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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **COUNTY OF SANTA CLARA**

15 **OSCAR PEREZ,**

16 **Plaintiff,**

17 **vs.**

18 **DGA SERVICES, INC. DBA JIT**
19 **TRANSPORTATION, a corporation, and**
20 **DOES 1-100, inclusive,**

21 **Defendants.**

Case No.: 23CV416653

DECLARATION OF VLADIMIR J.
KOZINA IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION AND PAGA
SETTLEMENT

Date: December 11, 2024

Time: 1:30 pm

Dept: 3

22 I, Vladimir J. Kozina, declare:

23 1. I am an attorney duly licensed to practice before all the courts of this state and am a
24 shareholder of Mayall Hurley P.C., counsel for Plaintiffs Oscar Perez and Yuri Landaverde
25 (“Plaintiffs”).

26 2. I have personal knowledge of the matters set forth herein and, if called upon to do so,
27 could and would competently testify thereto under oath.

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1 **Procedural History, Discovery, Settlement Negotiations and Mediation**

2 3. On May 24, 2023, Plaintiff Perez sent notice to the LWDA and Defendant of
3 Defendant's alleged violations of the Labor Code, specifically Labor Code sections 201-204, 210, 226,
4 226.7, 510, 512, 1182.12 *et seq.* 1198, and 2802. Attached as **Exhibit 1** is a true and correct copy of
5 this notice.

6 4. The LWDA did not provide notice that it intended to investigate the alleged violations
7 set forth in either of Plaintiff's notices.

8 5. Plaintiff Perez filed the instant action on May 25, 2023, asserting class claims against
9 Defendant for: 1) failure to pay minimum wage; 2) failure to pay overtime; 3) failure to furnish meal
10 breaks; 4) failure to furnish rest breaks; 5) failure to pay all wages at cessation of employment; 6)
11 failure to furnish accurate itemized wage statements; and 7) violation of Business and Professions
12 Code sections 17200 *et seq.* On July 31, 2023, Plaintiff Perez filed a First Amended Complaint adding
13 a cause of action under PAGA.

14 6. On May 1, 2024, Plaintiff Perez filed a Second Amended Complaint to add Plaintiff
15 Landaverde as a named plaintiff in this Action.

16 7. Through extensive written discovery and Defendant's production of over ten thousand
17 pages of documents, consisting of time and payroll data for the putative class, copies of Defendant's
18 relevant written policies, and including a spreadsheet containing over three hundred thousand lines of
19 data stating, among other things, the origin and destination points of deliveries made by Defendant's
20 truck drivers during the class period. Through review of this information, Plaintiffs determined that on
21 numerous occasions, many of Defendant's truck drivers drove across state lines (primarily to/from
22 Nevada) and/or picked up/delivered goods to/from major international airports such as SFO and LAX
23 that had arrived from out of state.

24 8. During the pendency of the litigation, Defendant entered into individual settlements
25 with approximately half of the putative class members in this action, whose claims are not covered by
26 the settlement agreement for which Plaintiffs seek preliminary and ultimately final approval.

27 9. Plaintiffs and Defendant engaged in private mediation with Nikki Tolt, Esq. on March
28 21, 2024. Prior to mediation, Plaintiffs had the payroll and time data analyzed by an expert who

1 created a damages model based on the assumption that Plaintiffs and the putative class did not fall
2 under the federal motor carrier exemption and thus were not exempt from overtime and California's
3 meal and rest break laws.

4 10. The matter settled at the end of the full day mediation session. The parties came to an
5 agreement to settle for a total of \$55,000 subject to Court approval.

6 11. At all times, the parties' negotiations were adversarial, non-collusive, and at arms'
7 length. These negotiations were supervised and facilitated by a mediator with substantial experience
8 in wage and hour class actions.

9 12. The parties utilized the Los Angeles County Model Class Action and PAGA Settlement
10 Agreement and Class Notice as the template for their agreement, modifying it as necessary to
11 encompass the specifics of the parties' settlement. The agreement was finalized and fully executed on
12 April 17, 2024. Attached hereto as **Exhibit 2** is a true and correct copy of the fully executed
13 settlement agreement.

14 13. Pursuant to the Settlement, the Defendant is to remit \$55,000.00 – the Gross Settlement
15 Amount ("GSA") – on an all-in, non-reversionary basis to resolve the claims to be released by
16 Participating Class Members.

17 14. There are a total of 68 class members. Participating Class Members are expected to
18 receive an average payout of approximately \$272.06 each, which is greater than the \$250 maximum
19 amount offered to any of the putative class members who agreed to an individual settlement with
20 Defendant.

21 **Class Counsel's Damages Analysis and Valuation of the Class Claims**

22 15. The Settlement Agreement represents a compromise of highly disputed claims.
23 Defendant vigorously denies Plaintiff's allegations in their entirety, denies that continued certification
24 of the class is appropriate (except for settlement purposes), contends that it has complied with the law,
25 and asserts numerous affirmative defenses, both legal and factual.

26 16. This Settlement has and will result in substantial benefits to all Class Members.

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Maximum Potential Class Damages

17. Plaintiff has asserted class claims for: 1) failure to pay minimum wage; 2) failure to pay overtime; 3) failure to furnish rest breaks; 4) failure to pay all wages at cessation of employment; 5) failure to furnish accurate itemized wage statements; and 6) violation of Business and Professions Code sections 17200 *et seq.*

18. Based on the documentation and data provided to Class Counsel by Defendant, Class Counsel was able to develop a model setting forth the maximum damages recoverable by the class. Class Counsel was in possession of the entire payroll, time records, and a spreadsheet providing substantial information regarding the routes driven (including points of origin and destinations for same) for the Class Members over the Class Period. The time and payroll information was provided to Class Counsel's expert economist, who utilized same to determine a model of the maximum damages potentially faced by Defendant with respect to the class claims at issue in this Action.

19. Under Class Counsel's damages model, Defendant faced a maximum of \$4,200,160 in non-PAGA exposure to the overall Class, when those individuals who also signed settlement agreements were included in the damages model. These damages were based on calculations involving 14,901 workweeks (or approximately 3x the total number of workweeks actually encompassed by the Settlement).

20. With respect to the overtime claims, Plaintiff's theory of liability is premised on the contention that the Class was entitled to overtime wages despite being truck drivers but that the truck drivers were not paid overtime premium pay when working in excess of eight hours per day and/or forty hours per workweek. Based on this information, Defendant faced a maximum \$1,403,413 in unpaid overtime, and \$365,198 in pre-judgment interest.

21. With respect to the meal period claims, Plaintiff's expert determined that there were 67,354 shifts of sufficient length to require a meal period. Of those shifts, 452 had a missed first meal period, 15,140 showed a late first meal period, and 2,843 showed a short first meal period. There were also approximately 30,886 shifts that were excess of 10 hours long. Of those shifts, no second meal period was recorded in approximately 27,979 of them, 1,740 of the shifts showed a late second meal

1 period, 70 showed a short second meal period. Overall, the calculated potential liability on the meal
2 period claims was \$735,206 with a potential \$134,580 in prejudgment interest.

