (including all matters associated with the mediation)
11 shall be offered into evidence in the Action or any other action for any purpose whatsoever; and

12 c. Any documents generated to bring the Settlement into effect, will be null and
13 void, and any order entered by the Court in furtherance of this Settlement Agreement will likewise be
14 treated as void from the beginning.

15 36. Escalator Clause. Defendant represents that, during the period from June 1, 2020, through
16 August 1, 2024, there are approximately 703,500 Workweeks for the Class Members. If it is determined
17 that the total number of Workweeks during the Class Period exceed 703,500 by more than ten percent
18 (10%) (i.e. exceeds 773,850), then Defendant will have the option of either: (a) increasing the Gross
19 Settlement Amount on a *pro rata* basis equal to the percentage increase in the number of Workweeks
20 above 773,850 Workweeks (e.g., if the threshold of 773,850 Workweeks is exceeded by 1%, the Gross
21 Settlement Amount will increase by 1%); or (b) shortening the Class Period so that the total Workweeks
22 for the Class Members is 773,850 or less.

23 37. Continuing Jurisdiction. After entry of judgment pursuant to the Settlement, the Court
24 will have continuing jurisdiction pursuant to Rule 3.769 of the California Rules of Court and Section
25 664.6 of the California Code of Civil Procedure, for purposes of addressing: (a) the interpretation and
26 enforcement of the terms of the Settlement, (b) settlement administration matters, and (c) such post-
27 judgment matters as may be appropriate under court rules or as set forth in this Settlement Agreement.

28 38. Exhibits Incorporated by Reference. The terms of this Settlement Agreement include the

terms set forth in any attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibits to this Settlement Agreement are an integral part of the Settlement.

39. Limitation on Publicity. Plaintiff and Class Counsel agree not to issue press releases and engage in any publicity regarding the Settlement, except as shall be contractually required to effectuate the terms of the Settlement and respond to inquiries received from Class Members and PAGA Employees. However, for the limited purpose of allowing Class Counsel to prove their experience and adequacy as class counsel in other actions, Class Counsel may reference the Settlement in the Action for such purposes. Furthermore, Plaintiff and Class Counsel will undertake any and all disclosures and submissions required to be made to the LWDA in conformity with PAGA.

40. Entire Agreement. This Settlement Agreement and any attached exhibits constitute the entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements may be deemed binding on the Parties. The Parties expressly recognize California Civil Code section 1625 and California Code of Civil Procedure section 1856(a), and any other provisions of state or federal law, which provide that a written agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence, and the Parties agree that no such extrinsic oral or written representations or terms will modify, vary, or contradict the terms of this Settlement Agreement. 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.

41. Interim Stay of Proceedings. The Parties agree to hold in abeyance all proceedings in the Action (including, and not limited to, the deadline to bring the Action to trial under California Code of Civil Procedure section 583.310), except such proceedings necessary to implement and complete the Settlement Agreement, pending the Final Approval Hearing to be conducted by the Court.

42. Amendment and Waiver. The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by written agreement signed by counsel for the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

1 43. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and
2 represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement
3 Agreement and to take all appropriate actions required or permitted to be taken by such Parties pursuant
4 to this Settlement Agreement to effectuate its terms and to execute any other documents required to
5 effectuate the terms of this Settlement Agreement. The Parties warrant that they understand and have
6 full authority to enter into this Settlement Agreement, and further intend that this Settlement Agreement
7 will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to
8 disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality
9 provisions that otherwise might apply under state or federal law.

10 44. Signatories. It is agreed that because the members of the Class are so numerous, it is
11 impossible or impractical to have each Class Member execute this Settlement Agreement. The Class
12 Notice will advise all Class Members of the binding nature of the Class Settlement as to the Settlement
13 Class Members, and the release shall have the same force and effect as if this Settlement Agreement
14 were executed by each Settlement Class Member.

15 45. Binding on Successors and Assigns. This Settlement Agreement will be binding upon,
16 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

17 46. California Law Governs. All terms of this Settlement Agreement and attached exhibits
18 hereto will be governed by and interpreted according to the laws of the State of California.

