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*Attorneys for Plaintiffs*

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

RUBEN HERNANDEZ, as an individual and  
on behalf of all others similarly situated,

Plaintiff,

vs.

NEOVIA LOGISTICS SERVICES, LLC, a  
Delaware Limited Liability Company;  
NEOVIA LOGISTICS DISTRIBUTION,  
LP, a Delaware Limited Partnership; and  
DOES 1 through 100,

Defendants.

Case No.: CIVSB2305867

*[Assigned for all purposes to the Hon. Tony  
Raphael, Dept. S36]*

**DECLARATION OF MATTHEW K.  
MOEN IN SUPPORT OF PLAINTIFFS'  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT**

Date: September 11, 2024  
Time: 8:30 a.m.  
Dept.: S36

Action Filed: March 2, 2023  
Trial Date: None Set

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I, MATTHEW K. MOEN, declare as follows:

1. I am a Senior Associate with Haines Law Group, APC, and counsel for the named Plaintiffs Ruben Hernandez, Patrick Joseph Neims, Arturo Ramirez, and Miguel Moreno (collectively, “Plaintiffs”) in the above-captioned matter. I am a member in good standing of the bar of the State of California and am admitted to practice in this Court. I have personal knowledge of the facts stated in this declaration and could testify competently to them if called upon to do so.

2. I received a Bachelor of Arts degree from UCLA in 2011, and a Juris Doctor from Loyola Law School, Los Angeles, in 2015. Both before and during law school, I worked for the law firm of Prindle, Amaro, Goetz, Hillyard, Barnes & Reinholtz LLP (now known as Prindle, Goetz, Barnes & Reinholtz LLP), located in Long Beach, California. Both before and during law school, I also worked for Jill McBride Baxter, Certified Sports Agent and Sports Law Attorney.

3. From January 2016 to December 2017, I worked as an associate at Baltodano & Baltodano LLP, a law firm dedicated exclusively to the practice of Plaintiff-side employment law located in San Luis Obispo, California. After the founding partner and senior litigation partner at Baltodano & Baltodano LLP, Justice Hernaldo J. Baltodano, was appointed to the California judiciary in December 2017, the firm dissolved on December 31, 2017. Since January 1, 2018, I have worked as an associate at my current firm, Haines Law Group, APC.

4. During my time with both Baltodano & Baltodano LLP and Haines Law Group, APC, my practice has been solely devoted to litigating plaintiff-side employment related cases in both state and federal court, including wage and hour class actions arising under the California Labor Code and the Fair Labor Standards Act. I am currently staffed on over forty (40) active wage and hour class actions in which I am integrally involved in all aspects of the litigation. I also supervise the work of several junior attorneys staffed on the same wage and hour class actions.

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1           5.       I have been appointed as Class Counsel in over fifty (50) class action settlements  
2 that have been granted final approval. The following is a non-exhaustive list of the recent wage  
3 and hour class actions in which I have been named as Class Counsel and awarded attorney's  
4 fees following a lodestar cross-check: *Santiago Gutierrez v. M.M.C.L., Inc. dba California*  
5 *Landcare*, Case No. 30-2021-01182371-CU-OE-CXC, Honorable Randall J. Sherman,  
6 presiding (awarding attorney's fees following a lodestar cross-check based on a rate of \$575 for  
7 work performed in 2021-2023); *Robert Lewis v. IMERYS Filtration Minerals, Inc., et al.*, Case  
8 No. 22CV02874, Santa Barbara County Superior Court, Honorable Jed Beebe, presiding  
9 (awarding attorney's fees following a lodestar cross-check based on a rate of \$575 for work  
10 performed in 2021-2023); *Roberto Arcos, et al. v. Panoramic Doors, LLC*, Case No. 37-2021-  
11 00048823-CU-OE-CTL, San Diego County Superior Court, Honorable Loren G. Freestone,  
12 presiding (awarding attorney's fees following a lodestar cross-check based on a rate of \$650 for  
13 work performed in 2021-2023); and *Aaron Hallum, et al. v. FCA US, LLC*, Case No.  
14 CIVDS1936782, San Bernardino County Superior Court, Honorable Joseph T. Ortiz, presiding  
15 (awarding attorney's fees following a lodestar cross-check based on a rate of \$650 per hour for  
16 work performed in 2021-2024).

17           6.       I have also been appointed as Class Counsel following a contested motion to  
18 certify one or more classes in three (3) class action lawsuits, including as the lead litigation  
19 attorney in the following cases:

- 20       • *George Gomez v. The Bedrock Company*, Case No. CIVDS1824255, San Bernardino  
21 County Superior Court, Honorable David Cohn, presiding (certifying claims for unpaid  
22 overtime and minimum wage violations, meal period violations, rest period violations,  
23 wage statement violations, and waiting time penalties); and
- 24       • *Aurora Gatica v. Valley Ag, Inc. et al.*, Case No. 19CECG03018, Fresno County  
25 Superior Court, Honorable Tyler D. Tharpe, presiding (certifying claims for meal period  
26 violations, unpaid rest period violations, wage statement violations, and waiting time  
27 penalties).

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1           7.       In every year from 2020 to 2024, Thomson Reuters and Los Angeles Magazine  
2 recognized me as a Top Young Attorney in Southern California in the annual Rising Star  
3 Edition of Super Lawyers. This is an honor awarded to no more than two-and-a-half percent  
4 (2.5%) of attorneys under the age of forty in Southern California each year.

5           8.       As counsel for Plaintiffs, I have been closely involved in all aspects of this  
6 litigation since its inception, and believe that the proposed Stipulation of Settlement  
7 (“Settlement Agreement” or “Settlement”) is a fair and reasonable result for the participating  
8 Settlement Class members.

9           9.       Defendants Neovia Logistics Services, LLC and Neovia Logistics Distribution,  
10 LP (collectively, “Defendants”) operate logistics warehouses across California, providing  
11 storage and transportation services. Like all Settlement Class members, Plaintiffs were  
12 employed by Defendants as non-exempt employees in California during the Class Period and  
13 were subject to Defendants’ allegedly unlawful wage and hour policies and practices.

14           10.      On March 2, 2023, Plaintiff Hernandez initiated the instant action, alleging  
15 Defendants failed to: (i) pay all minimum wages owed; (ii) pay all overtime wages owed; (iii)  
16 provide all lawful meal periods; (iv) reimburse necessary business expenses; (v) issue accurate  
17 itemized wage statements; (vi) timely pay all final wages upon separation; and (vii) comply  
18 with California’s Unfair Competition laws. On May 23, 2023, Plaintiff Hernandez filed a First  
19 Amended Complaint, adding an eighth cause of action for civil penalties under the Private  
20 Attorneys General Act, Labor Code section 2698, *et seq.* (PAGA), based on the same  
21 underlying Labor Code violations. On June 23, 2023, Defendants removed the action to federal  
22 court, and on January 4, 2024, the action was remanded back to San Bernardino County  
23 Superior Court. Attached hereto as **Exhibit C** are true and correct copies of Plaintiff  
24 Hernandez’s March 2, 2023 PAGA Notice letter and the LWDA’s confirmation of receipt.  
25 Attached hereto as **Exhibit D** are true and correct copies of Plaintiff Hernandez’s November 2,  
26 2023 Supplemental PAGA Notice letter and the LWDA’s confirmation of receipt.

27           11.      On October 28, 2022, Plaintiff Neims filed a separate class action complaint,  
28 Case No. CIVSB2224879 (the “*Neims Action*”), alleging the same and/or similar causes of

1 action against Defendants as in the instant action. On October 13, 2023, Defendants removed  
2 the *Neims Action* to federal court. On August 17, 2023, Plaintiff Ramirez filed a separate class  
3 action complaint, Case No. CIVSB2320935 (the “*Ramirez Action*”), alleging the same and/or  
4 similar causes of action against Defendants as in the instant action. On October 13, 2023,  
5 Defendants removed the *Ramirez Action* to federal court. On September 21, 2023, Plaintiff  
6 Moreno filed a separate class action complaint, Case No. CIVSB2323010 (the “*Moreno*  
7 *Action*”), alleging the same and/or similar causes of action against Defendants as in the instant  
8 action. On December 1, 2023, Plaintiff Moreno filed a Representative Action Complaint under  
9 PAGA, Case No. CIVSB2328743.

10 12. As a material term of the Settlement, Plaintiff Hernandez will file a Second  
11 Amended Complaint in this action, adding Plaintiffs Neims, Ramirez, and Moreno as named  
12 plaintiffs, consolidating all causes of action and factual allegations in the *Neims Action*,  
13 *Ramirez Action*, and *Moreno Action* into this action, and consolidating all claims under the  
14 PAGA based on the facts alleged in Plaintiff Hernandez’s March 2, 2023 PAGA Notice to the  
15 LWDA and November 2, 2023 Supplemental Notice, and Plaintiff Moreno’s September 20,  
16 2023 PAGA Notice to the LWDA, into this action. On August 2, 2024, the Parties filed a  
17 Stipulation for Leave to File the Second Amended Complaint, which remains pending with the  
18 Court. Plaintiffs will file the Second Amended Complaint immediately upon entry of the  
19 Court’s order granting leave to amend.

20 13. Plaintiffs assert that Defendants failed to maintain accurate records of the hours  
21 actually worked by Settlement Class members, resulting in unpaid wages. Specifically,  
22 Defendants required Plaintiffs and other non-exempt employees to undergo daily COVID-19  
23 related temperature checks and pass through security checkpoints prior to being permitted to  
24 enter Defendants’ facility to clock in at the start of their work shift. However, Defendants failed  
25 to pay Plaintiffs and other non-exempt employees for this pre-shift time.

26 14. In response, Defendants maintain their timekeeping policies/practices comply  
27 with California law, and that they properly compensate Settlement Class members for all hours  
28 worked. Further, Defendants assert that this claim is not suitable for class treatment, as it

1 requires individualized inquiries into whether any employee underwent a security screening or  
2 COVID-19 related temperature check at all, which Defendants contend was not required at all  
3 of its six California facilities, and exactly how much time each employee purportedly spent  
4 while off-the-clock on any given day, which is increasingly difficult since Defendants assert  
5 temperature checks took extremely minimal periods of time and off-the-clock time is inherently  
6 not recorded, resulting in an unmanageable series of mini-trials.

7         15. Plaintiffs assert that Defendants miscalculated Plaintiffs' and other non-exempt  
8 employees' regular rates of pay for overtime purposes by paying Plaintiffs and other non-  
9 exempt employees incentive bonus payments and hourly shift premium pay for working certain  
10 shifts, but failing to include the value of this earned incentive pay when calculating the regular  
11 rate of pay. In response, Defendants argue that any bonus payments made were purely  
12 discretionary, and therefore are properly excluded from the regular rate of pay. As such,  
13 Defendants contend that Plaintiffs' claim fails on the merits. Further, Defendants assert that this  
14 claim is unmanageable, as it requires individualized inquiries into whether each bonus payment  
15 made by Defendants was discretionary or non-discretionary, resulting in an unmanageable  
16 series of mini-trials.

17         16. Plaintiffs further assert that Defendants failed to provide the Settlement Class  
18 members with all timely duty-free, uninterrupted 30-minute meal periods to which they were  
19 entitled. Specifically, Plaintiffs assert Defendants maintained an unlawful written meal period  
20 policy that fails to provide for the timing or duration of meal periods, and in practice, failed to  
21 provide at least 30 minutes of "net rest" during meal periods in an area suitable for resting as  
22 required by Section 12(B) of the Wage Order. Instead, Defendants instructed their non-exempt  
23 employees to clock-in after *exactly* 30 minutes for a meal period, which did not account for  
24 travel time between the timeclocks and break rooms, resulting in short meal periods. Further,  
25 Plaintiffs assert that Defendants paid meal period premiums at the employees' respective base  
26 rates of pay, rather than at the regular rate of pay.

27         17. In response, Defendants contend it maintained lawful meal period  
28 policies/practices throughout the Class Period. Defendants assert that Plaintiffs' "net rest"

theory will fail on the merits because employees are not required to limit their meal periods to exactly 30 minutes in length, and timeclocks are located within 15-20 feet of all breakrooms at each of Defendants' facilities, meaning that employees are factually able to spend a full 30 minutes in the breakroom between clocking out and clocking in. Defendants also contends that Plaintiffs' meal period claim is not suited for class certification as individual inquiries would be required to assess the amount of time it took each employee to walk between Defendants' timeclocks and breakrooms, which differed at each facility, for every meal period taken, resulting in an unmanageable series of mini-trials.

18. Plaintiffs further allege that Defendants failed to authorize and permit the Settlement Class members to take all lawful rest periods to which they were entitled. Specifically, Plaintiffs assert that Defendants failed to authorize and permit a "net" rest period of 10-minutes beginning when the employee reaches a rest area away from his or her workstation, instead only providing exactly 10 minute rest periods beginning the moment an employee leaves their workstation and ending the moment the employee returns to their workstation, without accounting for the time required for the employee to walk to and from the designated breakroom from their workstation, including passing through security checkpoints. Plaintiffs also allege that Defendants failed to pay any rest period premiums during the relevant time period.

19. Defendants maintain they authorized and permitted the Settlement Class members to take all lawful rest periods to which they are entitled. Defendants assert that employees are not required to go to the breakrooms for rest periods, and are authorized and permitted to take 10-minute rest periods wherever they choose. Further, Defendants assert that employees at certain of its facilities did not start their rest periods until arriving at the breakrooms, and therefore Plaintiffs claim will fail on the merits. Defendants also assert that this claim is unmanageable and not suited for class certification, as it requires individualized inquiries into whether each employee was authorized and permitted to take a lawful rest period and on which days, which Defendants argue Plaintiff will be unable to substantiate with any

common, documentary evidence, as rest periods are not required to be recorded, resulting in an unmanageable series of mini-trials.

20. Plaintiffs further allege that Defendants required Plaintiffs and other non-exempt employees to purchase and wear protective masks as part of Defendants' COVID-19 policy, but failed to reimburse the Settlement Class members for these necessary business expenses. In response, Defendants argue it never required employees to purchase their own protective masks, and instead Defendants provided masks for the employees to use as part of their COVID-19 safety policies/practices. Further, Defendants maintain that this claim is not suited for class certification, as only one of its facilities required masks to be worn to begin with, and individual issues would predominate to determine which, if any, individual supervisors at that facility told employees they needed to buy their own masks and which employees, if any, chose not to use the masks provided by Defendants, resulting in an unmanageable series of mini-trials.