3 22. With respect to the rest break claims, Plaintiffs' expert determined there were a total of
4 69,664 shifts in excess of 3.5 hours in length (i.e. the shortest a shift can be before an employee is
5 entitled to at least one rest break). Plaintiffs' counsel used the same calculated violation rate as
6 appeared from the meal period records to estimate rest period violations, as rest breaks are not
7 recorded. Based on this, Plaintiffs' expert calculated a total of \$760,484 in unpaid rest premiums and
8 an additional \$139,938 in prejudgment interest.

9 23. The minimum wage claims are based on the allegation that, at times, when Plaintiffs
10 were clocked out for meal periods, they were working but not paid for that time. This was sporadic, as
11 more often Plaintiffs either did not clock out at all for meal periods or took them late, rather than clock
12 out and continue working. Plaintiffs' expert calculated a maximum damages value of \$14,408 in
13 unpaid minimum wage on this claim.

14 24. There were a total of 5,509 estimated pay periods within the Class Period in which a
15 wage statement was issued that was non-compliant based on the alleged violations above. This
16 resulted in a maximum of \$369,366 in wage statement penalties under Labor Code section 226(e).

17 25. As for the waiting time penalty claim, there were 45 former employees who would be
18 owed waiting time penalties if Plaintiffs were successful in their overtime and meal/rest break claims,
19 with a calculated exposure of approximately \$369,366 in waiting time penalties under Labor Code
20 section 203.

21 26. Finally, with respect to the asserted PAGA violations, within the PAGA period, our
22 expert determined the following maximum exposure based on the records and Plaintiff's liability
23 theories:

- 24 a. \$575,600 in civil penalties for minimum wage violations (\$100 per employee per
25 pay period);
- 26 b. \$275,800 in civil penalties for overtime violations (\$50 per employee per pay
27 period);

- c. \$282,200 in civil penalties for rest period violations (\$50 per employee per pay period);
- d. \$282,200 in civil penalties for meal period violations (\$50 per employee per pay period);
- e. \$551,600 in civil penalties for wage statement violations (\$250 per employee per pay period);
- f. \$4,500 in civil penalties for violations of Labor Code section 203;
- g. Total = \$1,971,900

27. In total, Class Counsel determined that Defendant faced a maximum class wide potential exposure of approximately \$4,200,160 as to the substantive class claims, and an additional \$1,971,900 in civil penalties under PAGA, for an overall total of \$6,172,060. However, this amount included all drivers, even those who executed settlement agreements, and covered approximately 14,901 workweeks. The settlement itself covers only 5,236 workweeks, or approximately one-third of that amount.

28. Because the workweeks actually worked by the Class Members included in the settlement is actually only 1/3 of those worked by the overall truck drivers during the Class Period, the potential exposure for overtime, meal and rest, and wage statement claims. Thus, even before taking into account litigation risk, exclusive of interest, the overtime exposure is closer to \$467,804; minimum wage exposure is closer to \$4,803; the meal period exposure is closer to \$245,069; the rest period exposure is closer to \$253,495; and the wage statement exposure is closer to \$123,122. In addition, because less than half of the putative class members are covered by the settlement, the potential waiting time penalty exposure is reduced to around \$145,806. This results in a total overall potential exposure of approximately \$1,240,099 before factoring in any risk to the ultimate success of the claims.

29. The Gross Settlement Amount of \$55,000 represents 4.4% of Defendant's overall non-PAGA liability.

Defendant's Defenses and Realistic Liability

30. Defendant raised several defenses against the class claims having the potential to substantially reduce or eliminate its potential exposure. At the very least, the defenses would have delayed any recovery on behalf of the Class substantially, potentially years.

31. Had this matter not settled, Defendant intended to promptly file a motion for summary judgment. Defendant's primary defenses to these claims are that its truck driver employees fall under the motor carrier exemption and therefore exempt from overtime pay, and further that those employees are also exempt from enforcement of California's meal and rest break laws due to preemption by the FMCSA. For the motor carrier exemption to apply, employees must themselves drive in interstate commerce, transport goods within a continuous chain of interstate commerce, or reasonably could have been expected to drive in interstate commerce. *See Villalpando v. Exel Direct, Inc.* (N.D. Cal. Sept. 3, 2015) 2015 WL 5179486, *31. "[E]ven a minor involvement in interstate commerce as a regular part of the employee's duties can subject that employee to the Secretary of Transportation's jurisdiction." *Reich v. American Driver Service, Inc.* (9th Cir. 1994) 33 F.3d 1153, 1155, citing *Morris v. McComb* (1947) 332 U.S. 422.

32. After Plaintiffs' counsel was provided with substantial documentation demonstrating regular actual interstate travel by class members, as well as routine pickups from and deliveries to international airports, it became apparent that most, if not all, putative class members would fall under the federal motor carrier exemption as a matter of law and therefore were, in fact, not entitled to overtime pay.

33. Further, when employees are under the jurisdiction of the Secretary of Transportation (i.e., they fall under the motor carrier exemption), California's meal and rest break laws are unenforceable against them because they are preempted. *Int'l Brotherhood of Teamsters, Local 2785 v. Federal Motor Carrier Safety Administration* (9th Cir. 2021) 986 F.3d 841. Again, that numerous putative class members either actually drove across state lines or were clearly transporting goods that were part of a continuous chain of interstate commerce strongly indicates that Plaintiffs' claims for meal and rest period violations would ultimately be unsuccessful.

1 34. Taking these risks into account, Class Counsel came up with a more reasonable,
2 realistic potential recovery to the class given the extensive risks to ultimate success on these claims
3 (let alone maintenance of any sizeable class given the potential for individualized inquiries regarding
4 application of the motor carrier exemption), Plaintiffs' counsel believes that a further 90% reduction in
5 the realistic value of the claims asserted is appropriate. Accordingly, Plaintiffs' counsel determined
6 that the realistic potential class wide exposure to Defendant was approximately \$123,530. A similar
7 reduction in the PAGA exposure would be appropriate for the same reasons (1/3 of the PAGA amount
8 due to the reduction in pay periods worked by the Class Members covered by the settlement and a
9 further 90% reduction to account for risk), leaving a realistic PAGA exposure of \$65,730.

10 35. The \$55,000 Gross Settlement Amount represents approximately 43.5% of the realistic
11 non-PAGA exposure in this case. The \$1,000 allocated to the PAGA settlement represents
12 approximately 1.5% of the realistic PAGA exposure, is fairly and equally allocated pro-rata amongst
13 all Aggrieved Employees without preference to any subgroup of employees¹, and is fair, reasonable,
14 and adequate.

15 36. Considering all the circumstances set forth above, and the inherent risks in a necessarily
16 protracted litigation process of uncertain outcome, the Settlement provides timely, guaranteed and
17 cognizable monetary relief that is objectively fair, adequate, and reasonable, a contention that I
18 strongly believe.

19 37. While I believe that certification was possible as to all of Plaintiffs' claims, given the
20 commonality of the policies and practices being challenged, continued litigation was guaranteed to be
21 costly, time consuming, and risky, particularly under these facts. Appellate proceedings would only
22 further delay and jeopardize recovery by Class Members. By contrast, the proposed Settlement
23 ensures timely relief and substantial recovery for the Class and is superior to other recently approved
24 settlements raising similar claims.

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27
28 ¹ See *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77.

1 38. The released Class Member claims, defined in Sections 6.2 and 6.3 of the Settlement
2 Agreement, were narrowly tailored to track the factual allegations underlying the claims advanced on
3 behalf the Class and do not include a Civil Code section 1542 waiver.