19 47. Execution and Counterparts. This Settlement Agreement is subject only to the execution
20 of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All
21 executed counterparts and each of them, including facsimile, electronic, and scanned copies of the
22 signature page, will be deemed to be one and the same instrument.

23 48. Acknowledgment that the Settlement is Fair and Reasonable. The Parties believe this
24 Settlement Agreement is a fair, adequate, and reasonable settlement of the Action, Released Class
25 Claims, and Released PAGA Claims, and have arrived at this Settlement after arm's-length negotiations
26 and in the context of adversarial litigation, taking into account all relevant factors, present and potential.
27 The Parties further acknowledge that they are each represented by competent counsel and that they have
28 had an opportunity to consult with their counsel regarding the fairness and reasonableness of this

1 Settlement Agreement. In addition, if necessary to obtain Court approval of the Settlement, the Mediator
2 may execute a declaration supporting the Settlement and the reasonableness of the Settlement and the
3 Court may, in its discretion, contact the Mediator to discuss the Settlement and whether or not the
4 Settlement is objectively fair and reasonable.

5 49. Invalidity of Any Provision. Before declaring any provision of this Settlement
6 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent
7 possible consistent with applicable precedents so as to find all provisions of this Settlement Agreement
8 valid and enforceable.

9 50. Cooperation. By signing this Settlement Agreement, the Parties are hereby bound by the
10 terms herein and agree to fully cooperate to implement the Settlement.

11 51. Non-Admission of Liability. The Parties enter into this Settlement Agreement to resolve
12 the dispute that has arisen between them and to avoid the burden, expense, and risk of continued
13 litigation. In entering into this Settlement Agreement, Defendant does not admit, and specifically denies,
14 that it has violated any state, federal, or local law; violated any regulations or guidelines promulgated
15 pursuant to any statute or any other applicable laws, regulations, or legal requirements; breached any
16 contract; violated or breached any duty; engaged in any misrepresentation or deception; or engaged in
17 any other unlawful conduct with respect to its employees. Neither this Settlement Agreement, nor any
18 of its terms or provisions, nor any of the negotiations connected with it, shall be construed as an
19 admission or concession by Defendant of any such violations or failures to comply with any applicable
20 law. Except as necessary in a proceeding to enforce the terms of this Settlement Agreement, this
21 Settlement Agreement and its terms and provisions shall not be offered as evidence in any action or
22 proceeding to establish any liability or admission on the part of Defendant or to establish the existence
23 of any condition constituting a violation of, or a non-compliance with state, federal, local, or other
24 applicable law.

25 52. Captions. The captions and paragraph numbers in this Settlement Agreement are inserted
26 for the reader's convenience, and in no way define, limit, construe, or describe the scope or intent of the
27 provisions of this Settlement Agreement.

28 53. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and

conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed more strictly against one Party than another merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arms-length negotiations between the Parties, all Parties have contributed equally to the preparation of this Settlement Agreement.

54. Representation by Counsel. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and that this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed in full by the Parties with the assistance of their respective counsel.

55. All Terms Subject to Final Court Approval. All amounts and procedures described in this Settlement Agreement herein will be subject to final Court approval.

56. Notices. All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by overnight mail at the addresses set for below, or such other addresses as either Party may designate in writing from time to time:

<u>To Plaintiff and Class Counsel:</u>	<u>To Defendant:</u>
Shaun Setareh, Esq. Thomas Segal, Esq. Farrah Grant, Esq. SETAREH LAW GROUP 420 N. Camden Drive, Beverly Hills, California 90210	Christopher J. Boman, Esq. Boris Sorsher, Esq. Harrison M. Zator, Esq. FISHER & PHILLIPS LLP 2050 Main Street, Suite 1000 Irvine, California 92614

57. Final Approval Order and Judgment. The Parties shall provide the Settlement Administrator with a copy of the Final Approval Order and Judgment once it is entered by the Court, and the Settlement Administrator shall post the Final Approval Order and Judgment on its website for sixty (60) calendar days, and this shall satisfy California Rules of Court 3.771(b). No individualized notice of the Final Approval Order and Judgment to the Class will be required.