21. As a result of Defendants' alleged failure to pay all wages, including overtime and minimum wages, and meal and rest period premiums, Plaintiffs assert that Defendants also failed to maintain accurate payroll records, timely pay all wages during employment, issue accurate and itemized wage statements, and failed to timely pay all final wages at the time of separation. Further, Plaintiffs contend that Defendants issued facially non-compliant wage statements in violation of Labor Code section 226(a), which failed to include all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. As a result of these alleged Labor Code violations, as well as Defendants' alleged failures to pay all sick pay wages at the regular rate of pay or to minimize excessive heat in the working environment, Plaintiffs also seek PAGA civil penalties on behalf of all aggrieved employees.

22. In response, Defendants argue that Plaintiffs' underlying claims will fail and, as a result, these derivative claims will also fail. Defendants also maintain that Plaintiffs cannot show that the wage statement violations were "knowing and intentional," or that the putative class members "suffer[ed] injury" as a result of the alleged violations, as required by Labor Code section 226(e) for the imposition of wage statement penalties. Moreover, Defendants

1 maintain that their good faith defenses to Plaintiffs’ underlying claims would preclude the  
2 recovery of waiting time penalties, which are only available for the “willful” failure to pay  
3 wages, and that this Court would exercise its discretion to substantially reduce any PAGA  
4 penalties awarded.

5         23. The Parties engaged in significant formal written and deposition discovery prior  
6 to attending mediation. Through formal discovery, Defendants provided Plaintiffs with  
7 timekeeping and payroll records for all putative class members spanning the putative class  
8 period, as well as policy documents and employee handbooks. Plaintiffs also took the deposition  
9 of Defendants’ corporate witness under Federal Rule of Civil Procedure 30(b)(6), and  
10 conducted a site inspection at one of Defendants’ facilities. Plaintiffs then retained an expert  
11 with a Ph.D. in economics to analyze the produced data and create a class-wide exposure model  
12 for the claims at issue. On November 27, 2023, the Parties participated in a mediation session  
13 with Steven G. Mehta, Esq., an experienced and respected wage and hour mediator, during  
14 which the Parties exchanged divergent views on Defendants’ liability and exposure valuations,  
15 their legal positions, and the likelihood of certification of Plaintiffs’ claims. Although the  
16 Parties adjourned mediation without reaching a settlement, they continued their settlement  
17 negotiations through Mr. Mehta throughout the following weeks. After additional weeks of  
18 continued negotiations, Mr. Mehta made a mediator’s proposal that the Parties ultimately  
19 accepted. Over the following months, the Parties finalized the terms of the proposed Settlement  
20 now before the Court for preliminary approval.

21         24. Attached hereto as **Exhibit A** is a true and correct copy of the parties’  
22 Stipulation of Settlement. Attached hereto as **Exhibit B** are true and correct copies of the  
23 Notice of Class Action Settlement (“Class Notice”) and Notice of Individual Settlement  
24 Payment (collectively, the “Notice Packet”).

25         25. If the Court preliminarily approves this settlement, Defendants will pay a  
26 Maximum Settlement Amount (“MSA”) of \$2,950,000.00. This Settlement is non-reversionary,  
27 and Settlement Class members will automatically receive their Individual Settlement Payments  
28 unless they affirmatively opt-out. After deducting amounts for Court-approved attorneys’ fees

1 and costs, Plaintiffs' Class Representative Enhancement Payments, settlement administration  
2 costs, and the LWDA's share of PAGA penalties, the Settlement provides for an estimated NSA  
3 of no less than \$1,753,676.67.

4         26. Settlement Class members can be easily identified using Defendant's  
5 employment and payroll records. According to Defendants' records, there are approximately  
6 1,934 putative Settlement Class members, rendering it impracticable to bring all Settlement  
7 Class members before the Court. Based on the estimated NSA, average Individual Settlement  
8 Payments are projected to be approximately \$906.76, with the lowest possible estimated  
9 Individual Settlement Payment of \$14.52 (in the event a Settlement Class member worked only  
10 one workweek during the Class Period) and the highest possible estimated Individual Settlement  
11 Payment of \$3,905.88 (in the event a Settlement Class member performed work in every  
12 workweek during the Class Period).

13         27. At the time of seeking final settlement approval, Plaintiffs will apply for Class  
14 Representative Enhancement Payments in the amount of \$5,000 each for their service to the  
15 Settlement Class and general release of all claims. Plaintiffs' requested class representative  
16 Enhancement Payments are intended to recognize the significant time and effort that Plaintiffs  
17 expended on behalf of the Settlement Class, including searching for relevant documents for use  
18 in the lawsuit, providing factual information to their attorneys, holding various phone calls with  
19 their attorneys to discuss the claims in the lawsuit and Defendants' policies and practices,  
20 assisting their attorneys to help prepare for mediation, making themselves available during  
21 mediation to assist and answer factual questions posed by the mediator, reviewing and  
22 providing input regarding the settlement in this case, and otherwise assisted their attorneys in  
23 moving this case towards resolution, the significant risks Plaintiffs undertook by serving as the  
24 named plaintiffs, and the fact that they agreed to a general release of all claims subject to a  
25 waiver of Civil Code § 1542.

26         28. Class Counsel will also apply for an attorneys' fee award of up to one third of the  
27 MSA (currently estimated at \$983,333.33), and up to \$100,000.00 in reimbursement for actual  
28 litigation costs. Plaintiffs submit that the requested fee is fair compensation for undertaking

1 complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. Class  
2 Counsel has incurred substantial attorneys' fees conducting pre-filing investigation, analyzing  
3 Plaintiffs' claims, conducting legal research and analysis, engaging in substantial formal written  
4 and deposition discovery, reviewing class documents and data produced by Defendants,  
5 extensively reviewing and evaluating the produced timekeeping and payroll records with the  
6 assistance of a retained expert to build a comprehensive damages model, preparing for and  
7 attending mediation, negotiating and drafting the Memorandum of Understanding, long-form  
8 Settlement Agreement, and Notice Packet documents, preparing this motion for preliminary  
9 approval, and otherwise litigating the case. Class Counsel will also expend future attorney time  
10 attending the hearing on this Motion, overseeing the Notice process, drafting the Final Approval  
11 Motion and supporting documents, attending the Final Approval hearing, and completing other  
12 tasks, such as fielding questions from Settlement Class members.

13         29. Class Counsel carefully vetted the claims at issue, reviewed Settlement Class  
14 member timekeeping and payroll data spanning the entire Class Period, reviewed all relevant  
15 policy documents, engaged in substantial formal written discovery, took the deposition of  
16 Defendants' corporate witness, and created a comprehensive damages model for Defendants'  
17 liability.

18         30. Although the Parties engaged in substantial formal discovery and information  
19 exchange prior to mediation, the Parties had not yet completed their discovery efforts, including  
20 additional scheduled site inspections and additional corporate witness depositions that had not  
21 yet been completed at the time the Parties reached the Settlement. Absent settlement, the Parties  
22 will be required to expend substantial time and resources conducting additional formal written  
23 and deposition discovery. Moreover, Plaintiffs have not yet filed for class certification, and thus,  
24 absent settlement, the Parties would face the prospect of appeals in the wake of a disputed class  
25 certification ruling and/or an adverse summary judgment ruling. Even if Plaintiffs succeeded in  
26 certifying one or more classes, the Parties would incur considerably more attorneys' fees and  
27 costs through a possible decertification motion, trial, and possible appeal.

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1           31.     At the time of the proposed Settlement, Plaintiffs had not filed their motion for  
2 class certification. Had the Court certified any claims, Plaintiffs anticipated that Defendants  
3 would seek decertification. Defendants also contend that a substantial portion of the putative  
4 class members had entered into arbitration agreements with class-action waivers, and there was  
5 also a risk that Defendant would engage in a campaign pursuant to *Chindarah v. Pick Up Stix,*  
6 *Inc.*, (2009) 171 Cal.App.4th 796, that could either affect Plaintiffs' ability to maintain the  
7 numerosity required to proceed as a class action, or significantly reduce the size of the putative  
8 class for a fraction of what Settlement Class members are receiving through this Settlement.  
9 Therefore, absent the Settlement, there was a serious risk that Plaintiffs would be unable to  
10 move forward on a class-wide basis.

11           32.     Plaintiffs' data analysis determined that Settlement Class members worked an  
12 aggregate total of 45,855 shifts during the relevant time period in which Defendants  
13 implemented a COVID-19 temperature check policy. Plaintiffs estimate that Settlement Class  
14 members were required to spend approximately 3 minutes per shift undergoing COVID-19  
15 related temperature checks and security checks before being able to clock in for their scheduled  
16 shifts. Accordingly, Plaintiffs calculated Defendants' maximum potential exposure for this  
17 claim at approximately \$43,676 (45,855 shifts \* 3 minutes per shift \* \$19.05 average rate of  
18 pay).

19           33.     Defendants, however, maintain that they properly compensated Settlement Class  
20 members for all time worked, and assert that any time spent on temperature checks was  
21 substantially less than 3 minutes. Defendants also assert this claim is unmanageable, as it  
22 requires individualized inquiries into whether any employee underwent a security screening or  
23 COVID-19 related temperature check and exactly how much time each employee purportedly  
24 spent while off-the-clock on any given day. Plaintiffs therefore discounted the maximum  
25 exposure by 60% for the risk of non-certification, and by an additional 25% for risk of losing on  
26 the merits, to arrive at a reasonable exposure of \$13,103.

27           34.     Plaintiffs' expert's data analysis determined that Settlement Class members were  
28 underpaid approximately \$49,199 as a result of Defendants' failure to properly include the value

1 of non-discretionary bonus payments and shift premiums when calculating the employees'  
2 respective regular rates of pay for overtime purposes. Defendants, however, argues that the  
3 bonuses in question were discretionary, and therefore did not need to be included in the regular  
4 rate of pay. Defendants also argue that this claim is unmanageable, as it requires individualized  
5 inquiries into whether each bonus payment was discretionary or non-discretionary. Plaintiff  
6 therefore discounted the maximum exposure by 30% for the risk of non-certification, and by an  
7 additionally 25% for the risk of losing on the merits, to arrive at a reasonable exposure of  
8 approximately \$25,829.

9         35. Plaintiffs' expert's data analysis determined that Settlement Class members  
10 worked an aggregate total of 40,209 shifts in excess of 5.0 hours during the Class Period that  
11 contained a facially unlawful meal period, whether late, short or missed. Further, Plaintiffs'  
12 expert's data analysis also found that Defendants only paid 5,948 meal period premium  
13 payments during the putative class period. Accordingly, Plaintiffs calculated Defendants'  
14 liability on this claim at \$652,672 ((40,209 meal period violations – 5,948 premiums paid) \*  
15 \$19.05 average premium).

16         36. Defendants assert, however, that they maintained lawful meal period  
17 policies/practices at all times during the Class Period, including paying meal period premiums  
18 to employees when meal periods were not provided. Defendants further assert that Plaintiffs'  
19 meal period claim is not suited for class certification as individual inquiries would be required  
20 to assess the amount of time it took each employee to walk between Defendants' timeclocks and  
21 breakrooms, which differed at each facility, for every meal period taken, resulting in an  
22 unmanageable series of mini-trials. Given these defenses, Plaintiffs discounted the maximum  
23 exposure by 45% for the risk of non-certification, and by an additional 30% for risk of losing on  
24 the merits, to arrive at a reasonable exposure of \$251,279.

25         37. Plaintiffs' expert's data analysis determined that non-exempt employees worked  
26 an aggregate total of 585,419 shifts in excess of 3.5 hours during the Class Period. Plaintiffs  
27 attribute a rest period violation for all work shifts in excess of 3.5 hours due to Defendants'  
28 unlawful rest period policy/practice that failed to authorize and permit 10-minutes "net rest".

1 Accordingly, Plaintiffs calculated Defendants' maximum potential exposure on this claim at  
2 \$11,152,231 (585,419 rest period violations \* \$19.05 average premium).

3 38. However, Defendants argue they have always authorized and permitted rest  
4 periods in accordance with California law, and dispute Plaintiffs' factual allegation that  
5 employees' rest periods did not begin once the employee arrived at the breakroom. Further,  
6 Defendants assert that this claim is not amenable to class certification given the individual  
7 inquiries required to determine whether and why each employee missed a rest period on any  
8 given shift, whether the employee chose to take a rest period at an area other than the provided  
9 breakroom, and for how long each and every rest period lasted for every employee on any given  
10 day throughout the entire Class Period, particularly given that rest periods are not recorded.  
11 Given these defenses, Plaintiffs discounted the maximum exposure by 60% for the risk of non-  
12 certification, and by an additional 65% for risk of losing on the merits, to arrive at an estimated  
13 exposure of \$1,561,312.

14 39. Plaintiffs estimate that they and the putative class members spent approximately  
15 \$15 each to purchase PPE safety equipment for work purposes. Therefore, Plaintiffs calculated  
16 Defendants' maximum potential exposure on this claim at \$6,090 (\$15 in expenses \* 406  
17 affected employees). Defendants maintain that, at all relevant times, it never required its  
18 employees to purchase masks or other COVID-19 PPE safety equipment, and instead provided  
19 masks for the employees. Also, Defendants contend this claim is not certifiable since it would  
20 require a series of mini-trials to determine which, if any, individual employees thought they  
21 needed to buy their own masks and which employees, if any, chose not to use the masks  
22 provided by Defendants. Therefore, Plaintiffs discounted the maximum potential exposure by  
23 45% for the risk of non-certification and 25% for the risk of being unsuccessful on the merits, to  
24 arrive at an estimated exposure of \$2,512.