4 39. Neither I nor my firm are aware of any other pending matter or action asserting claims
5 that will be extinguished or adversely affected by this Settlement.

6 **PAGA Penalty Payment**

7 40. The Settlement allocates \$1,000 to resolution of claims for PAGA civil penalties arising
8 out of the alleged violations of the Labor Code committed against the Class. The Parties negotiated
9 this amount in good faith, intending to serve the punitive and deterrent purposes of the PAGA.

10 41. This is an appropriate resolution under the circumstances because the punitive and
11 deterrent purposes of the PAGA are being served, particularly in light of the additional payments
12 being made to the Class Members. *Jennings v. Open Door Marketing, LLC* (N.D. Cal. 2018) 2018
13 WL 4773057 *8-9 (approving PAGA recovery of 0.6% of maximum); *Ahmed v. Beverly Health &*
14 *Rehabilitation Svcs., Inc.* (ED. Cal. 2018) 2018 WL 746393 *10.

15 42. I transmitted the Settlement Agreement to the LWDA on July 12, 2024, in compliance
16 with Labor Code § 2699(1)(2). See **Exhibit 3**.

17 **The Class Notice Complies with Rule 23 and Satisfies Due Process**

18 43. Attached as Pages 22-31 to the Settlement Agreement (**Exhibit 2**) is true and correct
19 copy of the proposed Notice of Class Action Settlement and Final Approval Hearing (the “Class
20 Notice”) which has been reviewed and approved by the Parties.

21 44. The Class Notice meets all of the requirements of procedural due process and Rule
22 23(e) by identifying the Plaintiff and Defendant and describing the claims and the Class Action in a
23 straightforward manner; succinctly describing the essential terms of the proposed Settlement,
24 including the Class Representatives’ proposed Service Payments and the amount Class Counsel will
25 request for attorney’s fees and costs; identifying the claims that are being released by the Classes;
26 identifying all parties against whom claims are being released; providing Class Members with
27 information on how to participate in, exclude themselves from, or object to the Settlement; clearly
28 providing all applicable deadlines for such action; informing Class Members of the consequences if

1 they decide to exclude themselves from the Settlement; and advising them that, if they choose to
2 participate and the Settlement is approved, they will be bound by the resulting judgment, including
3 informing them that this may affect their ability to participate in other pending litigation. Further, the
4 Class Notice clearly explains the manner in which Class Members can obtain further information (e.g.,
5 through the Court's website and the administrator's website) and that the Final Approval Hearing may
6 be moved without further notice.

7 45. Because all Class Members are current or former employees of Defendant, for whom
8 Defendant has current or last known addresses as well as SSNs, notice here is simpler and more
9 reliable than in other types of class actions that require published notice to reach unidentifiable class
10 members.

11 46. The Notice is being provided in English-only. An English-only notice is appropriate
12 because Defendant's employees conduct business in English, were expected to be able to read and
13 understand employment policies and regulations written in English, and truck drivers who possess a
14 commercial driver's license ("CDL") are required by law to be able to speak, read, and write in
15 English in order to have obtained their CDL. Thus, an English-only notice is adequate.

16 **Atticus Administration, LLC Should be Approved as Claims Administrator**

17 47. The Parties have selected Atticus Administration, LLC ("Atticus") to serve as
18 Administrator.

19 48. Class Counsel has experience with Atticus and have found their fees fair and
20 competitive amongst other administrators in the industry. I believe the estimated cost of
21 administration of \$5,500 is reasonable in relation to a class of this size and the work to be performed.

22 **Plaintiffs Have Served and Will Continue to Serve the Class Well**

23 49. Plaintiffs' interests in prosecuting this Class Action and obtaining the most beneficial
24 recovery possible fully comport with the collective best interests of the Class Members. Plaintiffs
25 understand the claims and theories that are being advanced, have been involved through the litigation
26 and have no conflicts with the other members of the Class whom he seeks to represent. Plaintiffs were
27 subjected to the same alleged unlawful policies, practices, and procedures. Were Plaintiffs not serving
28 as Class Representatives, they would be Class Members.

50. Plaintiffs have to date continued adequately representing the interests of the Class Members. Plaintiffs have demonstrated their commitment to prosecuting this Class Action on behalf of the Class Members by, amongst other things, locating and retaining attorneys, participating in the initial investigation into the claims in this action, filing this lawsuit and willingly exposing their names and reputations to scrutiny from prospective and/or future employers, participating in formal and informal discovery, participating in mediation and assisting in the preparation for same, helping to facilitate the Settlement for which approval is now sought, and being willing to testify at trial.

51. Plaintiffs, who have worked diligently with Class Counsel, including taking numerous calls with Class Counsel, participating in formal and informal discovery, and participating in the mediation and settlement negotiations, should be rewarded for taking the initiative to pursue these claims on behalf of their coworkers, and for their role in reaching a settlement providing for valuable monetary relief to the Class.

52. Plaintiff Perez will apply for a Service Payment in the amount \$2,000 in consideration for his service as Class Representative and Plaintiff Landaverde, who joined the Action later, will apply for a Service Payment of \$1,000. I believe this to be fair, reasonable, and appropriate.

53. Class Members will be apprised of Plaintiffs' requests as well as their ability to review the moving papers on the Court's website, and to object to the request if they so desire.

Experience of Class Counsel

54. I obtained a B.S. degree in Molecular Biology from the University of California, San Diego in 2001. I subsequently obtained a M.S. degree from the University of the Pacific in Biological Sciences in 2005.

55. I attended the Laurence Drivon School of Law from 2008 through 2012, graduating as Valedictorian. I earned my J.D. and became a member of the California Bar in 2012.

56. The vast majority of my practice is devoted to plaintiff's employment matters, including employment discrimination and wage-and-hour actions. My practice also includes employment defense, personal injury, and contract actions. I have substantial involvement in complex litigation like the instant case, and have worked on or am currently working on several wage and hour class action cases with Mayall Hurley, P.C. Currently, the majority of my practice is devoted to

1 complex litigation similar to the instant action. My law firm, Mayall Hurley P.C., primarily through
2 attorneys Robert J. Wasserman, Jenny D. Baysinger, and me, has pursued this action aggressively, and
3 many other similar class, collective, and representative actions. For instance, Mayall Hurley P.C. has
4 been approved as class counsel numerous actions, including:

- 5 a. *Markson, et al. v. CRST International, Inc, et al.*, Eastern District of California Case
6 No. 5:17-cv-01261-VAP-SP;
- 7 b. *Jacques v. Mike's Mobile, Inc.*, San Joaquin County Superior Court Case No. STK-
8 CV-UOE-2022-2329;
- 9 c. *Schmeirer v. Arc Document Solutions, LLC*, San Joaquin County Superior Court
10 Case No. STK-CV-UOE-2019-2008;
- 11 d. *Starr, et al. v. Schell and Kampeter, Inc.*, San Joaquin County Superior Court Case
12 No. STK-CV-UOE-2021-4585;
- 13 e. *Maldonado, et al. v. Wine & Roses, LLC*, San Joaquin County Superior Court Case
14 No. STK-CV-UOE-2019-2629;
- 15 f. *Flores v. Dart Container Corp., et al*, Eastern District of California Case No. 2:19-
16 cv-00083-WBS-EFB;
- 17 g. *Rodriguez v. J-M Manufacturing, Inc.*, San Joaquin County Superior Court Case
18 No. STK-CV-UOE-2019-6065;
- 19 h. *Arata v. Cozad Trailer Sales, LLC*, San Joaquin County Superior Court Case No.
20 STK-CV-UOE-2020-1774;
- 21 i. *Modica v. Iron Mountain Information Management Svcs., Inc.*, United States
22 District Court, Eastern District of California Case No. 2:19-cv-00370-TLN-JDP;
- 23 j. *Magee v. Thyssenkrupp Materials, N.A., et al.*, Alameda County Superior Court
24 Case No. RG19027231;
- 25 k. *Basinger v. Il Palio Restaurant Group, Inc.*, San Diego County Superior Court Case
26 No. 37-2018-00004296-CU-OE-CTL;
- 27 l. *Pacheco v. Bushfire Grill, Inc., et al*, United States District Court, Southern District
28 of California, Case No. 3:18-cv-01696-JAH-WVG;

- 1 m. *Wise v. ULTA Salon, Cosmetics & Fragrance, Inc.*, United States District Court,
2 Eastern District of California, Case No. 1:17-cv-00853-DAD-EPG;
- 3 n. *Fernando and Kalaveras v. Burroughs, Inc.*, Alameda County Superior Court, Case
4 No. RG18906875;
- 5 o. *Mansur v. Owens-Brockway Glass Container, Inc.*, San Joaquin County Superior
6 Court, Case No. STK-CV-UOW-2018-14631;
- 7 p. *Alderson v. Alameda County Agricultural Fair Association*, Alameda County
8 Superior Court, Case No. RG18912654;
- 9 q. *Terry v. Mare Island Dry Dock, LLC*, Solano County Superior Court, Case No.
10 FCS051650;
- 11 r. *Mettler, Bender, and Rojas v. Les Schwab Tire Centers of California, Inc.*, San
12 Joaquin County Superior Court, Case No. STK-CV-UOE-2018-476;
- 13 s. *Escalera v. La Tapatia Mexican Market, Inc.*, San Joaquin County Superior Court,
14 Case No., ST-CV-UOE-2017-5296;
- 15 t. *Garcia, et al. v. HMS Host USA, Inc.*, United States District Court, Northern
16 District of California, Case No. 17-cv-03069-RS;
- 17 u. *Ali v. Sutter Valley Medical Foundation, Inc.*, Sacramento County Superior Court,
18 Case No. 34-2017-00217486;
- 19 v. *Grady, et al. v. People 2.0 dba The Hire Source, et al.*, San Joaquin County Case
20 No. STK-CV-UOE-2017-13867;
- 21 w. *Kumar v. Forty Niners Stadium Management Company*, Santa Clara County
22 Superior Court, Case No. 17CV3121427;
- 23 x. *Gast v. Flooring Liquidators, Inc.*, Stanislaus County Superior Court, Case No.
24 2026223;
- 25 y. *Russell v. KeHe Distributors, Inc.*, United States District Court, Eastern District of
26 California, Case No. 2:17-at-00592;
- 27 z. *Smith v. Wal-Mart Stores, Inc. et al.*, United States District Court, Northern District
28 of California, Case No. 3:16-cv-02832-JD;

- 1 aa. *Titus v. The Martin-Brower, LLC*, United States District Court, Eastern District of
2 California, Case No. 2:17-cv-00558-JAM-GGH;
- 3 bb. *Hugues v. The Morning Star Trucking Company, LLC, et al.*, Yolo County Superior
4 Court Case No. CV16-1215;
- 5 cc. *Ahmed v. Beverly Health and Rehabilitation Services, Inc., et al.*, United States
6 District Court, Eastern District of California, Case No. 2:16-cv-01747-WBS-KJN;
- 7 dd. *Guzman-Padilla, et al. v. Gerard Van De Pol, et al.*, United States District Court,
8 Eastern District of California, Case No. 2:17-cv-00196-JAM-KJN;
- 9 ee. *Jaime v. Walt Disney Parks and Resorts U.S., Inc.*, United States District Court,
10 Central District of California, Case No. SACV 15-01618-CJC(DFMx);
- 11 ff. *Stevens v. Suncrest Solar, Inc.*, Fresno County Superior Court, Case No.
12 16CECG03355;
- 13 gg. *Cardoza v. Blazona Concrete Construction, Inc.*, Alameda County Superior Court
14 Case No. RG17866256;
- 15 hh. *Maasrani v. Waterton Hospitality Management*, San Mateo County Superior Court,
16 Case No. 17CIV05470;
- 17 ii. *Huynh v. Parker-Hannifin Corporation*, Stanislaus County Superior Court, Case
18 No. 2022325;
- 19 jj. *Moser v. O'Connor Woods Housing Corporation*, San Joaquin County Superior
20 Court, Case No. STK-CV-UOE-2014-0009861;
- 21 kk. *Bastami v. Semiconductor Components Industries, LLC*, Santa Clara County
22 Superior Court, Case No. 16cv297447;
- 23 ll. *Davis v. Balfour Beatty Infrastructure, Inc.*, Los Angeles County Superior Court,
24 Case No. BC592580;
- 25 mm. *Van Lith v. iHeartmedia + Entertainment, Inc. et al.*, United States District
26 Court, Eastern District of California, Case No. 1-16-cv-00066-SKO;
- 27 nn. *Clark v. Arrow Sign Co.*, San Joaquin County Superior Court, Case No. STK-CV-
28 UOE-2016-6457;

1 oo. *Moreno v. B.R. Funsten & Co.*, Solano County Superior Court Case No.
2 FCS046149;
3 pp. *Taylor v. Meadowbrook Meat Company, Inc.*, United States District Court, Norther
4 District of California, Case No. 3:15-cv-00132-LB;
5 qq. *Perez et al. v. Abbate Family Farms Limited Partnership et al.*, San Joaquin County
6 Superior Court, Case No. 39-2012-00288653-CU-OE-STK
7 rr. *Bice v. Vensure HR, Inc., et al.*, San Joaquin County Superior Court, Case No.
8 STK-CV-UOE-2016-1264.

9 All of the above are wage-and-hour class actions. Not including this matter, we have several
10 other wage-and-hour class actions currently pending final approval in which we have been
11 preliminarily approved as class counsel. My law firm and I have also represented plaintiffs in
12 numerous representative employment actions, settlements in which have been approved by multiple
13 California and federal courts, and are currently prosecuting dozens more.

14 57. Mayall Hurley, P.C. has also obtained class and/or conditional certification in a number
15 of contested cases, including *Liu v. QNAP, Inc.*, Los Angeles County Superior Court Case No.
16 19PSCV00668; *Bice v. Vensure HR, Inc., et al.*, San Joaquin County Superior Court, Case No. STK-
17 CU-UOE-2016-1264; *Perez et al. v. Abbate Family Farms Limited Partnership et al.*, San Joaquin
18 County Superior Court, Case No. 39-2012-00288653-CU-OE-STK, *Wilk v. Skechers U.S.A., Inc.*,
19 United States District court, Central District of California, Case No. 5-18-CV-01921-JGB-SP; *Titus v.*
20 *Paramount Equity Mortgage, LLC*, United States District Court, Eastern District of California, Case
21 No. 2:17-cv-00349-MCE-KJN; and *Solati v. RPM Mortgage, LLC*, Solano County Superior Court
22 Case No. FCS048401.