58. Cooperation and Execution of Necessary Documents. All Parties and their counsel will cooperate with each other in good faith and use their best efforts to implement the Settlement, including and not limited to, executing all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement Agreement, or on any supplemental provisions that may

become necessary to effectuate the terms of this Settlement Agreement, the Parties may seek the assistance of the Mediator and then the Court to resolve such disagreement.

59. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

60. Dismissal of Named Defendant DHL Express (USA), Inc. Plaintiff and Class Counsel agree to dismiss named Defendant DHL Express (USA), Inc. from the Action, without prejudice, prior to filing any settlement approval motion.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Class and PAGA Settlement and Release between Plaintiff and Defendant:

IT IS SO AGREED.

PLAINTIFF ANDRES GARCIA



ID 2NpYUrn5ZTIVdnkqgm16P4PY

Andres Garcia, Plaintiff

DEFENDANT EXEL INC. DBA DHL SUPPLY CHAIN (USA)

Dated: 2/01/2025, 2025

Full Name: _____

Title: _____

On behalf of Defendant Exel Inc. dba DHH Supply Chain
(USA)

APPROVED AS TO FORM:

SETAREH LAW GROUP



ID JqXpshTEo8931z1vdaO8PXfz

Dated: 01/26, 2025

Shaun Setareh

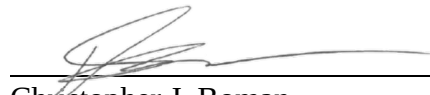
Thomas Segal

Farrah Grant

Attorneys for Plaintiff and Proposed Class Counsel

FISHER & PHILLIPS LLP

Dated: February 10, 2025



Christopher J. Boman

Boris Sorsher

Harrison M. Zator

Attorneys for Defendant

1 become necessary to effectuate the terms of this Settlement Agreement, the Parties may seek the
2 assistance of the Mediator and then the Court to resolve such disagreement.

3 59. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and
4 conditions of this Agreement, the Parties, their respective counsel, and all Participating Class Members
5 who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the
6 Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to
7 vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not
8 include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the
9 Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time
10 as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect
11 the amount of the Net Settlement Amount.

12 60. Dismissal of Named Defendant DHL Express (USA), Inc. Plaintiff and Class Counsel
13 agree to dismiss named Defendant DHL Express (USA), Inc. from the Action, without prejudice, prior
14 to filing any settlement approval motion.

15 **IN WITNESS WHEREOF**, the Parties hereto knowingly and voluntarily executed this Joint
16 Stipulation of Class and PAGA Settlement and Release between Plaintiff and Defendant:

17 **IT IS SO AGREED.**

18 **PLAINTIFF ANDRES GARCIA**

19 

ID 2NoYUrN5ZTYdnkoom16P4PY

Andres Garcia, Plaintiff

20 Dated: 2/01/2025, 2025

21 **DEFENDANT EXEL INC. DBA DHL SUPPLY**
22 **CHAIN (USA)**

23
24 Dated: February 10, 2025

25 

Full Name: Andrew G. Etker
Title: Associate General Counsel
On behalf of Defendant Exel Inc. dba DHH Supply Chain
(USA)

APPROVED AS TO FORM:

Dated: 01/26, 2025

SETAREH LAW GROUP



ID: JqXpshTEo8931z1vdaQ8PXfz

Shaun Setareh
Thomas Segal
Farrah Grant
Attorneys for Plaintiff and Proposed Class Counsel

FISHER & PHILLIPS LLP

Dated: _____, 2025

Christopher J. Boman
Boris Sorsher
Harrison M. Zator
Attorneys for Defendant

eSignature Details

Signer ID: JqXpshTEo8931z1ydaQ8PXfz
Signed by: Shaun Setareh
Sent to email: shaun@setarehlaw.com
IP Address: 199.36.244.35
Signed at: Jan 26 2025, 3:38 pm PST

Signer ID: 2NpYUrN5ZTiYdnkpm16P4PY
Signed by: Andres Garcia
Sent to email: Andresgarcia197836@gmail.com
IP Address: 172.56.180.229
Signed at: Feb 5 2025, 3:52 am PST

Exhibit A

NOTICE OF CLASS ACTION SETTLEMENT

Andres Garcia v. DHL Express (USA), Inc., et al.
Santa Clara County Superior Court, Case No. 22CV407813

PLEASE READ THIS NOTICE CAREFULLY.