25 40. According to Plaintiffs' expert's data analysis, approximately 1,138 Settlement  
26 Class members are eligible for wage statement penalties, and a total of 54,022 wage statements  
27 were issued during the relevant period. Since statutory wage statement penalties are capped at  
28 \$4,000 per employee, Plaintiffs calculated Defendants' maximum possible wage statement

1 exposure as approximately \$4,552,000. However, Defendants raised numerous defenses,  
2 including that the alleged violations, if any, were not “knowing and intentional,” and that  
3 Plaintiffs could not show that the Settlement Class members “suffer[ed] injury” as a result of  
4 any alleged violations. Defendants further argued that Plaintiffs’ underlying claims would fail,  
5 and, therefore, their derivative wage statement claim would also fail. Therefore, Plaintiffs  
6 discounted the maximum exposure by 45% for the risk of non-certification of the underlying  
7 claims and 80% for a risk of being unsuccessful on the merits, including failing to prove the  
8 violations were “knowing and intentional,” that the Settlement Class members “suffer[ed]  
9 injury,” or that the Court would find that Defendants had a reasonable, good faith belief that of  
10 compliance with wage and hour laws precluding the imposition of wage statement penalties, for  
11 an estimated reasonable recovery of \$500,720.

12 41. Plaintiffs’ expert’s data analysis determined that 1,262 Settlement Class  
13 members separated their employment during the relevant period applicable to this claim and  
14 were entitled to recover waiting time penalties. Therefore, Plaintiffs calculated Defendants’  
15 maximum potential exposure on this claim at \$5,769,864 (1,262 former employees \* average  
16 waiting time penalty of \$4,572 (\$19.05 average hourly rate \* 8 hours \* 30 days)). Defendants  
17 maintain that waiting time penalties are not appropriate because Plaintiffs’ claims fail on the  
18 merits, and given their good-faith defenses, Plaintiffs cannot show that any failure by  
19 Defendants to pay all final wages was willful. Plaintiffs discounted this claim by 45% for the  
20 risk of non-certification and by an additional 80% for risk of being unsuccessful on the merits,  
21 failing to establish willfulness, or that the Court would find a reasonable, good faith dispute  
22 over whether any wages are due precluding the imposition of waiting time penalties, for an  
23 estimated recovery of \$634,685.

24 42. Plaintiffs allege that PAGA civil penalties would be recoverable for each pay  
25 period in which they could prove an underlying Labor Code violation. According to Plaintiffs’  
26 expert’s data analysis, the Settlement Class members worked a combined total of 54,022 pay  
27 periods during the PAGA liability period in which at least one of Plaintiffs’ alleged Labor Code  
28 violations occurred. Plaintiffs therefore calculate Defendants’ maximum PAGA exposure at

1 \$5,402,200 (54,022 pay periods \* \$100 per violation). However, these penalties are exclusively  
2 derivative of the underlying violations that Defendants vigorously dispute, both as to  
3 certification and the merits. Plaintiffs also recognize that the Court has discretion to  
4 substantially reduce any award of PAGA penalties. Therefore, Plaintiffs discounted the  
5 maximum figure by 25% for the risk of losing on the merits of all underlying claims and by  
6 90% for the likely possibility that this Court would reduce the PAGA penalties awarded, to  
7 arrive at an estimated exposure of \$405,165.

8 43. Using these estimated figures, Plaintiffs estimated that the potential reasonable  
9 recovery for the Settlement Class would be approximately \$3,394,606. Thus, the proposed  
10 recovery to the Settlement Class of \$2,950,000 represents approximately 86.90% of Plaintiffs'  
11 reasonably forecasted class-wide recovery, which is well within the range approved by courts as  
12 being fair, reasonable and adequate, while also avoiding further expense and risk of proceeding  
13 towards class certification and trial.

14 44. Concurrently with the filing of this motion, Plaintiffs provided notice of the  
15 proposed Settlement, as well as copies of the Motion for Preliminary Approval and all papers  
16 filed in support hereof, to the LWDA. Attached hereto as **Exhibit E** are true and correct copies  
17 of Plaintiffs' Settlement submission and the LWDA's confirmation of receipt.

18 45. I confirm that I do not have any interest or involvement in, and am not affiliated  
19 with, the proposed settlement administrator, Apex Class Action Administration, or the proposed  
20 *cy pres* recipient, Working Wardrobes.

21 I declare under penalty of perjury under the laws of the United States and the state of  
22 California that the foregoing is true and correct. Executed on August 19, 2024, at El Segundo,  
23 California.

24   
25 Matthew K. Moen  
26  
27  
28

# **EXHIBIT A**

## STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Settlement Agreement” or “Settlement”) is reached by and between Plaintiffs Ruben Hernandez, Patrick Joseph Neims, Arturo Ramirez, and Miguel Moreno (“Plaintiffs” or “Class Representatives”), as individuals and on behalf of all members of the Settlement Class (defined below), on one hand, and Defendants Neovia Logistics Services, LLC and Neovia Logistics Distribution, LP (collectively, “Defendants”), on the other hand. Plaintiffs and Defendants are referred to herein collectively as the “Parties.” Plaintiffs and the Settlement Class are represented by Paul K. Haines, Fletcher W. Schmidt, and Matthew K. Moen of Haines Law Group, APC, Kashif Haque and Jessica L. Campbell of Aegis Law Firm, PC, and Marcus Bradley of Bradley Grombacher, LLP (collectively, “Class Counsel”). Defendants are represented by Tracie Childs and Keenan P. O’Connor of Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

On October 28, 2022, Plaintiff Patrick Joseph Neims filed a class action complaint in the Superior Court of California, for the County of San Bernardino, titled *Patrick Joseph Neims v. Neovia Logistics Distribution, LP, et al.*, Case No. CIVSB2224879 (the “*Neims Action*”), alleging the following: (i) failure to pay minimum wages; (ii) failure to pay overtime wages; (iii) failure to provide meal periods; (iv) failure to permit rest breaks; (v) failure to reimburse business expenses; (vi) failure to provide accurate itemized wage statements; (vii) failure to pay wages timely during employment; (viii) failure to pay all wages due upon separation from employment; (ix) violation of Business and Professions Code §§17200, *et seq.*; and (x) enforcement of Labor Code §2698 *et seq.* (“PAGA”). On October 13, 2023, Defendants removed the *Neims Action* to United States District Court for the Central District of California, Case No. 5:23-cv-00716-PA-SHKx.

On March 2, 2023, Plaintiff Ruben Hernandez filed a class action complaint in the Superior Court of California, for the County of San Bernardino, titled *Ruben Hernandez v. Neovia Logistics Services, LLC, et al.*, Case No. CIVSB2305867 (the “*Action*”), alleging the following: (i) failure to pay all minimum wages; (ii) failure to pay all overtime wages; (iii) meal period violations; (iv) failure to reimburse necessary business expenses; (v) wage statement penalties; (vi) waiting time penalties; and (vii) Unfair Competition. On May 23, 2023, Plaintiff Hernandez filed a First Amended Complaint, adding an eighth cause of action for civil penalties under the Private Attorneys General Act (Labor Code §§2698, *et seq.*), based on the same underlying Labor Code violations. On June 23, 2023, Defendants removed the *Action* to United States District Court for the Central District of California, Case No. 5:23-cv-01221-PA-SHK, and on January 4, 2024, the *Action* was remanded back to Superior Court of California, County of San Bernardino by and through the stipulation for settlement of the Parties to that *Action*.

On August 17, 2023, Plaintiff Arturo Ramirez filed a class action complaint in the Superior Court of California, for the County of San Bernardino, titled *Arturo Ramirez v. Neovia Logistics Distribution, LP, et al.*, Case No. CIVSB2320935 (the “*Ramirez Action*”), alleging the following: (i) failure to pay wages; (ii) failure to provide meal periods; (iii) failure to permit rest breaks; (iv) failure to reimburse business expenses; (v) failure to provide accurate itemized wage statements; (vi) failure to pay all wages due upon separation of employment; and (vii) violation of Business & Professions Code §§17200, *et seq.* On October 13, 2023, Defendants removed the *Ramirez Action* to United States District Court for the Central District of California, Case No. 5:23-cv-02104-PA-SHK.

On September 21, 2023, Plaintiff Miguel Moreno filed a class action complaint in the Superior Court of California, for the County of San Bernardino, titled *Miguel Moreno v. Neovia Logistics Distribution, LP, et al.*, Case No. CIVSB2323010 (the “Moreno Action”), alleging the following: (i) failure to pay overtime wages in violation of *Labor Code* §§510 and 1198; (ii) failure to pay all wages and minimum wages in violation of *Labor Code* §§221, 233, 1182, 1194, 1197 and 1198; (iii) failure to provide to provide compliant meal periods in violation of *Labor Code* §§ 226.7, 512, 516 and 1198; (iv) failure to provide compliant rest periods in violation of *Labor Code* §§226.7, 516 and 1198; (v) failure to furnish accurate, itemized wage statements in violation of *Labor Code* §226(a) and failure to maintain accurate records in violation of *Labor Code* § 1174.5; (vi) failure to timely pay wages during employment in violation of *Labor Code* § 204; (vii) failure to pay all wages owed at termination in violation of *Labor Code* §§201-203; (viii) failure to minimize excessive heat in violation of Wage Order 4-2001, § 15, and to provide compliant recovery periods in violation of *Labor Code* §226.7; and (ix) violation of California *Business & Professions Code* §§ 17200, *et seq.* On December 1, 2023, Plaintiff Miguel Moreno filed a Representative Action Complaint under PAGA in the Superior Court of California, for the County of San Bernardino, titled *Miguel Moreno vs. Neovia Logistics Distribution, LP, et al.*, Case No. CIV SB 2328743. Defendants filed Answers to the lawsuits generally denying all allegations of wrongdoing and asserting affirmative defenses.

As a material term of this Settlement, the Parties agree that Plaintiff Ruben Hernandez will file a Second Amended Complaint (“SAC”) in the Action, adding Plaintiffs Patrick Joseph Neims, Arturo Ramirez, and Miguel Moreno as named plaintiffs in the Action, consolidating all causes of action and factual allegations in the *Neims Action*, *Ramirez Action*, and *Moreno Action* into the Action, and consolidating all claims under the PAGA based on the facts alleged in Plaintiff Hernandez’s March 2, 2023 PAGA Notice to the LWDA and November 2, 2023 Supplemental Notice, and Plaintiff Moreno’s September 20, 2023 PAGA Notice to the LWDA, into the Action. Following the filing of the SAC, Plaintiffs Neims, Ramirez and Moreno will dismiss their respective separately filed actions, without prejudice.

Given the uncertainty of litigation, Plaintiffs and Defendants wish to settle both individually and on behalf of the Settlement Class and Allegedly Aggrieved Employees Accordingly, the Parties agree as follows:

**1. Settlement Class and Allegedly Aggrieved Employees Defined.**

- A. Settlement Class: For the purposes of this Settlement Agreement only, Plaintiffs and Defendants stipulate to the certification of the following Settlement Class:

All current and former non-exempt employees who worked for either and/or both Defendants in California between October 28, 2018 and December 27, 2023 (the “Class Period”).

The Parties agree that certification for purposes of settlement is not an admission that class certification is proper under Section 382 of the Code of Civil Procedure. If for any reason this Settlement Agreement is not approved or is terminated, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any

claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement.

- B. Allegedly Aggrieved Employees: For purposes of this Settlement Agreement only, Plaintiffs and Defendants stipulate to the following:

All current and former non-exempt employees who worked for either and/or both Defendants in California between October 28, 2021 and December 27, 2023 (the “PAGA Period”).

2. **Release by Settlement Class Members and Plaintiffs.** Plaintiffs and each Settlement Class member who does not timely opt-out of the settlement, will fully and finally release and discharge Defendants and all of their present and former parent companies, commonly owned or controlled affiliates, subsidiaries, divisions, related or affiliated companies, shareholders, officers, directors, employees, agents, attorney, insurers, successors and assigns (the “Released Parties”) as follows:

- A. Upon the full funding of the Maximum Settlement Amount, all Settlement Class members who do not timely opt out shall fully and finally release and discharge the Released Parties from liability for all claims under state, federal and local law, whether statutory, common law or administrative law, based on the factual allegations set forth in the operative complaints in the Action, Plaintiff Hernandez’s March 2, 2023 PAGA Notice to the LWDA, Plaintiff Hernandez’s November 2, 2023 Supplemental Notice to the LWDA, Plaintiff Moreno’s September 20, 2023 Notice to the LWDA, or which could have been pled in the operative complaints in the Action, the operative complaints in the PAGA Action, based on the factual allegations therein, including but not limited to claims for minimum wage violations, overtime wage violations, sick pay wages, meal period violations, rest period violations, violations of Labor Code sections 2802 and 2804, waiting time penalties, inaccurate payroll records, wage statement violations, excessive heat and failure to provide compliant recovery period violations, violations of the California Business and Professions Code section 17200, *et seq.*, and alleged violations of PAGA, that arose during the Class Period (“Released Claims”). For avoidance of doubt, this release applies to the Class Period.
- B. It is understood and acknowledged that all individuals who were employed by either or both Defendants in California and classified as a non-exempt employee at any time during the time period October 28, 2021 to December 27, 2023 (the “Allegedly Aggrieved Employees”) will be issued a check for their share of the PAGA payment, regardless of whether they validly opt-out of the class-action portion of the Settlement. Upon the full funding of the Maximum Settlement Amount, all Allegedly Aggrieved Employees and the State of California shall be deemed to have released and discharged the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged in the operative complaints in the Action, Plaintiff Hernandez’s March 2, 2023 PAGA Notice to the LWDA, Plaintiff Hernandez’s November 2, 2023 Supplemental Notice to the LWDA and Plaintiff Moreno’s September 20, 2023 Notice to the

LWDA, or which could have been pled in the operative complaints in the Action based on the factual allegations therein as set forth above (the “PAGA Released Claims”). For avoidance of doubt, this release applies to the PAGA Period.

- C. In light of Plaintiffs’ Class Representative Enhancement Payments, Plaintiffs agree to release, as individuals and in addition to the Released Claims described above, all claims, whether known or unknown, under federal law or state law and or any local or municipal law, against Defendants. Plaintiffs understand that this release includes unknown claims and that Plaintiffs are, as a result, waiving all rights and benefits afforded by California Civil Code Section 1542, which provides as follows:

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

- D. Nothing contained herein shall constitute a release of any rights or claims that cannot be waived as a matter of law (including but not limited to claims arising under workers’ compensation laws). Nor shall anything contained herein be construed to exclude the filing of an administrative charge or complaint with the Equal Employment Opportunity Commission or National Labor Relations Board, or participation in an administrative investigation or proceeding.
- E. The Settlement shall become effective on the date upon which the Court signs an Order granting final approval of the Settlement Agreement (“Effective Date”).