23 58. In litigating this action through class certification, our office has spent over 178 hours
24 of time to date and incurred \$15,817.96 in out-of-pocket costs to date. A detailed breakdown of
25 counsel's time and expenses will be provided in conjunction with Plaintiffs' motion for final approval.

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1 I declare under penalty of perjury under the laws of the State of California and the United
2 States of America that the foregoing is true and correct. Executed on this 12th day of July, 2024, in
3 Lodi, California.

4
5 
6 _____
7 VLADIMIR J. KOZINA
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Exhibit 1

118 WEST OAK STREET
LODI, CALIFORNIA 95240

STOCKTON OFFICE:
2453 GRAND CANAL BOULEVARD
STOCKTON, CALIFORNIA 95207

SOUTHERN CALIFORNIA OFFICE:
360 East 2nd Street, Suite 800
Los Angeles, CA 90012

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ROBERT J. WASSERMANN
JENNY D. BAYSINGER
JOHN P. BRISCOE
VLADIMIR J. KOZINA

May 24, 2023

SENT VIA ONLINE FILING (<https://dir.tfaforms.net/308>)

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

SENT VIA CERTIFIED MAIL

DGA Services, Inc. DBA JIT Transportation
1075 Montague Ct.
Milpitas, CA 95035

Re: Oscar Mercado Perez (SSN: XXX-XX- [REDACTED]; DOB: 0 [REDACTED])

To Whom It May Concern:

This firm represents Oscar Mercado Perez. in relation to his employment with DGA Services, Inc. DBA JIT Transportation. ("JIT"). In accordance with California Labor Code section 2699.3, this letter shall serve as Mr. Perez's written notice to the Labor and Workforce Development Agency ("LWDA") and JIT regarding the following Labor Code violations, and the facts and theories supporting the same.

JIT offers numerous services to its customers. These services include, but are not limited to shipment delivery, e-commerce fulfillment (i.e., picking, packing, and shipping orders for various companies themselves or through third parties), distribution and fulfillment (i.e., warehousing, storage and distribution services via their own warehouses and those of third parties), and value added services (e.g., pick and pack, testing and revision upgrades, vendor managed inventory, label production and application, enterprise resource planning and system integration and returns management authorization).

Perez was employed as a box truck driver for JIT from approximately May 2019 through March 2023. At all times relevant herein, Perez reported exclusively to JIT's Milpitas, CA warehouse.

During his employment, Perez worked as a Box Truck Driver for JIT and drove box trucks. The box trucks which Perez and JIT's other Box Truck Drivers drive have gross weight ratings of 10,000lbs. to 26,000lbs. and are not driven in interstate commerce.

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Perez and JIT's other Box Truck Drivers did not ever drive outside of California and there was no expectation or reasonable chance that Perez or JIT's other Box Truck Drivers would be called upon to make deliveries outside of California or deliveries that were part of a continuous chain of interstate commerce. Accordingly, Perez and JIT's other Box Truck Drivers were non-exempt employees and entitled to be paid minimum wage and overtime, as appropriate, for every hour worked pursuant to California law.

Notwithstanding the foregoing, JIT did not pay Perez and its other Box Truck Drivers minimum wage and overtime, as appropriate, for every hour worked. Specifically, JIT paid Perez and its other Box Truck Drivers only at their base rate of pay regardless of whether they had worked more than 8 hours in a day, 40 in a week, or 7 or more days straight.

By way of specific example, during the workweek/pay period July 12-18, 2021, Perez's wage statement reflects that he worked 56.52 hours. Despite having necessarily worked overtime during the workweek, JIT only compensated Perez for 56.52 hours at his base hourly rate of \$30.00. He was not paid overtime premium wages as required by law.

Similarly, on June 13, 2022, Perez logged 13.55 hour in the workday. Despite working both overtime and doubletime on June 13, 2022, JIT only compensated Perez at his base hourly rate for that time.

Plaintiff and Defendants' other California Box Truck Drivers were also entitled to reimbursement of business expenses they incurred performing their job duties. These reimbursements included, but were not limited to mileage, tolls, insurance, and cell phone use. Notwithstanding the foregoing, JIT failed and refused to reimburse Plaintiffs and its other California Box Truck Drivers for all of their business expenses.

Perez and JIT's other Box Truck Drivers were also not consistently authorized or permitted to take meal and rest breaks as required by California law. JIT required Perez and its Box Truck Drivers to work through meal and rest breaks due to understaffing and work demands. On the occasions that Perez and JIT's other Box Truck Drivers were able to take their meal breaks, they routinely occurred after 5 hours of work.

By way of specific example, Perez's timecard for June 20, 2022, reflects that he began work at 7:56 a.m., but was not authorized to take a meal period until 3:10 p.m., more than seven (7) hours after his shift began. This was a frequent occurrence.

On June 23, 2022, Perez began work at 7:45 a.m., but was unable to take a meal break until 5:00 p.m. due to his driving/delivery requirements.

Further, JIT frequently failed to relieve Perez and JIT's other Box Truck Drivers of employer control during their meal and rest breaks.

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Page 3 of 3

When Perez and JIT's other Box Truck Drivers were not provided compliant meal and rest breaks, Defendants did not pay premiums as required by California law.

Because of the violations set forth above, the wage statements furnished by JIT to Perez and its other Box Truck Drivers violate California Labor Code section 226(a) insofar as they fail to accurately show:

- a. The gross wages earned, in violation of section 226(a)(1);
- b. The total hours worked, in violation of section 226(a)(2)
- c. The net wages earned, in violation of section 226(a)(5); and
- d. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of section 226(a)(9).

Because JIT fails to pay its Box Truck Drivers for all the hours they worked, overtime at the correct rate of pay, and because they are not provided compliant meal and rest breaks, or the premiums associated with missing the same, they are not timely paid all wages due and owing to them during each pay period and at the end of their employment.

Perez and JIT's other Box Truck Drivers have not been paid all such wages due and owing to them when their employment with JIT ended.

Accordingly, and as set forth above, Perez contends JIT has violated Labor Code sections 201-204, 210, 226, 226.7, 510, 512, 1182.12 et seq., 1198 and 2802, as well as and the applicable IWC Wage Orders.

If the LWDA believes that it needs additional information to determine whether to investigate these claims, please contact me immediately to request the additional information, which I will provide to the extent it is available to me or my client.

If the LWDA does not intend to investigate these violations, Perez intends to file a civil complaint, or amend a pre-existing civil complaint, against Progressive pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code §§ 2698 – 2699.5), on his behalf and, as a proxy for the LWDA, on behalf of all aggrieved current and former California non-exempt, hourly employees. Thank you for your attention in this matter.

Regards,

MAYALL HURLEY P.C.