You have received this Notice because Defendant's records indicate that you may be eligible to take part in the class action settlement reached in the above-referenced matter.

You do not need to take any action to receive a settlement payment and, unless you request to be excluded from the settlement, your legal rights may be affected.

This Notice is designed to advise you of your rights and options with respect to the settlement.

By order of the Superior Court of California for the County of Santa Clara (the "Court" or "Santa Clara County Superior Court"), you are notified that: preliminary approval of a class action settlement reached between Plaintiff Andres Garcia ("Plaintiff") and Defendant Exel Inc. dba DHL Supply Chain (USA) ("Defendant") (Plaintiff and Defendant are collectively referred to as the "Parties"), was granted on [insert date], in the case entitled *Andres Garcia v. DHL Express (USA), Inc., et al.*, Santa Clara County Superior Court, Case No. 22CV407813 (the "Action"), which may affect your legal rights.

If you are a Class Member (or member of the Class), you need not take any action to receive a settlement payment, but you have the opportunity to request exclusion from the Settlement (in which case you will not receive payment under the Settlement), object to the Settlement, and/or dispute the number of Workweeks credited to you, if you so choose, as explained more fully below.

I. IMPORTANT DEFINITIONS

"Class" means all current and former non-exempt employees employed by Defendant Exel Inc. dba DHL Supply Chain (USA) in California at any time during the Class Period. This definition excludes the employees who meet all of the following conditions: (1) were hired by Defendant prior to 2015; and (2) who worked during the Class Period on or after December 15, 2021.

"Class Member" means a member of the Class.

"Class Period" means the period from June 1, 2020, through August 1, 2024.

"PAGA Employees" means all current and former non-exempt employees employed by Defendant Exel Inc. dba DHL Supply Chain (USA) in California at any time during the PAGA Period.

"PAGA Period" means the period from December 6, 2021, through August 1, 2024.

II. BACKGROUND OF THE ACTION

Plaintiff is a former employee of Defendant. Plaintiff alleged Defendant violated California labor and employment laws as follows: (1) Failure to Provide Meal Periods; (2) Failure to Provide Rest Periods; (3) Failure to Pay Hourly Wages; (4) Failure to Pay Vacation Wages; (5) Failure to Provide Accurate Written Wage Statements; (6) Failure to Timely Pay All Final Wages; (7) Failure to Pay Wages Without Discount; (8) Unfair Competition; and (9) Civil Penalties under the Private Attorneys General Act (Labor Code §§ 2698 et seq.)

Plaintiff seeks, among other things, recovery of unpaid wages and meal and rest period premiums, restitution, declaratory relief, penalties, interest, and attorneys' fees and costs.

Defendant denies all of the allegations in the Action and denies that it violated any law. The Court has not made a ruling on the merits of the case.

The Parties participated in a full-day mediation session with a respected class action mediator, and as a result, the Parties reached a settlement. The Parties have since entered into a Joint Stipulation of Class Action and PAGA Settlement and

Release (“Settlement” or “Settlement Agreement”), which was preliminarily approved by the Court on [Preliminary Approval Date]. The Court has appointed (Insert Administrator) as the administrator of the Settlement (“Settlement Administrator”), Plaintiff Andres Garcia as representative of the Class (“Class Representative”), and the following law firm as counsel for the Class (“Class Counsel”):

Shaun Setareh, Esq.
Thomas Segal, Esq.
Farrah Grant, Esq.
Setareh Law Group
420 N. Camden Drive
Beverly Hills, California 90210
Telephone: (310) 888-7771 / Fax: (310) 888-0109

The Settlement represents a compromise and Settlement of highly disputed claims. Nothing in the Settlement is intended or will be construed as an admission by Defendant that the claims in the Action have merit or that Defendant has any liability to Plaintiff or to Class Members. Plaintiff and Defendant, and their respective counsel, have concluded and agree that, in light of the risks and uncertainties to each side of continued litigation, the Settlement is fair, reasonable, and adequate, and that the Settlement is in the best interests of the Class Members.