3. **Maximum Settlement Amount.** As consideration, Defendants agree to pay a non-reversionary “Maximum Settlement Amount” of Two Million Nine Hundred Fifty Thousand Dollars and Zero Cents (\$2,950,000.00) in full and complete settlement of the Action, as follows:

- A. The Parties have agreed to engage Apex Class Action Administration as the “Settlement Administrator” to administer this Settlement.
- B. Defendants shall pay the Maximum Settlement Amount to the Settlement Administrator no later than thirty (30) calendar days after the Effective Date.
- C. This is a non-reversionary settlement. The Maximum Settlement Amount includes:
- (1) All payments (including interest) to the Settlement Class members;
  - (2) All costs of the Settlement Administrator which are not to exceed \$17,990.00, subject to Court approval;

- (3) Up to \$5,000.00 each (\$20,000.00 total) for Plaintiffs' Class Representative Enhancement Payments in recognition for Plaintiffs' contributions to the Action and service to the Settlement Class, subject to Court approval;
  - (4) Up to one-third (1/3) of the Maximum Settlement Amount in Class Counsel's attorneys' fees (currently estimated at \$983,333.33), plus actual costs and expenses incurred by Class Counsel related to the Action as supported by declaration, which are currently estimated to be no greater than \$100,000.00, subject to Court approval. These amounts will cover any and all work performed and any and all costs incurred by Class Counsel in connection with the litigation in the Action, including without limitation, all work performed and costs incurred to date, and all work to be performed and all costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. Class Counsel shall be solely and legally responsible for correctly characterizing this compensation for tax purposes and for paying any taxes on the amounts received; and
  - (5) One Hundred Thousand Dollars and Zero Cents (\$100,000.00) of the Maximum Settlement Amount has been set aside by the Parties as PAGA civil penalties, subject to Court approval. Per Labor Code § 2699(i), 75% of such penalties, or \$75,000.00, will be payable to the LWDA, and the remaining 25%, or \$25,000.00, will be payable to the Allegedly Aggrieved Employees as the "PAGA Amount," as described below.
- D. Defendants will not oppose the reasonableness of these requests. In the event that the Court reduces or does not approve the requested Attorneys' Fees and Costs to Class Counsel, neither Plaintiff nor Class Counsel shall have the right to revoke this Agreement, and it will remain binding. Any reduction by the Court of these requests will revert to the Net Settlement Amount for distribution to the Settlement Class members who do not opt-out.
- E. **Employer Payroll Taxes.** The Maximum Settlement Amount does not include the employer's share of payroll taxes, which shall be paid by Defendants separate and apart from, and in addition to, the Maximum Settlement Amount.
- F. **Escalator Clause.** The Parties agree based on the data that there are an estimated 120,705 aggregate workweeks worked by the approximately 1,934 Settlement Class Members at the time of mediation. If the actual number of aggregate workweeks worked by the Settlement Class Members exceeds this figure by more than 10% (i.e., if there are 132,776 or more aggregate workweeks worked by the Settlement Class Members), then at Defendants' option, either the: (a) Maximum Settlement Amount shall increase by the actual amount over the ten percent (10%) increase (i.e., if the number of Workweeks increases by 11%, the Gross Settlement Amount will increase by 11%); or (b) Class Period shall end as of the date the Workweeks within the Class Period reach 132,776 Workweeks.

4. **Payments to the Settlement Class.** Settlement Class members are not required to submit a claim form to receive a payment (“Individual Settlement Payment”) from the Settlement. Individual Settlement Payments will be determined and paid as follows:
- A. The Settlement Administrator shall first deduct from the Maximum Settlement Amount the amounts approved by the Court for Class Counsel’s attorneys’ fees, Class Counsel’s costs and expenses, the Class Representative Enhancement Payments, the Settlement Administrator’s fees and expenses for administration, and the amount of PAGA civil penalties designated as payable to the LWDA. The remaining amount shall be known as the “Net Settlement Amount.”
  - B. From the Net Settlement Amount, the Settlement Administrator will calculate each Settlement Class member’s Individual Settlement Payment based on the following formula:
    - i. PAGA Amount: The \$25,000.00 payable to the Allegedly Aggrieved Employees as their 25% portion of the PAGA civil penalties shall be designated as the “PAGA Amount.” Each Allegedly Aggrieved Employee, regardless of whether they timely submit a Request for Exclusion, shall receive a portion of the PAGA Amount proportionate to the number of workweeks that he or she worked during the PAGA Period compared to the aggregate number of workweeks worked by all Allegedly Aggrieved Employees during the PAGA Period.
    - ii. Wage Statement Amount: Fifteen percent (15%) of the Net Settlement Amount shall be designated as the “Wage Statement Amount.” Each participating Settlement Class member who was employed by Defendants at any time between October 28, 2021 and the end of the Class Period, shall receive a portion of the Wage Statement Amount proportionate to the number of workweeks that he or she worked during the aforementioned time period, by multiplying the Wage Statement Amount by a fraction, the numerator of which is the Settlement Class member’s total workweeks worked during the aforementioned time period, and the denominator of which is the aggregate number of workweeks worked by all participating Settlement Class members during the aforementioned time period.
    - iii. Waiting Time Amount: Twenty percent (20%) of the Net Settlement Amount shall be designated as the “Waiting Time Amount.” The Waiting Time Amount shall be distributed in equal, pro-rata shares to each participating Settlement Class member who separated their employment from Defendants at any time between October 28, 2019 and the end of the Class Period.
    - iv. The remainder of the Net Settlement Amount will be distributed to each participating Settlement Class member based on their proportionate number of workweeks worked during the Class Period, by multiplying the remaining Net Settlement Amount by a fraction, the numerator of which is

the Settlement Class member's total workweeks worked during the Class Period, and the denominator of which is the total number of workweeks worked by all participating Settlement Class members during the Class Period.

- C. Within ten (10) business days following the full funding of the Maximum Settlement Amount with the Settlement Administrator, the Settlement Administrator will calculate each Settlement Class member's Individual Settlement Payment, and will prepare and mail the Individual Settlement Payments to the participating Settlement Class members.
- D. Each Individual Settlement Payment shall be allocated as 20% wages (subject to applicable withholdings), and 80% as penalties and interest (not subject to withholdings). The portion of the PAGA Amount payable to the PAGA Allegedly Aggrieved Employees shall be allocated as 100% penalties. The Settlement Administrator will be responsible for issuing to participating Settlement Class members an IRS Form W-2 for amounts paid as wages, and an IRS Form 1099 for amounts paid as penalties and interest. Settlement Class members are responsible for their share of the payroll taxes on portions of the Individual Settlement Payments allocated as unpaid wages, which will be deducted from their Individual Settlement Payments. Neither Plaintiffs nor Defendants, nor counsel for either of the Parties, makes any representations or warranties with respect to tax consequences of any payment under this Settlement. To the extent that this Settlement Agreement is interpreted to contain or constitute advice regarding any state or federal tax issue, such advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding penalties under the Internal Revenue Code. Defendants are not responsible for any employee tax obligations regarding the allocation of the Maximum Settlement Amount or any payment made pursuant to this Settlement Agreement.
- E. Defendants shall fully discharge their obligations to the participating Settlement Class members through the mailing of an Individual Settlement Payment, regardless of whether such checks are actually received and/or negotiated by the recipients. Each member of the Settlement Class who receives an Individual Settlement Payment must cash that check within 180 days from the date the Settlement Administrator mails it. Any check that is not negotiated within one hundred eighty (180) days of mailing to a Settlement Class member shall be transferred to Working Wardrobes, the Parties' agreed-upon *cy pres* designee.
- F. Neither Plaintiffs nor Defendants shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.

5. **Attorneys' Fees and Costs.** Defendants will not object to Class Counsel's request for a total award of attorneys' fees of up to one-third of the Maximum Settlement Amount, which is currently estimated to be \$983,333.33. Additionally, Class Counsel will request an award of actual

costs and expenses as supported by declaration, in an amount not to exceed \$100,000.00 from the Maximum Settlement Amount. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. Class Counsel will be issued an IRS Form 1099-MISC by the Settlement Administrator for the fees and costs award approved by the Court. In the event that the Court reduces or does not approve the requested Attorneys' Fees and Costs to Class Counsel, neither Plaintiff nor Class Counsel shall have the right to revoke this Agreement, and it will remain binding. Any reduction by the Court of these requests will revert to the Net Settlement Amount for distribution to the Settlement Class members who do not opt-out.

6. **Class Representative Enhancement Payments.** Defendants will not object to a request for Class Representative Enhancement Payments in the amount of \$5,000.00 each (\$20,000.00 total) for Plaintiffs' time and risk in prosecuting this case, Plaintiffs' service to the Settlement Class, and in exchange for Plaintiffs' general release of claims. These awards will be in addition to Plaintiffs' Individual Settlement Payments as Settlement Class members, and shall be reported on an IRS Form 1099-MISC issued by the Settlement Administrator.

7. **Settlement Administrator.** Defendants agree to the appointment of Apex Class Action Administration as Settlement Administrator. Defendants will not object to Plaintiffs seeking approval to pay up to \$17,990.00 for the administration services from the Maximum Settlement Amount. The Settlement Administrator shall be responsible for establishing a QSF into which it shall deposit and hold the payment from Defendants comprising the Maximum Settlement Amount, sending Notice Packets in English and Spanish to the Settlement Class members, calculating Individual Settlement Payments and preparing all checks and mailings, and other duties as described in this Settlement Agreement. The Settlement Administrator shall be authorized to pay itself from the Maximum Settlement Amount only after Individual Settlement Payments have been mailed to all participating Settlement Class members.

8. **Preliminary Approval.** Within a reasonable time after execution of this Settlement Agreement by the Parties and the filing of the SAC, Plaintiffs shall apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for settlement purposes only;
- B. Appointing Paul K. Haines, Fletcher W. Schmidt, and Matthew K. Moen of Haines Law Group, APC, Kashif Haque and Jessica L. Campbell of Aegis Law Firm, PC, and Marcus Bradley of Bradley Grombacher, LLP as Class Counsel;
- C. Appointing Plaintiffs Ruben Hernandez, Patrick Joseph Neims, Arturo Ramirez, and Miguel Moreno as Class Representatives for the Settlement Class;
- D. Approving Apex Class Action Administration as Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;

- F. Approving the form and content of the Notice Packet (which is comprised of the Notice of Class Action Settlement and the Notice of Individual Settlement Payment), and directing the mailing of the same; and
- G. Scheduling a Final Approval hearing.

9. **Notice to Settlement Class.** Following preliminary approval, the Settlement Class shall be notified as follows:

- A. Within fifteen (15) business days of the court signing an order preliminarily approving this Settlement Agreement, Defendants will provide the Settlement Administrator with the names, last known addresses, phone numbers, social security numbers, and workweek data for all Settlement Class members during the Class Period.
- B. Within ten (10) business days from receipt of this information, the Settlement Administrator shall (i) run the names of all Settlement Class members through the National Change of Address (“NCOA”) database to determine any updated addresses for Settlement Class members; (ii) update the address of any Settlement Class member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Individual Settlement Payment for each Settlement Class member; and (iv) mail a Notice Packet to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.
- C. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline, as defined below, shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a “skip trace,” to obtain an updated mailing address within five (5) business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet to the Settlement Class member immediately, and in any event within five (5) business days of obtaining the updated address. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class member. Settlement Class members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Settlement Administrator shall have an additional fourteen (14) calendar days after the Response Deadline to opt-out, object, or dispute their Individual Settlement Payment. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline.
- D. Requests for Exclusion. Any Settlement Class member who wishes to opt-out of the Settlement must complete and mail a Request for Exclusion (defined below) to the Settlement Administrator within sixty (60) calendar days of the date of the initial mailing of the Notice Packets (the “Response Deadline”).

- i. The Notice Packet shall state that Settlement Class members who wish to exclude themselves from the Settlement must submit a Request for Exclusion by the Response Deadline. The Request for Exclusion must: (1) contain the name, address, telephone number and the last four digits of the Social Security number of the Settlement Class member; (2) contain a statement that the Settlement Class member wishes to be excluded from the Settlement; (3) be signed by the Settlement Class member; and (4) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion does not contain the information listed in (1)-(3), it will not be deemed valid for exclusion from the Settlement, except a Request for Exclusion not containing a Class Member's telephone number and/or last four digits of the Social Security number will be deemed valid. The date of the postmark on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class member who requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement and will not be bound by the terms of the Settlement or have any right to object, appeal or comment thereon, except as to that portion of the Settlement and final judgment dedicated to alleged violations of the PAGA and associated penalties.
  - ii. At no time will the Parties or their counsel seek to solicit or otherwise encourage any Settlement Class member to object to the Settlement or opt-out of the Settlement Class, or encourage any Settlement Class member to appeal from the final judgment.
  - iii. Defendants' Right to Rescind. Notwithstanding any other provision of this Settlement Agreement, Defendants shall retain the right, in the exercise of their sole discretion, to nullify the Settlement if more than five percent (5%) of the putative Settlement Class members validly exclude themselves from the Settlement. Defendants shall communicate their decision to nullify the Settlement Agreement pursuant to this paragraph in writing to the Settlement Administrator and Class Counsel no later than ten (10) calendar days after the Response Deadline. In the event that Defendants elect to exercise this right, Defendants shall be solely responsible for paying all costs incurred by the Settlement Administrator through the date that Defendants communicate their decision to nullify the Settlement Agreement in writing to the Settlement Administrator and Class Counsel.
  - i. PAGA Allegedly Aggrieved Employees. All PAGA Allegedly Aggrieved Employees shall receive their share of the PAGA Amount and will be deemed to have released the PAGA Released Claims, regardless of whether or not they timely request to be excluded from the Settlement Class.
- E. Objections. Members of the Settlement Class who do not opt-out may object to this Settlement Agreement as explained in the Class Notice by filing a written objection

with the Settlement Administrator (who shall serve all objections as received on Class Counsel and Defendants' counsel, as well as file all such objections with the Court) within the Response Deadline. Defendants' counsel and Class Counsel shall file any responses to objections no later than the deadline to file the Motion for Final Approval. To be valid, any objection must be postmarked no later than the Response Deadline. Any Settlement Class member who wishes to may appear in person or through their own counsel and raise an objection at the Final Approval Hearing.