By /s/ Robert Wassermann
ROBERT J. WASSERMANN

Exhibit 2

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Oscar Perez (“Plaintiff”) and defendant DGA Services, Inc. dba JIT Transportation (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means the Plaintiffs’ lawsuit alleging wage and hour violations against Defendant captioned Oscar Perez v. DGA Services, Inc. dba JIT Transportation, et al, Case No. 23CV416653 initiated on May 25, 2023, and pending in Superior Court of the State of California, County of Santa Clara.
- 1.2. “Administrator” means Atticus Administration, LLC, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Aggrieved Employee” means any Truck Drivers employed by Defendant in California who worked for Defendant during the PAGA Period.
- 1.5. “Class” means all current and former Truck Drivers who worked for Defendant from May 25, 2019, through the date of execution of this Agreement who have not previously released their claims against Defendant and/or accepted payments in exchange for release of their claims against Defendant. For purposes of clarification, during the pendency of this Action, Defendant offered individual settlements to putative members of the class that was pleaded in the Operative Complaint. Many of those persons opted to accept the offered individual settlement including by way of signing a release and/or cashing a check that stated it was subject to the release that was offered. Those persons already settled claims and are not part of the Class for purposes of this Agreement.
- 1.6. “Class Counsel” means Mayall Hurley, P.C, by and through lead counsel Robert J. Wassermann, Jenny D. Baysinger, and Vladimir J. Kozina.
- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8. “Class Data” means Class Member identifying information in Defendant’s possession consisting of the Class Member’s name, last-known mailing address, Social Security number, current or former employee status, and number of Class Period Workweeks and PAGA Pay Periods, to the extent known by Defendant.

- 1.9. "Class Member" or "Settlement Class Member" means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).
- 1.10. "Class Member Address Search" means the Administrator's investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.
- 1.11. "Class Notice" means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English in the form, without material variation, attached as **Exhibit A** and incorporated by reference into this Agreement.
- 1.12. "Class Period" means the period of May 25, 2019, through the date of execution of this Agreement.
- 1.13. "Class Representatives" means the two named Plaintiffs (Oscar Perez and Yuri Alexander Mena Landaverde) in the Operative Complaint (defined below) in the Action for purposes of this settlement Agreement.
- 1.14. "Class Representatives Service Payment" means the payment to the Class Representatives for initiating the Action and providing services in support of the Action.
- 1.15. "Court" means the Superior Court of California, County of Santa Clara.
- 1.16. "Defendant" means named Defendant DGA Services, Inc. dba JIT Transportation
- 1.17. "Defense Counsel" means John T. Egley and Chris C. Scheithauer of Call & Jensen, P.C., 610 Newport Center Drive, Suite 700, Newport Beach, California 92660
- 1.18. "Effective Date" means the date by when both of the following have occurred:
 - (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and
 - (b) the Judgment is final.

The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

- 1.19. "Final Approval" means the Court's order granting final approval of the Settlement.
- 1.20. "Final Approval Hearing" means the Court's hearing on the Motion for Final Approval of the Settlement.

- 1.21. "Final Judgment" means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.
- 1.22. "Gross Settlement Amount" means \$55,000.00, which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 8 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representatives Service Payment and the Administrator's Expenses.
- 1.23. "Individual Class Payment" means the Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.
- 1.24. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the PAGA Period.
- 1.25. "Judgment" means the judgment entered by the Court based upon the Final Approval.
- 1.26. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.27. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.28. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representatives Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.29. "Non-Participating Class Member" means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.30. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.
- 1.31. "PAGA Period" means the period from May 27, 2022, to the date of execution of this Agreement.
- 1.32. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).
- 1.33. "PAGA Notice" means Plaintiff's May 24, 2023, letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.34. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$250) and the 75% to LWDA (\$750) in settlement of PAGA claims.

- 1.35. "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.36. "Plaintiffs" mean Oscar Perez and Yuri Alexander Mena Landaverde, the named plaintiffs in the Action.
- 1.37. "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the Settlement.
- 1.38. "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.39. "Released Class Claims" means the claims being released as described in Paragraph 5.2 below.
- 1.40. "Released PAGA Claims" means the claims being released as described in Paragraph 5.3 below.
- 1.41. "Released Parties" means: Defendant and each of its former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates.
- 1.42. "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.43. "Response Deadline" means 45 days after the Administrator mails Notice to Class Members and Aggrieved Employees and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.
- 1.44. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.
- 1.45. "Workweek" means any week during which a Class Member worked for Defendant for at least one day, during the Class Period.

2. RECITALS.

- 2.1. On May 25, 2023, Plaintiff Oscar Perez commenced this Action by filing a putative Class Action Complaint alleging causes of action against Defendant for failure to pay minimum wage, failure to pay overtime, failure to provide meal breaks, failure to provide rest breaks, failure to pay all wages due at end of employment, failure to furnish accurate itemized wage statements, and unlawful business practices. On July 31, 2023, Plaintiff filed a First Amended Complaint adding a cause of action under PAGA. Plaintiff and Defendant stipulated to leave of Court to file a Second Amended Complaint to add Yuri

Alexander Mena Landaverde as a named Plaintiff, which Second Amended Complaint is the Operative Complaint in the Action (the "Operative Complaint.") Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint and denies any and all liability for the causes of action alleged.

- 2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice.
- 2.3. On March 21, 2024, the Parties participated in an all-day mediation presided over by Nikki Tolt, Esq. which led to this Agreement to settle the Action.
- 2.4. Prior to mediation, Class Counsel obtained, through formal and informal discovery, documents constituting payroll and personnel records for the entire Class, Defendant's applicable policies and procedures, copies of settlement agreements entered into with the putative class members, and Class Counsel interviewed several Class members regarding Plaintiff's claims. Plaintiff also had the records obtained analyzed by an expert economist. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("Dunk/Kullar").
- 2.5. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. **MONETARY TERMS.**

- 3.1. **Gross Settlement Amount.** Except as otherwise provided by Paragraph 9 below, Defendant promises to pay \$55,000.00 (Fifty-Five Thousand Dollars) and no more as the Gross Settlement Amount. Defendant has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.
- 3.2. **Payments from the Gross Settlement Amount.** The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:
 - 3.2.1. To Plaintiffs: Class Representatives Service Payments to the Class Representatives of not more than \$2,000 to Oscar Perez, and not more than \$1,000 to Yuri Alexander Mena Landaverde (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representatives are entitled to receive as Participating Class Members). Defendant will not oppose Plaintiffs' request for Class Representatives Service Payments that do not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiffs will seek Court approval for any Class

Representatives Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves Class Representatives Service Payments less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representatives Service Payment using IRS Form 1099. Plaintiffs assume full responsibility and liability for taxes owed on the Class Representatives Service Payment.

- 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 20%, which is currently estimated to be \$11,000.00 and a Class Counsel Litigation Expenses Payment of not more than \$16,000. Defendant will not oppose requests for these payments provided they do not exceed these amounts. Plaintiffs and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.
- 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$5,500 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less, or the Court approves payment less than \$5,500, the Administrator will retain the remainder in the Net Settlement Amount.
- 3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount (less the Former Employee Payment set forth below) by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.
- 3.2.4.1. Tax Allocation of Individual Class Payments. 100% of each Participating Class Member's Individual Class Payment will be allocated to non-wage income, interest, and penalties. The Individual Class Payments are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

- 3.2.4.1. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.
- 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$1,000 to be paid from the Gross Settlement Amount, with 75% (\$750) allocated to the LWDA PAGA Payment and 25% (\$250) allocated to the Individual PAGA Payments.
 - 3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.
 - 3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.
- 4. **SETTLEMENT FUNDING AND PAYMENTS.**
 - 4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendant estimates there are **68** Class Members who collectively worked a total of **5,236** Workweeks, and **91** Aggrieved Employees who worked a total of **6,139** PAGA Pay Periods.
 - 4.2. Class Data. Not later than 15 days after the Court grants Preliminary Approval of the Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

- 4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, by transmitting the funds to the Administrator within fifteen (15) days after the Effective Date of this Settlement Agreement.
- 4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
 - 4.4.1. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments. The Administrator will send them via First Class U.S. Mail, postage prepaid, to all Class Members. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.
 - 4.4.2. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.
 - 4.4.3. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

- 4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. RELEASES OF CLAIMS.