III. SUMMARY OF THE PROPOSED SETTLEMENT

A. Settlement Formula

The total settlement amount is Four Million Nine Hundred Forty-Seven Thousand Dollars and Zero Cents (\$4,947,000.00) (the “Gross Settlement Amount”). The portion of the Gross Settlement Amount that is available for payment to Class Members who do not opt out of this Settlement (“Settlement Class Members”) is referred to as the “Net Settlement Amount.” The Net Settlement Amount will be the Gross Settlement Amount less the following payments which are subject to approval by the Court: (1) attorneys’ fees in an amount of up to one-third of the Gross Settlement Amount (i.e., up to \$1,649,000.00) and reimbursement of litigation costs and expenses in an amount of up to Thirty-Five Thousand Dollars and Zero Cents (\$35,000.00) to Class Counsel (collectively, “Attorneys’ Fees and Costs”); (2) enhancement payment in an amount not to exceed Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff Andres Garcia, for his effort and work in prosecuting the Action (“Enhancement Payment”); (3) settlement administration costs in an amount not to exceed One Hundred Thousand Dollars and Zero Cents (\$100,000.00) to the Settlement Administrator (“Settlement Administration Costs”); and (4) the allocation of Two Hundred Fifty Thousand Dollars and Zero Cents (\$250,000.00) to settle all claims under PAGA (“PAGA Amount”), of which 75%, or \$187,500.00, will be paid to the Labor and Workforce Development Agency (“LWDA”) and the remaining 25%, or \$62,500.00, will be distributed to PAGA Employees.

Class Members are eligible to receive a *pro rata* share of the Net Settlement Amount (“Individual Settlement Share”) based on the number of workweeks during which they worked for Defendant as non-exempt employee in California during the Class Period (“Workweeks”).

The Settlement Administrator has divided the Net Settlement Amount by the Workweeks of all Class Members to yield the “Estimated Workweek Value,” and multiplied each Class Member’s individual Workweeks by the Estimated Workweek Value to yield his or her estimated Individual Settlement Share that he or she may be eligible to receive under the Class Settlement (which is listed in Section III.C below). Class Members who do not submit a timely and valid Request for Exclusion (“Settlement Class Members”) will be issued payment of their final Individual Settlement Payment.

Each Individual Settlement Share will be allocated as fifteen percent (15%) to wages (which will be reported on an IRS Form W-2), and eighty-five percent (85%) to interest, penalties, and fees (which will be reported on an IRS Form 1099, if applicable). PAGA Employees who worked between December 6, 2021, through August 1, 2024, will also be eligible to receive a portion of the PAGA Amount (“Individual PAGA Payment(s)”). Individual PAGA Payments will be treated as 100% penalties and will be reported on IRS Form 1099. Each Individual Settlement Share will be subject to reduction for the employee’s share of taxes and withholdings with respect to the wage portion of the Individual Settlement Share. The net payment of each Settlement Class Member’s Individual Settlement Share (after reduction for the employee’s share of

taxes on the wage portion) and Individual PAGA Payment (if applicable) is referred to as their “Individual Settlement Payment.”

If the Court grants final approval of the Settlement, Defendant will make a one-time deposit of the full Gross Settlement Amount.

If the Court grants final approval of the Settlement, Individual Settlement Payments will be mailed to Settlement Class Members at the address that is on file with the Settlement Administrator by way of one (1) check following the deposit of the full Gross Settlement Amount. **If the address to which this Notice was mailed is not correct, or if you move after you receive this Notice, you must provide your correct mailing address to the Settlement Administrator as soon as possible to ensure your receipt of payment that you may be entitled to.**

B. Your Workweeks Based on Defendant’s Records

According to Defendant’s records:

From June 1, 2020, through August 1, 2024, you worked for Defendant as a non-exempt employee in California for [REDACTED] Workweeks.