- F. Notice of Individual Settlement Payment / Disputes. Each Notice Packet mailed to a Settlement Class member shall disclose the amount of the Settlement Class member's estimated Individual Settlement Payment as well as all of the information that was used to calculate the Individual Settlement Payment. Settlement Class members will have the opportunity, should they disagree with Defendants' records regarding the information stated in the Notice of Individual Settlement Payment, to provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement Payments under the terms of this Settlement Agreement. However, if the Settlement Administrator and the Parties cannot agree on a resolution, the Parties will submit the dispute to the Court for a final determination.
- G. Defendants understand their legal obligation not to retaliate against the Settlement Class members for their participation and/or election to participate in the benefits to be afforded any of them by the Settlement and/or the Action.
- H. Notice of Final Approval. A notice of the Court's Final Approval Order will be posted on the Settlement Administrator's website for the Settlement Class members and PAGA Allegedly Aggrieved Employees, in compliance with CRC Rule 3.771(b).

10. **Final Approval.** Following preliminary approval and the close of the period for filing requests for exclusion, objections, or disputes under this Settlement Agreement, Plaintiffs shall apply to the Court for entry of an Order:

- A. Granting final approval to the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;
- B. Approving Plaintiffs' and Class Counsel's application for attorneys' fees and costs, Class Representative Enhancement Payments, settlement administration costs, and payment to the LWDA for its share of civil penalties under PAGA; and
- C. Entering judgment pursuant to California Rule of Court 3.769.

11. **Non-Admission of Liability.** Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this Settlement. Each of the Parties has entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code Section 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If Final Approval does not occur, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code Section 1152.

12. **Circular 230 Disclaimer.** EACH PARTY TO THIS SETTLEMENT AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS SETTLEMENT AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS SETTLEMENT AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS SETTLEMENT AGREEMENT, (B) HAS NOT ENTERED INTO THIS SETTLEMENT AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS SETTLEMENT AGREEMENT.

13. **Waiver and Amendment.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by all of the Parties or their respective counsel, 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.

14. **Confidentiality.** The Parties agree to keep this Settlement Agreement confidential (except for purposes of enforcement) through preliminary approval. Thereafter, neither Party will issue any press release(s), make comments to the media, or otherwise publicize the terms of the Settlement. Nothing herein shall prohibit any of the Parties from disclosing information relating to the Settlement Agreement as required by law.

15. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery and by e-mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

if to Plaintiffs: Fletcher W. Schmidt of Haines Law Group, APC  
2155 Campus Drive, Suite 180, El Segundo, CA 90245  
fschmidt@haineslawgroup.com

if to Defendants: Tracie Childs of Ogletree, Deakins, Nash, Smoak & Stewart P.C.  
4660 La Jolla Village Drive, Suite 900, San Diego, CA 92122  
Tracie.childs@ogletree.com

16. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

17. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

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

**IN WITNESS THEREOF**, the Parties to this Settlement Agreement each acknowledge that they have read the foregoing Settlement Agreement, accept and agree to the provisions contained herein, and hereby execute it voluntarily and with full understanding of its consequences.

**RUBEN HERNANDEZ**



Ruben Hernandez (Aug 9, 2024 10:17 PDT)

Dated: 08/09/24

Plaintiff

**PATRICK JOSEPH NEIMS**

Dated: \_\_\_\_\_

Plaintiff

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fschmidt@haineslawgroup.com

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**IN WITNESS THEREOF**, the Parties to this Settlement Agreement each acknowledge that they have read the foregoing Settlement Agreement, accept and agree to the provisions contained herein, and hereby execute it voluntarily and with full understanding of its consequences.

**RUBEN HERNANDEZ**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Plaintiff

**PATRICK JOSEPH NEIMS**

Dated: 8/14/2024 | 7:33 AM PDT  
\_\_\_\_\_

\_\_\_\_\_  
Plaintiff

Signed by:  
  
CAE63DC2F69741B...

**ARTURO RAMIREZ**

Dated: 8/8/2024 | 8:40 PM PDT

DocuSigned by:  
Arturo Ramirez  
D29F1B2E6B814F8...

Plaintiff

**MIGUEL MORENO**

Dated: \_\_\_\_\_

Plaintiff

**NEOVIA LOGISTICS SERVICES, LLC**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**NEOVIA LOGISTICS DISTRIBUTION, LP**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**APPROVED AS TO FORM:**

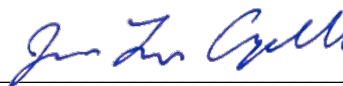
Dated: \_\_\_\_\_

**HAINES LAW GROUP, APC**

By: \_\_\_\_\_  
Paul K. Haines  
Fletcher W. Schmidt  
Matthew K. Moen  
Attorneys for Plaintiffs

Dated: \_\_\_\_\_

**AEGIS LAW FIRM, PC**

By:  \_\_\_\_\_  
Kashif Haque  
Jessica L. Campbell  
Attorneys for Plaintiffs

**ARTURO RAMIREZ**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Plaintiff

**MIGUEL MORENO**

Dated: 8/15/2024  
\_\_\_\_\_

DocuSigned by:  
*Miguel Moreno*  
\_\_\_\_\_  
Plaintiff

**NEOVIA LOGISTICS SERVICES, LLC**

Dated: \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

**NEOVIA LOGISTICS DISTRIBUTION, LP**

Dated: \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

**APPROVED AS TO FORM:**

Dated: \_\_\_\_\_

**HAINES LAW GROUP, APC**

By: \_\_\_\_\_  
Paul K. Haines  
Fletcher W. Schmidt  
Matthew K. Moen  
Attorneys for Plaintiffs

Dated: \_\_\_\_\_

**AEGIS LAW FIRM, PC**

By: \_\_\_\_\_  
Kashif Haque  
Jessica L. Campbell  
Attorneys for Plaintiffs

**ARTURO RAMIREZ**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Plaintiff

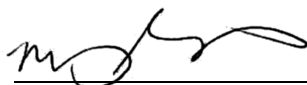
**MIGUEL MORENO**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Plaintiff

**NEOVIA LOGISTICS SERVICES, LLC**

Dated: August 15, 2024  
\_\_\_\_\_

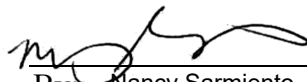


By: Nancy Sarmiento  
\_\_\_\_\_

Its: General Counsel  
\_\_\_\_\_

**NEOVIA LOGISTICS DISTRIBUTION, LP**

Dated: August 15, 2024  
\_\_\_\_\_



By: Nancy Sarmiento  
\_\_\_\_\_

Its: Authorized Representative  
\_\_\_\_\_

**APPROVED AS TO FORM:**

Dated: \_\_\_\_\_

**HAINES LAW GROUP, APC**

By: \_\_\_\_\_

Paul K. Haines

Fletcher W. Schmidt

Matthew K. Moen

Attorneys for Plaintiffs

Dated: \_\_\_\_\_

**AEGIS LAW FIRM, PC**

By: \_\_\_\_\_

Kashif Haque

Jessica L. Campbell

Attorneys for Plaintiffs

**ARTURO RAMIREZ**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Plaintiff

**MIGUEL MORENO**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Plaintiff

**NEOVIA LOGISTICS SERVICES, LLC**

Dated: \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

**NEOVIA LOGISTICS DISTRIBUTION, LP**

Dated: \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

**APPROVED AS TO FORM:**

Dated: 08/09/2024

**HAINES LAW GROUP, APC**

By:   
\_\_\_\_\_  
Paul K. Haines  
Fletcher W. Schmidt  
Matthew K. Moen  
Attorneys for Plaintiffs

Dated: \_\_\_\_\_

**AEGIS LAW FIRM, PC**

By: \_\_\_\_\_  
Kashif Haque  
Jessica L. Campbell  
Attorneys for Plaintiffs

Dated: \_\_\_\_\_

8/15/24

**BRADLEY GROMBACHER, LLP**

By: \_\_\_\_\_

Marcus Bradley  
Attorneys for Plaintiffs

Dated: \_\_\_\_\_

**OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART P.C.**

By: \_\_\_\_\_

Tracie Childs  
Keenan P. O'Connor  
Attorneys for Defendants

Dated: \_\_\_\_\_

**BRADLEY GROMBACHER, LLP**

By: \_\_\_\_\_

Marcus Bradley  
Attorneys for Plaintiffs

Dated: August 16, 2024

**OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART P.C.**

By: *Tracie Childs*

Tracie Childs  
Keenan P. O'Connor  
Attorneys for Defendants

# **EXHIBIT B**

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

RUBEN HERNANDEZ, PATRICK JOSEPH NEIMS,  
ARTURO RAMIREZ, and MIGUEL MORENO, as  
individuals and on behalf of all others similarly  
situated,

Plaintiffs,

vs.

NEOVIA LOGISTICS SERVICES, LLC, a Delaware  
Limited Liability Company; NEOVIA LOGISTICS  
DISTRIBUTION, LP, a Delaware Limited Partnership;  
and DOES 1 through 100,

Defendants.

Case No. CIVSB 2305867

**NOTICE OF CLASS ACTION SETTLEMENT**

To: All current and former non-exempt employees who worked for either and/or both Defendants Neovia Logistics Services, LLC and/or Neovia Logistics Distribution, LP (collectively, “Defendants”) in California between October 28, 2018 and December 27, 2023 (the “Class Period”). Collectively, these employees will be referred to as “Settlement Class Members.”

**PLEASE READ THIS NOTICE CAREFULLY  
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT**

***Why should you read this notice?***

The Court has granted preliminary approval of a proposed class action settlement (the “Settlement”) in *Ruben Hernandez, et al. v. Neovia Logistics Services, LLC, et al.*, Superior Court of California, County of San Bernardino, Case No. CIVSB2305867 (the “Lawsuit”). Your rights may be affected by the Settlement, and it is important that you read this notice carefully.

You may be entitled to money from this Settlement. Defendants’ records show that you were employed by either and/or both Defendants as a non-exempt employee in California during the Class Period. The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound by the terms of the Settlement and any final judgment.

***What is this case about?***

Plaintiffs Ruben Hernandez, Patrick Joseph Neims, Arturo Ramirez, and Miguel Moreno (“Plaintiffs”) brought this lawsuit against Defendants asserting claims on behalf of all Settlement Class Members. Plaintiffs are known as the “Class Representatives,” and their attorneys, who also represent the interests of all Settlement Class Members, are known as “Class Counsel.”

In the Lawsuit, Plaintiffs allege that Defendants failed to: (1) pay all wages and minimum wages; (2) pay all overtime wages; (3) provide all lawful meal periods; (4) authorize and permit all lawful rest periods; (5) reimburse all necessary business expenditures; (6) issue accurate and itemized wage statements; (7) timely pay all wages and final wages; (8) comply with California’s Unfair Competition laws; and (9) are liable for civil penalties under the Private Attorneys General Act (“PAGA”).

Defendants deny that they have done anything wrong. Defendants deny that they have engaged in any unlawful activity, that they have failed to comply with the law in any respect, and that they have any liability to anyone under the claims asserted in the Lawsuit. Defendants deny that they owe Settlement Class Members any reimbursement, restitution, penalties, or other damages. Accordingly, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Defendants, which expressly deny all liability.

The Court has not ruled on the merits of Plaintiffs' claims. However, to avoid additional expense, inconvenience, and interference with business operations, the parties concluded that it is in the best interests of Defendants and the Settlement Class Members to settle the Lawsuit on the terms summarized in this Notice. After Defendants provided relevant information to Class Counsel, the Settlement was reached after mediation and arms'-length negotiations between the parties.

The Class Representatives and Class Counsel support the Settlement. Among the reasons for support are the defenses to liability potentially available to Defendants, the risk of denial of class certification, the inherent risks of trial on the merits, and the delays and uncertainties associated with ongoing litigation.

**If you are still employed by Defendants, your decision about whether to participate in the Settlement will not affect your employment. California law and Defendants' policies strictly prohibit unlawful retaliation.**

Defendants will not take any adverse employment action against or otherwise target, retaliate, or discriminate against any Settlement Class Member because of his or her decision to either participate or not participate in the Settlement.

***Who are the Attorneys?***

| Attorneys for Plaintiffs/Settlement Class Members:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Attorneys for Defendants:                                                                                                                                                                                                                                                                                                                 |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>HAINES LAW GROUP, APC</b><br/>Paul K. Haines (SBN 248226)<br/>phaines@haineslawgroup.com<br/>Fletcher W. Schmidt (SBN 286462)<br/>fschmidt@haineslawgroup.com<br/>Matthew K. Moen (SBN 305956)<br/>mmoen@haineslawgroup.com<br/>2155 Campus Drive, Suite 180<br/>El Segundo, California 90245<br/>Tel: (424) 292-2350<br/>Fax: (424) 292-2355</p> <p><b>AEGIS LAW FIRM, PC</b><br/>Kashif Haque, State Bar No. 218672<br/>Jessica L. Campbell, State Bar No. 280626<br/>Fawn F. Bekam, State Bar No. 307312<br/>9811 Irvine Center Drive, Suite 100<br/>Irvine, California 92618<br/>Telephone: (949) 379-6250<br/>Facsimile: (949) 379-6251<br/>khaque@aegislawfirm.com<br/>jcampbell@aegislawfirm.com<br/>fbekam@aegislawfirm.com</p> <p><b>BRADLEY/GROMBACHER, LLP</b><br/>Marcus J. Bradley, Esq. (SBN 174156)<br/>31365 Oak Crest Drive, Suite 240<br/>Westlake Village, California 91361<br/>Telephone: (805) 270-7100<br/>Facsimile: (805) 270-7589<br/>mbradley@bradleygrombacher.com</p> | <p><b>OGLETREE, DEAKINS, NASH, SMOAK &amp; STEWART, P.C.</b><br/>Tracie Childs (SBN 190806)<br/>Tracie.childs@ogletree.com<br/>Keenan P. O'Connor (SBN 311800)<br/>Keenan.oconnor@ogletree.com<br/>4660 La Jolla Village Drive, Suite 900<br/>San Diego, California 92122<br/>Telephone: (858) 652-3100<br/>Facsimile: (858) 652-3101</p> |

### ***What are the terms of the Settlement?***

On <<PRELIM APPROVAL DATE>>, the Court preliminarily certified a class – for settlement purposes only – of all current and former non-exempt employees who worked for either and/or both Defendants in California during the Class Period. Settlement Class Members who do not submit a valid and timely Request for Exclusion from the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release their claims against Defendants, as described below in the “Release” section.