Effective on the date when Defendant fully funds the entire Gross Settlement Amount, Plaintiff, the Class Members, Aggrieved Employees, and Class Counsel will release claims against all Released Parties as follows:

- 5.1 Plaintiffs' Release. Plaintiffs and their respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged based on the facts contained in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint and/or Plaintiff's PAGA Notice ("Plaintiffs' Release"). Plaintiffs' Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiffs acknowledge that Plaintiffs may discover facts or law different from, or in addition to, the facts or law that Plaintiffs now know or believe to be true but agree, nonetheless, that Plaintiffs' Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiffs' discovery of them.

- 5.1.1 Plaintiffs' Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiffs' Release, Plaintiffs expressly waive and relinquish the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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.

- 5.2 Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint including, any and all claims involving any alleged failure to pay minimum wage, failure to pay overtime, failure to furnish meal periods, failure to furnish rest periods, failure to furnish accurate itemized wage statements, failure to pay wages at termination, and unfair business practices. Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other

claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

- 5.3 PAGA Release by Aggrieved Employees: All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint, and the PAGA Notices.

6. MOTION FOR PRELIMINARY APPROVAL.

The Parties agree to jointly prepare and file a motion for preliminary approval ("Motion for Preliminary Approval").

- 6.1 Defendant's Declaration in Support of Preliminary Approval. Within 14 days of the full execution of this Agreement, Defendant will prepare and deliver to Class Counsel a signed Declaration from Defendant and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator. In their Declarations, Defense Counsel and Defendant shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.
- 6.2 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under Dunk/Kullar and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from Plaintiffs supporting their request for a service payment; (v) a signed declaration from Class Counsel attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); and (vii) all facts relevant to any actual or potential conflict of interest with Class Members and/or the Administrator. In their Declarations, Plaintiffs and Class Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.
- 6.3 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 60 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of

the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

- 6.4 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

- 7.1 Selection of Administrator. The Parties have jointly selected Atticus Administration, LLC to serve as the Administrator and verified that, as a condition of appointment, Atticus Administration, LLC agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating any payroll tax withholdings and providing reports state and federal tax authorities.
- 7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.
- 7.4 Notice to Class Members.
- 7.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.
- 7.4.2 Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data with a mailing address in the United States, via first-class United States Postal Service ("USPS") mail, the Class Notice substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator

shall update Class Member addresses using the National Change of Address database.

- 7.4.3 Not later than 3 business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS and the applicable mailing method specified in Section 7.4.2 above, based on the location of the forwarding address. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.
 - 7.4.4 The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 45 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.
 - 7.4.5 If the Administrator, Defendant or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever are later.
- 7.5 Requests for Exclusion (Opt-Outs).
- 7.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's full legal name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.
 - 7.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any timely Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's

determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

7.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 5.2 and 5.3 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

7.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, all Aggrieved Employees are deemed to release the claims identified in Paragraph 5.3 of this Agreement and are eligible for an Individual PAGA Payment.

7.6 Challenges to Calculation of Workweeks. Each Class Member and each of the Aggrieved Employees shall have 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

7.7 Objections to Settlement.

7.7.1 Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

7.7.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in

Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 45 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

- 7.7.3 Non-Participating Class Members have no right to object to any of the class action components of the Settlement.
- 7.8 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.
 - 7.8.1 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.
 - 7.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion ("Exclusion List"); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).
 - 7.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments ("Weekly Report"). The Weekly Reports must include provide the Administrator's assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.
 - 7.8.4 Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay

Periods. The Administrator's decision shall be final and not appealable or otherwise susceptible to challenge.

- 7.8.5 Administrator's Declaration. Not later than 14 days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.
- 7.8.6 Final Report by Settlement Administrator. Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

8. CLASS SIZE ESTIMATES.

Based on a review of its records to date, Defendant estimates there are **68** Class Members who collectively worked a total of **5,236** Workweeks, and **91** Aggrieved Employees who worked a total of **6,139** PAGA Pay Periods.

9. DEFENDANT'S RIGHT TO WITHDRAW.

If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 5% of the total of all Class Members, Defendant may, but is not obligated to, elect to withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be void *ab initio*, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendant will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendant must notify Class Counsel and the Court of its election to withdraw not later than seven days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

10. MOTION FOR FINAL APPROVAL.

Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel not later than seven days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

- 10.1 Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.
- 10.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.
- 10.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.
- 10.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

- 10.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

11. AMENDED JUDGMENT.

If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

12. ADDITIONAL PROVISIONS.

- 12.1 No Admission of Liability, Class Certification, or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendant reserves the right to seek decertification of any class for any reason, reserves the right to challenge the manageability for any representative claims, and reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to oppose any motion to decertify classes and to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).
- 12.2 Confidentiality Prior to Preliminary Approval. Plaintiffs, Class Counsel, Defendant and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income

to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency.

Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiffs, Class Counsel, Defendant and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, with any third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

- 12.3 No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 12.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 12.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 12.6 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 12.7 No Prior Assignments. The Parties separately represent 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 released and discharged by the Party in this Settlement.
- 12.8 No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement

be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

- 12.9 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 12.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 12.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 12.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 12.13 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 12.14 Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from Defendant that was produced solely for purposes of mediation and/or settlement, excluding all such information produced pursuant to the formal discovery in the Action unless, prior to the Court's discharge of the Administrator's obligation, Defendant makes a written request to Class Counsel for the return, rather than the destructions, of said Class Data.
- 12.15 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 12.16 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 12.17 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third

business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

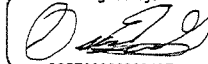
Robert J. Wassermann
rwassermann@mayallaw.com
Jenny D. Baysinger
jbaysinger@mayallaw.com
Vladimir J. Kozina
vjkozina@mayallaw.com
Mayall Hurley, P.C.
112 S. Church Street
Lodi, CA 95240
(209) 477-3833

To Defendant:

John T. Egley
jegley@calljensen.com
Chris C. Scheithauer
cscheithauer@calljensen.com
CALL & JENSEN
A Professional Corporation
610 Newport Center Drive, Suite 700
Newport Beach, CA 92660
(949) 717-3000

- 12.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
- 12.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree upon the signing of this Agreement, pursuant to CCP section 583.330, to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

Dated: 4/17/2024

DocuSigned by:

C35E0003696848F...

Plaintiff Oscar Perez

Dated: 4/16/2024

DocuSigned by:
Yuri Alexander Mena Landaverde
072547A756B2449...

Plaintiff Yuri Alexander Mena Landaverde

Dated:

[Signature] VP JIT
For DGA Services, Inc. DGA

APPROVED AS TO FORM

Dated: 4/16/2024

MAYALL HURLEY, P.C.