From December 6, 2021, through August 1, 2024, you worked for Defendant as a non-exempt employee in California for [REDACTED] Workweeks.

If you wish to dispute the number of Workweeks credited to you, you must submit a written letter to the Settlement Administrator. The written dispute must: (a) contain the case name and number of the Action (*Andres Garcia v. DHL Express (USA), Inc., et al.*, Santa Clara County Superior Court, Case No. 22CV407813); (b) be signed by you; (c) contain your full name; (d) clearly state that you dispute the number of Workweeks credited to you and what you contend is the correct number(s) to be credited to you; (e) include information and/or attach documentation demonstrating that the number of Workweeks that you contend should be credited to you is correct; and (f) be mailed to the Settlement Administrator at the address listed in Section IV.B below, postmarked **on or before [REDACTED]**.

C. Your Estimated Individual Settlement Payment

As explained above, your estimated Individual Settlement Payment is based on the number of Workweeks credited to you.

Under the terms of the Settlement, your Individual Settlement Share is estimated to be \$[REDACTED]. The Individual Settlement Share is subject to reduction for the employee’s share of taxes and withholding with respect to the wage portion of the Individual Settlement Share.

Under the terms of the Settlement, your Individual PAGA Payment is estimated to be \$[REDACTED]. The Individual PAGA Payment will only be distributed if the Court approves the Settlement and after the Settlement goes into effect.

Individual Settlement Payments will only be distributed if the Court approves the Settlement and after the Settlement goes into effect.

The Settlement approval process may take multiple months. Your Individual Settlement Payment in this Notice is only an estimate. Your actual Individual Settlement Payment may be higher or lower.

D. Released Claims

After the Court enters an order granting final approval of the Settlement or five days after the final resolution of any appeals objecting to the Settlement, each of the Settlement Class Members (including the Class Representative) will be deemed to have, and by operation of the Court’s entry of judgment will have, fully, finally, and forever released, settled, compromised, relinquished, and discharged any and all claims against the Released Parties for the Released Class Claims during the Release Period, and each of the PAGA Employees will be deemed to have, and by operation of the Court’s entry of judgment will have, fully, finally, and forever released, settled, compromised, relinquished, and discharged any and all claims against the Released Parties for the Released PAGA Claims during the Release Period.

“Released Class Claims” means any and all claims, actions, or cause of action alleged in the Complaint or that could have been alleged based upon the facts alleged in the Complaint, arising during the Class Period, including and not limited to, for failure to properly pay overtime, including a failure to pay overtime premiums at the regular rate of pay and failure to pay minimum wages (including, but not limited to, any time lost or inaccurately recorded due to an inability to access the Kronos timekeeping system, or other timekeeping system), failure to provide compliant meal periods and associated premiums including a failure to pay premiums at the regular rate of pay, failure to provide compliant rest periods and associated premiums including a failure to pay premiums at the regular rate of pay, failure to pay vested vacation wages, failure to timely pay wages upon termination, during employment, and associated waiting-time penalties, failure to provide compliant wage statements, failure to pay wages without discount, failure to keep requisite payroll records, failure to return deposits, failure to reimburse necessary business expenses, in violation of California Labor Code sections 200, 201, 202, 203, 204, 210, 212, 223, 226(a), 226.7, 226.7(b), 227.3, 404, 510, 512(a), 558, 558.1, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, violation of California Business and Professions Code section 17200 *et seq.* based on the aforementioned, and any other applicable provisions of state or federal law, including the applicable Industrial Wage Orders, based on the facts alleged in the Action.