Defendants have agreed to pay \$2,950,000.00 (the “Maximum Settlement Amount”) to fully resolve all claims in the Lawsuit, including payments to Settlement Class Members, attorneys’ fees and verified cost reimbursement, settlement administration costs, payment to the California Labor and Workforce Development Agency (“LWDA”) for its share of PAGA civil penalties, and the Class Representative Enhancement Payments. The following deductions from the Maximum Settlement Amount will be requested by the parties:

Settlement Administration Costs. The Court has approved Apex Class Action Administration to act as the “Settlement Administrator,” who is sending this Notice to you and who will perform many other duties relating to the Settlement. The Court has approved setting aside up to \$17,990.00 from the Maximum Settlement Amount to pay the Settlement administration costs.

Attorneys’ Fees and Expenses. Class Counsel have been prosecuting the Lawsuit on behalf of the Settlement 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. The Court will determine the actual amount awarded to Class Counsel as attorneys’ fees, which will be paid from the Maximum Settlement Amount. Settlement Class Members are not personally responsible for any of Class Counsel’s attorneys’ fees or expenses. Class Counsel will ask for fees of up to one-third of the Maximum Settlement Amount (which is currently estimated to be \$983,333.33) as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through Settlement finalization. Class Counsel also will ask for reimbursement of up to \$100,000.00 for verified costs which were incurred by Class Counsel in connection with the Lawsuit.

Class Representative Enhancement Payments. Class Counsel will ask the Court to award \$5,000.00 each to Plaintiffs as a Class Representative Enhancement Payment. This is meant to compensate Plaintiffs for their general release of claims against Defendants and their service and extra work provided on behalf of the Settlement Class Members.

PAGA Payment to the State of California. The parties have agreed to allocate \$100,000.00 of the Maximum Settlement Amount as PAGA civil penalties. Per Labor Code Section 2699(i), 75% of such penalties (\$75,000.00) will be payable to the LWDA for its share of PAGA penalties, and the remaining 25% (\$25,000.00) will be payable to all current and former non-exempt employees who worked for either or both Defendants in California between October 28, 2021 and December 27, 2023 (the “PAGA Period”) (the “Allegedly Aggrieved Employees”), as part of the Net Settlement Amount.

Calculation of Settlement Class Members’ Individual Settlement Payments. After deducting the Court-approved amounts above, the balance of the Maximum Settlement Amount will form the Net Settlement Amount, which will be distributed to all Settlement Class Members who do not submit a valid and timely Request for Exclusion (described below). The Net Settlement Amount will be divided as follows:

- (i) PAGA Amount: The \$25,000.00 payable to the Allegedly Aggrieved Employees as PAGA civil penalties shall be designated as the “PAGA Amount.” Each Allegedly Aggrieved Employee shall receive a portion of the PAGA Amount proportionate to the number of workweeks that he or she worked during the PAGA Period compared to the aggregate number of workweeks worked by all Allegedly Aggrieved Employees during the PAGA Period, regardless of whether he or she timely submits a Request for Exclusion.
- (ii) Wage Statement Amount: Fifteen percent (15%) of the Net Settlement Amount shall be designated as the “Wage Statement Amount.” Each participating Settlement Class member who was employed by Defendants at any time between October 28, 2021 and the end of the Class Period, shall receive a portion of the Wage Statement Amount proportionate to the number of workweeks that he or she

worked during the aforementioned time period compared to the aggregate number of workweeks worked by all participating Settlement Class members during the aforementioned time period.

- (iii) Waiting Time Amount: Twenty percent (20%) of the Net Settlement Amount shall be designated as the “Waiting Time Amount.” The Waiting Time Amount shall be distributed in equal, pro-rata shares to each participating Settlement Class member who separated their employment from Defendants at any time between October 28, 2019 and the end of the Class Period.
- (iv) The remainder of the Net Settlement Amount will be distributed to each participating Settlement Class member based on their proportionate number of workweeks worked during the Class Period, by multiplying the remaining Net Settlement Amount by a fraction, the numerator of which is the Settlement Class member’s total workweeks worked during the Class Period, and the denominator of which is the total number of workweeks worked by all participating Settlement Class members during the Class Period.

Individual Settlement Payments to Settlement Class Members. If the Court grants final approval of the Settlement, Individual Settlement Payments will be mailed to Settlement Class Members who did not submit a valid and timely Request for Exclusion. Each participating Settlement Class Member who receives an Individual Settlement Payment must negotiate that check within 180 calendar days from the date the Settlement Administrator mails it. Any funds payable to participating Settlement Class Members whose checks are not negotiated within 180 calendar days after mailing will be transferred by the Settlement Administrator to Working Wardrobes, the Court-approved *cy pres* designee.

Allocation and Taxes. For tax purposes, each Individual Settlement Payment will be allocated as 80% penalties and interest issued pursuant to an IRS Form 1099; and 20% as wages issued pursuant to an IRS Form W-2, with employee-side payroll withholding taxes withheld. The portion of the PAGA Amount payable to the Allegedly Aggrieved Employees shall be allocated as 100% penalties. Settlement Class Members are responsible for the proper income tax treatment of the Individual Settlement Payments. The Settlement Administrator, Defendant and its counsel, and Class Counsel cannot provide tax advice. Accordingly, Settlement Class Members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. If the Court approves the Settlement, each Settlement Class Member who has not submitted a timely and valid Request for Exclusion will fully and finally release and discharge Defendants and all of their present and former parent companies, commonly owned or controlled affiliates, subsidiaries, divisions, related or affiliated companies, shareholders, officers, directors, employees, agents, attorney, insurers, successors and assigns (the “Released Parties”), from liability for all claims under state, federal and local law, whether statutory, common law or administrative law, based on the factual allegations set forth in the operative complaints in the Action, Plaintiff Hernandez’s March 2, 2023 PAGA Notice to the LWDA, Plaintiff Hernandez’s November 2, 2023 Supplemental Notice to the LWDA, Plaintiff Moreno’s September 20, 2023 Notice to the LWDA, or which could have been pled in the operative complaints in the Action, the operative complaints in the PAGA Action, based on the factual allegations therein, including but not limited to claims for minimum wage violations, overtime wage violations, sick pay wages, meal period violations, rest period violations, violations of Labor Code sections 2802 and 2804, waiting time penalties, inaccurate payroll records, wage statement violations, excessive heat and failure to provide compliant recovery period violations, violations of the California Business and Professions Code section 17200, *et seq.*, and alleged violations of PAGA, that arose during the Class Period (collectively, the “Released Claims”). For avoidance of doubt, this release applies to the Class Period.

PAGA Release. If the Court approves the Settlement, all Allegedly Aggrieved Employees will be issued a check for their share of the PAGA Amount, regardless of whether they validly opt-out of the class-action portion of the Settlement, and shall be deemed to have released and discharged the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged in the operative complaints in the Action, Plaintiff Hernandez’s March 2, 2023 PAGA Notice to the LWDA, Plaintiff Hernandez’s November 2, 2023 Supplemental Notice to the LWDA and Plaintiff Moreno’s September 20, 2023 Notice to the LWDA, or which could have been pled in the operative complaints in the Action based on the factual allegations therein as set forth above (the “PAGA Released Claims”). For avoidance of doubt, this release applies to the PAGA Period.

Conditions of Settlement. The Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class Members, and the entry of Judgment.

#### ***How can I claim money from the Settlement?***

Do Nothing. If you do nothing, you will be entitled to your Individual Settlement Payment, which has been calculated for you based on the formula set forth above, as stated in the accompanying Notice of Individual Settlement Payment. You also will be bound by the Settlement, including the release of claims stated above.

#### ***What other options do I have?***

Dispute Information in Notice of Individual Settlement Payment. Your award is based on the proportionate number of workweeks that you worked during the relevant time periods and whether your employment separated during the relevant time period. The information contained in Defendants' records regarding this information, along with your estimated Individual Settlement Payment, is listed on the accompanying Notice of Individual Settlement Payment. If you disagree with the information in your Notice of Individual Settlement Payment, you may submit a dispute, along with any supporting documentation, in accordance with the procedures stated in the Notice of Individual Settlement Payment. Any disputes, along with supporting documentation, must be postmarked no later than **<<RESPONSE DEADLINE>>**. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.**

The Parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Settlement Class Members. Should a consensus not be reached, any outstanding disputes will be submitted to the Court for a final determination.

Exclude Yourself from the Settlement. If you **do not** wish to take part in the Settlement, you may exclude yourself by sending to the Settlement Administrator a written "Request for Exclusion" letter or card postmarked no later than **<<RESPONSE DEADLINE>>**, with your name, address, telephone number, last four digits of your social security number, and your signature. The Request for Exclusion must state:

"I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE *RUBEN HERNANDEZ, ET AL. V. NEOVIA LOGISTICS SERVICES, LLC, ET AL.*, LAWSUIT FILED IN THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO, CASE NO. CIVSB2305867. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT."

Send the Request for Exclusion directly to the Settlement Administrator at **<<ADMINISTRATOR CONTACT INFO>>**. Any person who submits a timely Request for Exclusion from the Settlement shall, upon receipt by the Settlement Administrator, no longer be a Settlement Class Member, shall be barred from participating in the class action portion of the Settlement, and shall receive no benefits from the Settlement. **Do not submit both a Dispute and a Request for Exclusion.** If you do, the Request for Exclusion will be invalid, you will be included in the Settlement Class, and you will be bound by the terms of the Settlement.

Objecting to the Settlement. You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you may mail a written objection to the Settlement Administrator. Your written objection must include your full name and current address, as well as contact information for any attorney representing you regarding your objection, the case name and number, all objections and the factual and legal basis for the same, and any and all supporting papers, briefs, declarations, and/or other evidence supporting your objection. All objections or other correspondence must state the name and number of the case, which is *Ruben Hernandez, et al. v. Neovia Logistics Services, LLC, et al.*, Superior Court of California, County of San Bernardino, Case No. CIVSB2305867. Objections in writing must be postmarked on or before **<<RESPONSE DEADLINE>>**.

You may also appear at the Final Approval Hearing scheduled for **<<FINAL APPROVAL HEARING DATE/TIME>>** in Department S-36 of the Superior Court of California, County of San Bernardino, located at 247 W. 3rd Street, San Bernardino, California 92415. The location, date, and time of the Final Approval Hearing may be

moved without further notice to you. You may contact Class Counsel using the contact information provided above to confirm the address and time of the hearing, if you wish to appear in person. You have the right to appear either in person or through your own attorney at this hearing, whether or not you submit a written objection. If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class Members who do not object.

#### ***What is the next step?***

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on <<FINAL APPROVAL HEARING DATE/TIME>>, in Department S-36 of the Superior Court of California, County of San Bernardino, located at 247 W. 3rd Street, San Bernardino, California 92415. The location, date, and time of the Final Approval Hearing may be moved without further notice to you. You may contact Class Counsel using the contact information provided above to confirm the address and time of the hearing. The Court also will be asked to rule on Class Counsel's request for attorneys' fees and reimbursement of documented costs and expenses, the Enhancement Payments to the Class Representatives, the Settlement Administrator's costs, and the amount related to the PAGA civil penalties. **You are not required to attend the Final Approval Hearing.**

#### ***How can I get additional information?***

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Office of the Clerk of the San Bernardino County Court, located at 247 West Third Street, San Bernardino, California 92415, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday. You may also contact Class Counsel using the contact information listed above for more information.

**PLEASE DO NOT CALL OR WRITE THE COURT, DEFENDANTS, OR THEIR ATTORNEYS FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS**

#### ***REMINDER AS TO TIME LIMITS***

The deadline for submitting any Disputes, Requests for Exclusion, or Objections is <<RESPONSE DEADLINE>>.

## **NOTICE OF INDIVIDUAL SETTLEMENT PAYMENT**

*RUBEN HERNANDEZ, ET AL. V. NEOVIA LOGISTICS SERVICES, LLC, ET AL.*  
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO, CASE NO. CIVSB2305867

Please complete, sign, date and return this Form to <<ADMINISTRATOR CONTACT INFO>> **ONLY IF** (1) your personal contact information has changed, and/or (2) you wish to dispute any of the information listed in Section (III), below. It is your responsibility to keep a current address on file with the Settlement Administrator.

**(I) Please type or print your name:**

\_\_\_\_\_  
(First, Middle, Last)

**(II) Please type or print the following identifying information if your contact information has changed:**

\_\_\_\_\_  
Former Names (if any)

\_\_\_\_\_  
New Street Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip Code

**(III) Information Used to Calculate Your Individual Settlement Payment:**

According to Defendants' records:

- (a) You worked \_\_\_\_\_ workweeks during the Class Period;
- (b) You worked \_\_\_\_\_ workweeks between October 28, 2021 and December 27, 2023 (the Wage Statement/PAGA Period); and
- (c) Your employment with Defendant <<DID/DID NOT>> end between October 28, 2019 and December 27, 2023 (the Waiting Time Period).

**Based on the above, your Individual Settlement Payment is estimated to be \$ \_\_\_\_\_.**

**(IV) If you disagree with the information provided in items (a) - (c) in Section (III) above, please explain why in the space provided below and include copies of any supporting evidence or documentation with this form:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If you dispute the above information from Defendants' records, those records will control unless you are able to provide documentation that establishes that Defendants' records are mistaken. If there is a dispute about whether Defendants' information or yours is accurate, and the dispute cannot be resolved informally, the dispute will be resolved by the Parties and the Settlement Administrator as described in the Class Notice that accompanies this Form. Any unresolved disputes will be submitted to the Court for a final determination.

**ANY DISPUTES, ALONG WITH ANY SUPPORTING DOCUMENTATION, MUST BE POSTMARKED  
NO LATER THAN <<RESPONSE DEADLINE>>.**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

# **EXHIBIT C**

**HAINES LAW GROUP**  
**EMPLOYMENT ATTORNEYS**

March 2, 2023

**VIA LWDA WEBSITE**

Labor and Workforce Development Agency  
Attn. PAGA Administrator  
1515 Clay Street, Ste. 801  
Oakland, CA 94612

Re: *Ruben Hernandez v. Neovia Logistics Services, LLC, et al.*

To Whom It May Concern:

Please be advised that this law firm represents Ruben Hernandez in claims arising from his employment with Neovia Logistics Services, LLC, a Delaware limited liability company; Neovia Logistics Distribution, LP, a Delaware limited partnership; and Does 1 through 100 (“Defendants”). Mr. Hernandez is an “aggrieved employee” within the meaning of Labor Code section 2699.3 as to all of the violations alleged herein. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 754 (“any Labor Code penalties recoverable by state authorities may be recovered in a PAGA action by a person who was employed by the alleged violator and affected by at least *one* of the violations alleged in the complaint.”) (emphasis added). The purpose of this letter is to comply with Labor Code § 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, “aggrieved employees” includes all of Defendants’ non-exempt employees who worked for Defendants in California during the one year immediately preceding the date of this letter through the present.