By

DocuSigned by:
Robert Wassermann
077A13A0E77A4C5

Counsel For Plaintiff

Dated:

CALL & JENSEN, P.C.

By *[Signature]*
Counsel For DGA Services, Inc.

**COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING
DATE FOR FINAL COURT APPROVAL**

**OSCAR PEREZ, et al. v. DGA SERVICES, INC. dba JIT TRANSPORTATION, et al.,
Santa Clara County Superior Court Case No. 23CV416653**

The Superior Court for the State of California authorized this Notice. Read it carefully! It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.

You may be eligible to receive money from an employee class action lawsuit ("Action") against DGA Services, Inc. dba JIT Transportation ("DGA" or "Defendant") for alleged wage and hour violations. The Action was filed by former Defendant employees Oscar Perez and Yuri Alexander Mena Landaverde ("Plaintiffs") and seeks payment of (1) back wages and penalties for a class of non-exempt employees ("Class Members") who worked for Defendant during the Class Period (May 25, 2019, to [DATE OF EXECUTION]); and (2) penalties under the California Private Attorney General Act ("PAGA") for all non-exempt employees who worked for Defendant . during the PAGA Period (May 27, 2022, to [DATE OF EXECUTION]) ("Aggrieved Employees").

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendant to fund Individual Class Payments, and (2) a PAGA Settlement requiring Defendant to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency ("LWDA").

Based on Defendant 's records, and the Parties' current assumptions, **your Individual Class Payment is estimated to be \$XXX and your Individual PAGA Payment is estimated to be \$XXX**. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendant's records you are not eligible for an Individual PAGA Payment under the Settlement because you didn't work during the PAGA Period.)

The above estimates are based on Defendant 's records showing that you worked XXX workweeks during the Class Period, and you worked XXX pay periods during the PAGA Period. If you believe that you worked more during either period, you can submit a challenge by the deadline date. **See Section 4** of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff's attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires Defendant to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendant .

If you worked for Defendant during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

- (1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against Defendant .
- (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against Defendant, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

Defendant will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement.	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Defendant that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement. The Opt-out Deadline is [DATE]	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendant must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).
Participating Class Members Can Object to the Class	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class

Settlement but not the PAGA Settlement Written Objections Must be Submitted by [DATE]	Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.
You Can Participate in the Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on [DATE]. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks/Pay Periods Written Challenges Must be Submitted by [DATE]	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number of Class Period Workweeks and number of PAGA Period Pay Periods you worked according to Defendant's records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by [DATE]. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiffs are former Defendant employees. The Action accuses Defendant of violating California labor laws by failing to pay overtime wages, minimum wages, and wages due upon termination and failing to provide meal periods, rest breaks and accurate itemized wage statements. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) ("PAGA"). Plaintiffs are represented by attorneys in the Action: Robert J. Wasserman, Jenny D. Baysinger, and Vladimir J. Kozina of Mayall Hurley, P.C. ("Class Counsel.")

Defendant strongly denies violating any laws or failing to pay any wages and contends it complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Defendant or Plaintiffs are correct on the merits. In the meantime, Plaintiffs and Defendant hired an experienced, neutral mediator an effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were

successful. By signing a lengthy written settlement agreement ("Agreement") and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiffs and Defendant have negotiated a proposed Settlement that is subject to the Court's Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendant does not admit any violations or concede the merit of any claims.

Plaintiffs and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendant has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Defendant Will Pay \$55,000 as the Gross Settlement Amount (Gross Settlement). DGA has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel's attorney's fees and expenses, the Administrator's expenses, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, Defendant will fund the Gross Settlement not later than 15 days after final Judgment. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - A. Up to \$11,000 (20% of the Gross Settlement) to Class Counsel for attorneys' fees and up to \$16,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
 - B. Up to \$3,000 total (\$2,000 to Plaintiff Perez and \$1,000 to Plaintiff Landaverde) as Class Representative Awards to Plaintiffs for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiffs will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.
 - C. Up to \$5,500 to the Administrator for services administering the Settlement.
 - D. Up to \$1,000.00 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.
4. Taxes Owed on Payments to Class Members. Plaintiffs and Defendant are asking the Court to approve an allocation of 100% of each Individual Class Payment to non-wage income, interest and penalties. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Individual Class Payments on IRS 1099 Forms.

Although Plaintiffs and Defendant have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name.

If the monies represented by your check is sent to the Controller's Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than [DATE], that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member's full legal name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Defendant.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against Defendant based on the PAGA Period facts alleged in the Action.

7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline enter a

Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and Defendant have agreed that, in either case, the Settlement will be void: Defendant will not pay any money and Class Members will not release any claims against Defendant.

8. Administrator. The Court has appointed a neutral company, Atticus Administration, LLC (the "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator's contact information is contained in **Section 9** of this Notice.
9. Participating Class Members' Release. After the Judgment is final and Defendant has fully funded the Gross Settlement, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant or related entities for wages or penalties based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint including, any and all claims involving any alleged failure to pay minimum wage, failure to pay overtime, failure to furnish meal periods, failure to furnish rest periods, failure to furnish accurate itemized wage statements, failure to pay wages at termination, and unfair business practices. Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

10. Aggrieved Employees' PAGA Release. After the Court's judgment is final, and Defendant has paid the Gross Settlement, all Aggrieved Employees will be barred from asserting PAGA claims against Defendant, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Defendant or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

The Aggrieved Employees' Releases for Participating and Non-Participating Class Members are as follows:

All Participating and Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint, and the PAGA Notices.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount (less the Former Employee Payments) by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$250 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.
3. Workweek/Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in Defendant's records, are stated in the first page of this Notice. You have until [DATE] to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. **Section 9** of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Defendant's calculation of Workweeks and/or Pay Periods based on Defendant's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Defendant's Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.

2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your full legal name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing clearly identifying you and communicating your request be excluded. Be sure to personally sign your request, identify the Action as *Oscar Perez v. DGA Services, Inc.*, and include your identifying information (full legal name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. The Administrator must be sent your request to be excluded by [DATE], or it will be invalid. Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Defendant are asking the Court to approve. At least 16 days before the Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website ([url](#)) or the Court's website www.sccscourt.org.

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. The deadline for sending written objections to the Administrator is [DATE]. Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action, *Oscar Perez v. DGA Services, Inc.*, Case No. 23CV416653 and include your full legal name, current address, telephone number, and approximate dates of employment for Defendant, and sign the objection. **Section 9** of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection.

See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on [DATE] at [TIME] in Department 19 of the Santa Clara County Superior Court, located at 161 North First Street, San Jose, CA 95113. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiffs, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend). Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website [url](#) beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendant and Plaintiffs have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to the Administrator's website at [\(url\)](#). You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<https://traffic.sccourt.org/search>) and entering the Case Number for the Action, Case No. 23CV416653 in the Case Number Search box. You can also make an appointment to personally review court documents in the Clerk's Office at the Old Courthouse by calling (408) 882-2100

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

Class Counsel:

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112 S. Church Street
Lodi, CA 95240
(209) 477-3833

Settlement Administrator:

Name of Company:
Email Address:
Mailing Address:
Telephone:
Fax Number:

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the Unclaimed Property Fund at sco.ca.gov for instructions on how to retrieve the funds

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

Exhibit 3