“Released PAGA Claims” means all claims for civil penalties under the Private Attorneys General Act, California Labor Code section 2698, *et seq.* that were alleged in the PAGA Notice, the Amended PAGA Notice, and Complaint in the Action or that reasonably could have been alleged based on the factual allegations in the PAGA Notice, the Amended PAGA Notice, and Complaint in the Action, arising during the PAGA Period, against any of the Released Parties, for violations of the California Labor Code, including *inter alia* sections 200, 201, 202, 203, 204, 210, 212, 223, 226(a), 226.7, 226.7(b), 227.3, 404, 510, 512(a), 558, 558.1, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800, 2802, 6400 *et seq.*, and applicable Industrial Welfare Commission Wage Order for failure to properly pay overtime including a failure to pay overtime premiums at the regular rate of pay, failure to pay minimum wages, failure to provide compliant meal periods and associated premiums including a failure to pay premiums at the regular rate of pay, failure to provide compliant rest periods and associated premiums including a failure to pay premiums at the regular rate of pay, failure to pay vested vacation wages, failure to timely pay wages upon termination, during employment, and associated waiting-time penalties, failure to provide compliant wage statements, failure to pay wages without discount, failure to keep requisite payroll records, failure to return deposits, and failure to reimburse necessary business expenses.

“Released Parties” means Defendant, its respective parents, subsidiaries, divisions, affiliates, predecessors, successors in interest, or related entities, or the officers, directors, shareholders, trustees, representatives, members, managers, employees, attorneys, agents, assigns, insurers, re-insurers, of any of them.

E. Attorneys’ Fees and Costs to Class Counsel

Class Counsel will seek attorneys’ fees in an amount of up to one-third of the Gross Settlement Amount (i.e., up to \$1,649,000.00) and reimbursement of litigation costs and expenses in an amount of up to Thirty-Five Thousand Dollars and Zero Cents (\$35,000.00), to be paid from the Gross Settlement Amount, subject to approval by the Court. Class Counsel has been prosecuting the Action on behalf of Plaintiff and Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses.

F. Enhancement Payment to Plaintiff

Plaintiff will seek the amount of Ten Thousand Dollars and Zero Cents (\$10,000.00) as an Enhancement Payment to Plaintiff Andres Garcia in recognition of his services in connection with the Action. The Enhancement Payment will be paid from the Gross Settlement Amount subject to approval by the Court, and if awarded, it will be paid to Plaintiff in addition to his Individual Settlement Payment that he is entitled to under the Settlement.

G. Settlement Administrator Costs to the Settlement Administrator

Payment to the Settlement Administrator is estimated not to exceed One Hundred Thousand Dollars and Zero Cents (\$100,000.00) for the costs of the notice and settlement administration process, including and not limited to, the expense of notifying the Class Members of the Settlement, receiving and reviewing requests for exclusion, objections, and/or disputes, if any, submitted by Class Members, calculating Individual Settlement Payments, and distributing payments and tax forms under the Settlement, and will be paid from the Gross Settlement Amount subject to approval by the Court.

IV. WHAT ARE YOUR RIGHTS AND OPTIONS AS A CLASS MEMBER?

A. Participate in the Settlement

If you want to receive money from the Settlement, you do not have to do anything. You will automatically be issued your Individual Settlement Payment unless you decide to exclude yourself from the Settlement. Unless you elect to exclude yourself from the Settlement, you will be bound by the terms of the Settlement and any judgment that may be entered by the Court based thereon, and you will be deemed to have released the Released Parties for the Released Class Claims. As a Class Member, you will not be separately responsible for the payment of attorney's fees or litigation costs and expenses, unless you retain your own counsel, in which event you will be responsible for your own attorney's fees and expenses.

B. Request Exclusion from the Settlement

If you do not wish to participate in the Settlement, you may seek exclusion from (or "opt out" of) the Settlement by submitting a timely, written request for exclusion from the Settlement to the Settlement Administrator at the following address:

[Settlement Administrator]
[Address]

The request for exclusion must: (a) include your full name; (b) include the name and case number of the Action (*Andres Garcia v. DHL Express (USA), Inc., et al.*, Santa Clara County Superior Court, Case No. 22CV407813); (c) include a clear and unequivocal statement that you wish to be excluded from the Settlement; (d) include your signature; and (e) be mailed to the Settlement Administrator at the address listed above, postmarked **no later than [Response Deadline]**.