Defendants operate a logistics warehouse that provides storage and transportation for their clients. Mr. Hernandez was employed by Defendants as a non-exempt employee at Defendants’ Ontario, California location, from May 23, 2016 until approximately December 2020 when Mr. Hernandez commenced a medical leave of absence. On January 25, 2023, Mr. Hernandez formally separated his employment with Defendants.

During Mr. Hernandez’s employment with Defendants, Defendants maintained an unlawful policy/practice that failed to compensate Mr. Hernandez and other aggrieved employees for all minimum wages earned for all hours actually worked including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work. Specifically, Defendants required Mr. Hernandez and other aggrieved employees to undergo COVID-19 temperature checks prior to clocking in for their shift, but did not record or pay for this time. Thus, Mr. Hernandez and other aggrieved employees were not compensated at least the statutory minimum wage for all time worked.

As a result, Defendants required Mr. Hernandez and other aggrieved employees to perform work while off-the-clock and Defendants failed to compensate Mr. Hernandez and other aggrieved employees for all minimum wages owed.

Mr. Hernandez and other aggrieved employees routinely worked in excess of 8 hours per workday and/or 40 hours per workweek but did not receive overtime compensation equal to one and a half times his regular rate of pay for all overtime hours worked. Defendants paid Mr. Hernandez and other aggrieved employees non-discretionary incentive pay and/or other forms of pay that are not excludable from an employee's "regular rate" of compensation including, but not limited to, payments denoted in their wage statements as "Shift Prem 60" and "Shift Prem 50" (hereinafter referred to as "Incentive Pay"). Despite paying Mr. Hernandez and other aggrieved employees Incentive Pay, Defendants failed to properly incorporate the value of the Incentive Pay earned by Mr. Hernandez and other aggrieved employees when calculating their respective regular rates of pay, resulting in unpaid overtime wages.

Throughout Mr. Hernandez's employment with Defendants, Defendants also failed to provide Mr. Hernandez and other aggrieved employees with all legally compliant meal periods due to Defendants' unlawful meal period policies/practices which resulted in meal periods which were late, short, or missed. On occasions when Defendants failed to provide Mr. Hernandez and other aggrieved employees with compliant meal periods, Defendants failed to provide Mr. Hernandez and other aggrieved employees with an additional hour of premium pay at the regular rate of pay in each instance in which a violation occurred. Specifically, although Mr. Hernandez and other aggrieved employees received Incentive Pay, Defendants paid meal period premiums at the base rate of pay without any adjustments for the receipt of Incentive Pay, thereby miscalculating and underpaying the meal period premiums paid. See *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 878 (holding that "the term 'regular rate of compensation' in section 226.7(c) has the same meaning as 'regular rate of pay' in section 510(a) and encompasses not only hourly wages but all nondiscretionary payments for work performed by the employee."). As a result of Defendants' policies/practices, Defendants failed to provide Mr. Hernandez and other aggrieved employees with legally compliant meal period premiums as required by Labor Code § 226.7.

Defendants also failed to pay Mr. Hernandez and other aggrieved employees all sick pay wages owed to them. Defendants' policies and practices dictated that sick pay payments be made at an employee's base rate of pay, as opposed to their regular rate of pay. Because Mr. Hernandez and other aggrieved employees received various forms of non-discretionary Incentive Pay that was required to be incorporated when calculating their respective regular rates of pay, but were not, Mr. Hernandez and other aggrieved employees have not been paid all sick pay wages owed to them.

During their respective employments with Defendants, Mr. Hernandez and other aggrieved employees were required to purchase and wear protective masks in order to work at Defendants' warehouses as part of Defendants' COVID-19 policy. Despite requiring

employees to incur these necessary business expenses, Defendants failed to reimburse Mr. Hernandez and other aggrieved employees for the cost of masks.

As a result of Defendants' failure to pay all minimum wages, overtime wages, sick pay wages, and meal period premium wages owed, Defendants maintained inaccurate payroll records, issued inaccurate wage statements, and failed to pay all final wages owed to Mr. Hernandez and other aggrieved employees upon their respective separations from employment. As described above, Defendants committed the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 9 ("Wage Order 9"):

#### Minimum Wage Violations

Defendants failed to conform their pay practices to the requirements of the law. This unlawful conduct includes Defendants' failure to pay Mr. Hernandez and other aggrieved employees for all hours worked including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code and Wage Order 9. Wage Order 9, § 4 and California Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law. California Labor Code § 1198 makes unlawful the employment of an employee under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide that an employer who has failed to pay its employees the legal minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages due and interest thereon.

#### Overtime Wage Violations

Defendants were required to properly pay Mr. Hernandez and other aggrieved employees for all overtime hours worked pursuant to California Labor Code § 1194 and Wage Order 9. Wage Order 9, § 3 requires an employer to pay an employee "one and one-half (1½) times the employee's regular rate of pay" for work in excess of 8 hours per workday and/or in excess of 40 hours of work in the workweek. Wage Order 9, § 3 also requires an employer to pay an employee double the employee's regular rate of pay for work in excess of twelve hours each work day and/or for work in excess of eight hours on the seventh consecutive day of work in the workweek. Defendants caused Mr. Hernandez and other aggrieved employees to work overtime hours but did not compensate Mr. Hernandez or other aggrieved employees at one and one-half times their regular rate of pay for all such hours.

#### Meal Period Violations

As alleged above, Defendants failed to provide Mr. Hernandez and other aggrieved employees with all lawful meal periods to which they were entitled. *See* Labor Code §§ 226.7 and 512; Wage Order 9, § 10. As a result, Mr. Hernandez and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 ("If an

employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided."'). On information and belief, Defendants failed to provide Mr. Hernandez and other aggrieved employees with an additional hour of premium pay for each instance in which a violation.

#### Failure to Reimburse Necessary Business Expenses

Defendants failed to reimburse Mr. Hernandez and other aggrieved employees for all necessary business expenses incurred, including the purchase of protective masks to comply with Defendants' COVID-19 policies. Defendants' policy of not providing reimbursement for necessary work-related expenses violates Labor Code §§ 2802 and 2804 ("An employer shall indemnify his or his employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or his duties, or of his or obedience to the directions of the employer.") Mr. Hernandez and other aggrieved employees are therefore entitled to reimbursement of such unpaid work expenses with interest.

#### Wage Statement Violations

Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Mr. Hernandez and other aggrieved employees with complete and accurate itemized wage statements, including gross wages earned, total hours worked, net wages earned, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code § 226 *et seq.* Defendants' failure to furnish Mr. Hernandez and other aggrieved employees with complete and accurate itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all overtime and minimum wages, as well as meal period premium wages, and deprived them of the information necessary to identify the discrepancies in Defendants' reported data and whether they have been paid all wages earned.

#### Sick Time Pay Violations

Defendants were required to pay Mr. Hernandez and other aggrieved employees for all sick pay earned at their respective regular rates of compensation pursuant to California Labor Code § 246. Defendants compensated Mr. Hernandez and other aggrieved employees at their base rate of pay but did not compensate Mr. Hernandez or other aggrieved employees at their regular rate of pay for all such hours.

#### Waiting Time Penalties

Defendants failed to timely pay Mr. Hernandez and other aggrieved employees all final wages due to them at the time of their separation which includes, among other things,

unpaid overtime wages, minimum wages, sick pay wages, and/or meal period premium wages. Further, Defendants continue to fail to pay other aggrieved employees all earned wages at the end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203.

As an "aggrieved employee", Mr. Hernandez will initiate a civil action on behalf of himself and other aggrieved employees to recover damages, statutory penalties, and civil penalties (including an amount equal to the unpaid wages) resulting from the wage and hour violations alleged herein. Based on Mr. Hernandez's own investigation, and on information and belief, Defendants committed and continue to commit the following Labor Code violations:

- a. Defendants violated Labor Code §§ 558, 1182.12, 1194, 1194.2, and 1197 by failing to pay Mr. Hernandez and other aggrieved employees the statutory minimum wage for all hours worked;
- b. Defendants violated Labor Code §§ 204, 510, 558, 1194 and 1198 by failing to pay Mr. Hernandez and other aggrieved employees all overtime compensation earned;
- c. Defendants violated Labor Code §§ 226.7, 512, and 558 by failing to provide all meal periods as required by law and failing to pay meal period premiums in all occasions and/or not paying the meal period premium at the correct rate of pay to Mr. Hernandez and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations;
- d. Defendants violated Labor Code §§ 2802 and 2804 by failing to reimburse Mr. Hernandez and other aggrieved employees for all necessary business expenses incurred;
- e. Defendants violated Labor Code § 226 by failing to furnish Mr. Hernandez and other aggrieved employees with accurate and compliant itemized wage statements;
- f. Defendants violated Labor Code § 246 by failing to pay Mr. Hernandez and other aggrieved employees sick time pay at their respective regular rates of compensation;
- g. Defendants violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due to Mr. Hernandez and other aggrieved employees;
- h. Defendants violated Labor Code § 204 by failing to pay Mr. Hernandez and other aggrieved employees all wages earned at least twice during each calendar month; and

- i. Defendants violated Labor Code §§ 558 and 1174 by failing to maintain accurate records on behalf of Mr. Hernandez and other aggrieved employees.

Pursuant to Labor Code § 2699.3, please notify us and Defendants if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,  
HAINES LAW GROUP, APC



Fletcher W. Schmidt

cc: Neovia Logistics Services, LLC c/o Amanda Garcia, agent for service of process (via certified mail); Neovia Logistics Distribution, LP. c/o C T Corporation System, agent for service of process (via certified mail)

**From:** [noreply@salesforce.com](mailto:noreply@salesforce.com) on behalf of [LWDA DO NOT REPLY](#)  
**To:** [Jonathan Ramirez](#)  
**Subject:** Thank you for submission of your PAGA Case.  
**Date:** Thursday, March 02, 2023 3:28:13 PM

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3/2/2023

LWDA Case No. LWDA-CM-939596-23  
Law Firm : Haines Law Group, APC  
Plaintiff Name : Ruben Hernandez  
Employer: Neovia Logistics Services, LLC  
Filing Fee : \$75.00  
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to [pagainfo@dir.ca.gov](mailto:pagainfo@dir.ca.gov).

DIR PAGA Unit on behalf of  
Labor and Workforce Development Agency

Website: [http://labor.ca.gov/Private\\_Attorneys\\_General\\_Act.htm](http://labor.ca.gov/Private_Attorneys_General_Act.htm)

# **EXHIBIT D**

**HAINES LAW GROUP**  
**EMPLOYMENT ATTORNEYS**

November 2, 2023

**VIA LWDA WEBSITE**

Labor and Workforce Development Agency  
Attn: PAGA Administrator  
1515 Clay Street, Suite 801  
Oakland, CA 94612

Re: *Ruben Hernandez v. Neovia Logistics Services, LLC, et al.*  
LWDA Case No.: LWDA-CM-939596-23

To Whom It May Concern:

This letter is to supplement the letter sent on March 2, 2023 by my office on behalf of Ruben Hernandez (the “PAGA Letter”), regarding the Labor Code violations committed by Neovia Logistics Services, LLC, Neovia Logistics Distribution, LP, and DOES 1 through 100 (collectively, “Defendants”) against Mr. Hernandez and other aggrieved employees. A true and correct copy of the PAGA letter is attached hereto as **Exhibit A** and it, along with the allegations in it, are incorporated herein by reference.

In addition to the factual allegations regarding violations of the California Labor Code set forth in the PAGA Letter, Mr. Hernandez supplements the PAGA Letter with additional factual allegations regarding the California Labor Code violations perpetrated by Defendants during the relevant time period, as discussed below. For purposes of this notice, “aggrieved employees” should be understood to include all of Defendants’ non-exempt employees who worked for Defendants in California at any point during the time period March 2, 2022 through the present.

In addition to the specific provisions of the Labor Code that Mr. Hernandez alleges Defendants have violated, as set out in Exhibit A and incorporated herein by reference, Mr. Hernandez asserts that Defendants failed to authorize and permit Mr. Hernandez and other aggrieved employees to take all duty-free 10-minute net rest periods for every four hours worked, or major fraction thereof, due to Defendants’ unlawful rest period policies/practices. Specifically, Defendants maintain a facially unlawful rest period policy that requires Mr. Hernandez and other aggrieved employees to remain on Defendants’ work premises during all rest periods, in violation of *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 260 (“[D]uring required rest periods, employers must relieve their employees of all duties and relinquish any control over how employees spend their break time.”). Moreover, when Mr. Hernandez and other aggrieved employees took purported rest periods, they were often “short,” because Defendants failed to provide at least 10 minutes of net rest in an area suitable for resting as required by Section 12(B) of the Wage Order. On occasions when Mr. Hernandez and other aggrieved employees were not authorized and permitted to take all legally-compliant rest periods to which they were

entitled, Defendants failed to compensate Mr. Hernandez and other aggrieved employees with an additional hour of premium pay at their respective regular rates of pay for each workday in which a rest period violation occurred, as required by Labor Code section 226.7. Further, during at least during a portion of the relevant time period, Defendants maintained no mechanism for the payment of rest period premium payments as required by Labor Code section 226.7 in the event that a legally compliant rest period was not provided to their non-exempt employees.

Defendants also issued facially non-compliant wage statements to Mr. Hernandez and other aggrieved employees that fail to list all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee in violation of Labor Code Section 226(a)(9). Specifically, the wage statements issued by Defendants to Mr. Hernandez and other aggrieved employees fail to list the rate of pay and corresponding hours for earned shift premium pay, denoted on employee wage statements with a version of the payroll code “Shift Prem”, including for example but not limitation, “Shift Prem 60” and “Shift Prem 50”. Instead, Defendants only list the gross wages paid pursuant to these shift premium rates, but do not include the applicable hourly rate in effect or the corresponding number of hours worked at each such hourly rate.