If the Court grants final approval of the Settlement, any Class Member who submits a timely and valid request for exclusion from the Settlement will not be entitled to receive any payment from the Settlement, will not be bound by the Settlement (and the release of Released Class Claims stated in Section III.D above), and will not have any right to object to, appeal, or comment on the Settlement. Any Class Members who do not submit a timely and valid request for exclusion from the Settlement will be deemed Settlement Class Members and will be bound by all terms of the Settlement, including those pertaining to the release of Released Class Claims stated in Section III.D above, as well as any judgment that may be entered by the Court based thereon.

Notwithstanding the above, all PAGA Employees will receive their share of the 25% share of the PAGA Amount and will be bound to the Released PAGA Claims, irrespective of whether they submit a Request for Exclusion.

Defendant will have the option to void the settlement agreement if ten percent (10%) of the individuals eligible to become class members have opted out of the Settlement.

C. Object to the Settlement

You can object to the terms of the Settlement as long as you have not submitted a request for exclusion from the Settlement, by submitting a written objection ("Notice of Objection") to the Settlement Administrator.

A written Notice of Objection must: (a) include your full name; (b) contain the name and case number of Action (*Andres Garcia v. DHL Express (USA), Inc., et al.*, Santa Clara County Superior Court, Case No. 22CV407813); (c) contain a statement of the specific legal and factual basis for each objection argument; (d) contain a statement whether you or your attorney intend to appear at the Final Approval Hearing, and (e) be filed or postmarked **no later than [Response Deadline]**.

Settlement Class Members who submit timely Notices of Objection may appear at the Final Approval Hearing in order to have their objections heard by the Court. If the Court permits, Settlement Class Members who have not submitted a written Notice of Objection in compliance with the Settlement Agreement may still appear at the Final Approval Hearing and present their objections.

V. FINAL APPROVAL HEARING

The Court will hold a hearing (the “Final Approval Hearing”) in Department 19 of the Santa Clara County Superior Court, located at the Old Courthouse at 161 North First Street, San Jose, California 95113 on **DATE**, at **TIME**, to determine whether the Settlement should be finally approved as fair, reasonable, and adequate and whether the attorneys’ fees and costs to Class Counsel, Enhancement Payment to Plaintiff, and Settlement Administrator Costs to the Settlement Administrator should be awarded. If the Court enters an order and judgment granting final approval of the Settlement, a copy of this order and judgment will be posted on the Settlement Administrator’s website; to access it you will need to navigate to the following web URL: **[insert]**

The hearing may be continued without further notice to the Class Members. It is not necessary for you to appear at the Final Approval Hearing, although you may appear if you wish to regardless of whether you submitted a Notice of Objection.

Personal appearances and remote appearances are an option. (As of **[]**, the Court’s remote platform is Microsoft Teams.) Class members who wish to appear remotely should contact class counsel at least three days before the hearing if possible. Instructions for appearing remotely are provided at https://www.sccourt.org/general_info/ra_teams/video_hearings_teams.shtml and should be reviewed in advance. Class members may appear remotely using the Microsoft Teams link for Department 19 (**Afternoon Session**) or by calling the toll-free conference call number for Department 19. Any class member who wishes to appear in person should check in at Court Services (1st floor, Downtown Superior Courthouse, 191 North First Street, San Jose, California 95113) and wait for a sheriff’s deputy to escort him or her to the courtroom for the hearing.

VI. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement Agreement, you should review the detailed Settlement Agreement and other papers which are on file with the Court.

You may view the Settlement Agreement and other documents filed in the Action by using the kiosks located at the Downtown Superior Courthouse, 191 North First Street, San Jose, California, 95113, during regular business hours of each court day. You can also access documents filed in the Action, to the extent they have been imaged for online access, as well as basic information regarding hearing dates and filings in the Action by looking the case up on the Case Information Portal of the Court’s website (<https://portal.sccourt.org>). Fees may apply for accessing and/or obtaining copies of documents from the Court in person or online. To look up and access documents and information on the Court’s systems, you will need to use the case number.

PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT.

IF YOU HAVE ANY QUESTIONS, YOU MAY CALL THE SETTLEMENT ADMINISTRATOR AT THE FOLLOWING TOLL-FREE NUMBER: **[INSERT], OR YOU MAY ALSO CONTACT CLASS COUNSEL.**