As described above and supplementing Mr. Hernandez’s PAGA Letter, Defendants committed the following additional violations of the Labor Code and Industrial Welfare Commission Wage Order No. 9 (“Wage Order 9”):

#### Rest Period Violations

Wage Order 9, § 11 and Labor Code §§ 226.7 and 516 establish the right of employees to be provided with a rest period of at least ten (10) minutes net rest for each four (4) hour period worked, or major fraction thereof. As described above, Defendants failed, and continue to fail, to authorize and permit Mr. Hernandez and other aggrieved employees to take all required and compliant 10-minute net rest periods in an area suitable for resting as required by Section 12(B) of the Wage Order. *See* Labor Code §§ 226.7 and 516; Wage Order 9, §§ 11 and 12(B). As a result, Mr. Hernandez and similarly aggrieved employees are owed an additional hour of premium wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 (“If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest period is not provided.”).

#### Wage Statement Violations

Defendants were obligated to furnish Mr. Hernandez and other aggrieved employees with complete and accurate itemized wage statements which list, among other things, all applicable hourly rates in effect during the pay period and the corresponding

number of hours worked at each hourly rate by the employee. *See* Labor Code § 226(a)(9). However, Defendants failed to furnish Mr. Hernandez and other aggrieved employees with wage statements that were compliant with this requirement when employees earned hourly shift premium pay, in violation of Labor Code section 226(a).

As an “aggrieved employees,” Mr. Hernandez will initiate a civil action on behalf of himself and other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the violations alleged herein. Based on Mr. Hernandez’s own investigations, and on information and belief, Defendants committed and continue to commit the following additional Labor Code violations:

- a. Defendants violated Labor Code §§ 226.7, 516, and 558 by failing to authorize and permit Mr. Hernandez and other aggrieved employees to take all lawful rest periods to which they are entitled, and failing to pay rest period premiums to Mr. Hernandez and other aggrieved employees at their respective regular rates of compensation for rest period violations; and
- b. Defendants violated Labor Code §§ 226(a) and 226.3 by failing to furnish Mr. Hernandez and other aggrieved employees with accurate and compliant itemized wage statements that include all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, as required by Labor Code § 226(a)(9).

Pursuant to Labor Code section 2699.3(a)(2)(A), please notify us and Defendants if the LWDA intends to investigate these additional alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,  
HAINES LAW GROUP, APC



Fletcher W. Schmidt

Enclosure

cc: Neovia Logistics Services, LLC, c/o Amanda Garcia, C T Corporation System, agent for service of process (via certified mail); Neovia Logistics Distribution, LP, c/o Amanda Garcia, C T Corporation System, agent for service of process (via certified mail); Tracie Childs, Keenan P. O'Connor, and Brett R. Tengberg, Ogletree, Deakins, Nash, Smoak & Stewart, P.C., counsel for Defendants Neovia Logistics Services, LLC and Neovia Logistics Distribution, LP (via certified mail).

# **EXHIBIT A**

**HAINES LAW GROUP**  
**EMPLOYMENT ATTORNEYS**

March 2, 2023

**VIA LWDA WEBSITE**

Labor and Workforce Development Agency  
Attn. PAGA Administrator  
1515 Clay Street, Ste. 801  
Oakland, CA 94612

Re: *Ruben Hernandez v. Neovia Logistics Services, LLC, et al.*

To Whom It May Concern:

Please be advised that this law firm represents Ruben Hernandez in claims arising from his employment with Neovia Logistics Services, LLC, a Delaware limited liability company; Neovia Logistics Distribution, LP, a Delaware limited partnership; and Does 1 through 100 (“Defendants”). Mr. Hernandez is an “aggrieved employee” within the meaning of Labor Code section 2699.3 as to all of the violations alleged herein. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 754 (“any Labor Code penalties recoverable by state authorities may be recovered in a PAGA action by a person who was employed by the alleged violator and affected by at least *one* of the violations alleged in the complaint.”) (emphasis added). The purpose of this letter is to comply with Labor Code § 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, “aggrieved employees” includes all of Defendants’ non-exempt employees who worked for Defendants in California during the one year immediately preceding the date of this letter through the present.

Defendants operate a logistics warehouse that provides storage and transportation for their clients. Mr. Hernandez was employed by Defendants as a non-exempt employee at Defendants’ Ontario, California location, from May 23, 2016 until approximately December 2020 when Mr. Hernandez commenced a medical leave of absence. On January 25, 2023, Mr. Hernandez formally separated his employment with Defendants.

During Mr. Hernandez’s employment with Defendants, Defendants maintained an unlawful policy/practice that failed to compensate Mr. Hernandez and other aggrieved employees for all minimum wages earned for all hours actually worked including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work. Specifically, Defendants required Mr. Hernandez and other aggrieved employees to undergo COVID-19 temperature checks prior to clocking in for their shift, but did not record or pay for this time. Thus, Mr. Hernandez and other aggrieved employees were not compensated at least the statutory minimum wage for all time worked.

As a result, Defendants required Mr. Hernandez and other aggrieved employees to perform work while off-the-clock and Defendants failed to compensate Mr. Hernandez and other aggrieved employees for all minimum wages owed.

Mr. Hernandez and other aggrieved employees routinely worked in excess of 8 hours per workday and/or 40 hours per workweek but did not receive overtime compensation equal to one and a half times his regular rate of pay for all overtime hours worked. Defendants paid Mr. Hernandez and other aggrieved employees non-discretionary incentive pay and/or other forms of pay that are not excludable from an employee's "regular rate" of compensation including, but not limited to, payments denoted in their wage statements as "Shift Prem 60" and "Shift Prem 50" (hereinafter referred to as "Incentive Pay"). Despite paying Mr. Hernandez and other aggrieved employees Incentive Pay, Defendants failed to properly incorporate the value of the Incentive Pay earned by Mr. Hernandez and other aggrieved employees when calculating their respective regular rates of pay, resulting in unpaid overtime wages.

Throughout Mr. Hernandez's employment with Defendants, Defendants also failed to provide Mr. Hernandez and other aggrieved employees with all legally compliant meal periods due to Defendants' unlawful meal period policies/practices which resulted in meal periods which were late, short, or missed. On occasions when Defendants failed to provide Mr. Hernandez and other aggrieved employees with compliant meal periods, Defendants failed to provide Mr. Hernandez and other aggrieved employees with an additional hour of premium pay at the regular rate of pay in each instance in which a violation occurred. Specifically, although Mr. Hernandez and other aggrieved employees received Incentive Pay, Defendants paid meal period premiums at the base rate of pay without any adjustments for the receipt of Incentive Pay, thereby miscalculating and underpaying the meal period premiums paid. See *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 878 (holding that "the term 'regular rate of compensation' in section 226.7(c) has the same meaning as 'regular rate of pay' in section 510(a) and encompasses not only hourly wages but all nondiscretionary payments for work performed by the employee."). As a result of Defendants' policies/practices, Defendants failed to provide Mr. Hernandez and other aggrieved employees with legally compliant meal period premiums as required by Labor Code § 226.7.

Defendants also failed to pay Mr. Hernandez and other aggrieved employees all sick pay wages owed to them. Defendants' policies and practices dictated that sick pay payments be made at an employee's base rate of pay, as opposed to their regular rate of pay. Because Mr. Hernandez and other aggrieved employees received various forms of non-discretionary Incentive Pay that was required to be incorporated when calculating their respective regular rates of pay, but were not, Mr. Hernandez and other aggrieved employees have not been paid all sick pay wages owed to them.

During their respective employments with Defendants, Mr. Hernandez and other aggrieved employees were required to purchase and wear protective masks in order to work at Defendants' warehouses as part of Defendants' COVID-19 policy. Despite requiring

employees to incur these necessary business expenses, Defendants failed to reimburse Mr. Hernandez and other aggrieved employees for the cost of masks.

As a result of Defendants' failure to pay all minimum wages, overtime wages, sick pay wages, and meal period premium wages owed, Defendants maintained inaccurate payroll records, issued inaccurate wage statements, and failed to pay all final wages owed to Mr. Hernandez and other aggrieved employees upon their respective separations from employment. As described above, Defendants committed the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 9 ("Wage Order 9"):

#### Minimum Wage Violations

Defendants failed to conform their pay practices to the requirements of the law. This unlawful conduct includes Defendants' failure to pay Mr. Hernandez and other aggrieved employees for all hours worked including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code and Wage Order 9. Wage Order 9, § 4 and California Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law. California Labor Code § 1198 makes unlawful the employment of an employee under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide that an employer who has failed to pay its employees the legal minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages due and interest thereon.

#### Overtime Wage Violations

Defendants were required to properly pay Mr. Hernandez and other aggrieved employees for all overtime hours worked pursuant to California Labor Code § 1194 and Wage Order 9. Wage Order 9, § 3 requires an employer to pay an employee "one and one-half (1½) times the employee's regular rate of pay" for work in excess of 8 hours per workday and/or in excess of 40 hours of work in the workweek. Wage Order 9, § 3 also requires an employer to pay an employee double the employee's regular rate of pay for work in excess of twelve hours each work day and/or for work in excess of eight hours on the seventh consecutive day of work in the workweek. Defendants caused Mr. Hernandez and other aggrieved employees to work overtime hours but did not compensate Mr. Hernandez or other aggrieved employees at one and one-half times their regular rate of pay for all such hours.

#### Meal Period Violations

As alleged above, Defendants failed to provide Mr. Hernandez and other aggrieved employees with all lawful meal periods to which they were entitled. *See* Labor Code §§ 226.7 and 512; Wage Order 9, § 10. As a result, Mr. Hernandez and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 ("If an

employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided."'). On information and belief, Defendants failed to provide Mr. Hernandez and other aggrieved employees with an additional hour of premium pay for each instance in which a violation.

#### Failure to Reimburse Necessary Business Expenses

Defendants failed to reimburse Mr. Hernandez and other aggrieved employees for all necessary business expenses incurred, including the purchase of protective masks to comply with Defendants' COVID-19 policies. Defendants' policy of not providing reimbursement for necessary work-related expenses violates Labor Code §§ 2802 and 2804 ("An employer shall indemnify his or his employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or his duties, or of his or obedience to the directions of the employer.") Mr. Hernandez and other aggrieved employees are therefore entitled to reimbursement of such unpaid work expenses with interest.

#### Wage Statement Violations

Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Mr. Hernandez and other aggrieved employees with complete and accurate itemized wage statements, including gross wages earned, total hours worked, net wages earned, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code § 226 *et seq.* Defendants' failure to furnish Mr. Hernandez and other aggrieved employees with complete and accurate itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all overtime and minimum wages, as well as meal period premium wages, and deprived them of the information necessary to identify the discrepancies in Defendants' reported data and whether they have been paid all wages earned.

#### Sick Time Pay Violations

Defendants were required to pay Mr. Hernandez and other aggrieved employees for all sick pay earned at their respective regular rates of compensation pursuant to California Labor Code § 246. Defendants compensated Mr. Hernandez and other aggrieved employees at their base rate of pay but did not compensate Mr. Hernandez or other aggrieved employees at their regular rate of pay for all such hours.

#### Waiting Time Penalties

Defendants failed to timely pay Mr. Hernandez and other aggrieved employees all final wages due to them at the time of their separation which includes, among other things,

unpaid overtime wages, minimum wages, sick pay wages, and/or meal period premium wages. Further, Defendants continue to fail to pay other aggrieved employees all earned wages at the end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203.

As an "aggrieved employee", Mr. Hernandez will initiate a civil action on behalf of himself and other aggrieved employees to recover damages, statutory penalties, and civil penalties (including an amount equal to the unpaid wages) resulting from the wage and hour violations alleged herein. Based on Mr. Hernandez's own investigation, and on information and belief, Defendants committed and continue to commit the following Labor Code violations:

- a. Defendants violated Labor Code §§ 558, 1182.12, 1194, 1194.2, and 1197 by failing to pay Mr. Hernandez and other aggrieved employees the statutory minimum wage for all hours worked;
- b. Defendants violated Labor Code §§ 204, 510, 558, 1194 and 1198 by failing to pay Mr. Hernandez and other aggrieved employees all overtime compensation earned;
- c. Defendants violated Labor Code §§ 226.7, 512, and 558 by failing to provide all meal periods as required by law and failing to pay meal period premiums in all occasions and/or not paying the meal period premium at the correct rate of pay to Mr. Hernandez and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations;
- d. Defendants violated Labor Code §§ 2802 and 2804 by failing to reimburse Mr. Hernandez and other aggrieved employees for all necessary business expenses incurred;
- e. Defendants violated Labor Code § 226 by failing to furnish Mr. Hernandez and other aggrieved employees with accurate and compliant itemized wage statements;
- f. Defendants violated Labor Code § 246 by failing to pay Mr. Hernandez and other aggrieved employees sick time pay at their respective regular rates of compensation;
- g. Defendants violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due to Mr. Hernandez and other aggrieved employees;
- h. Defendants violated Labor Code § 204 by failing to pay Mr. Hernandez and other aggrieved employees all wages earned at least twice during each calendar month; and

- i. Defendants violated Labor Code §§ 558 and 1174 by failing to maintain accurate records on behalf of Mr. Hernandez and other aggrieved employees.

Pursuant to Labor Code § 2699.3, please notify us and Defendants if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,  
HAINES LAW GROUP, APC



Fletcher W. Schmidt

cc: Neovia Logistics Services, LLC c/o Amanda Garcia, agent for service of process (via certified mail); Neovia Logistics Distribution, LP. c/o C T Corporation System, agent for service of process (via certified mail)

## Valerina Cifuentes

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**From:** DIR PAGA Unit <lwdadonotreply@dir.ca.gov>  
**Sent:** Thursday, November 02, 2023 11:44 AM  
**To:** Valerina Cifuentes  
**Subject:** Thank you for your Amended PAGA Claim Notice Submission.

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

11/02/2023 11:43:19 AM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Amended PAGA Claim Notice

If you have questions or concerns regarding this submission or your case, please send an email to [pagainfo@dir.ca.gov](mailto:pagainfo@dir.ca.gov).

DIR PAGA Unit on behalf of  
Labor and Workforce Development Agency

Website: [http://labor.ca.gov/Private\\_Attorneys\\_General\\_Act.htm](http://labor.ca.gov/Private_Attorneys_General_Act.htm)

# **EXHIBIT E**