

Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
Misty M. Lauby, Esq. [CSB No. 243009]
misty@lmlfirm.com
LAUBY, MANKIN & LAUBY LLP
5198 Arlington Avenue, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

Attorneys for Plaintiff, on a representative basis and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS

ANA ORTEGA, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

AGGRESSIVE TRANSPORT LTD-USA,
a California Corporation; and DOES 1
through 20, inclusive;

Defendants.

Case No.: CV-23-003207

*[Assigned to Hon. John R. Mayne, Dept 21, for
all purposes]*

**DECLARATION OF BRIAN J. MANKIN,
ESQ., IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Hearing

Date: February 13, 2025

Time: 8:30 a.m.

Dept.: 21

I, Brian J. Mankin, state and declare:

1. I am an attorney licensed to practice before all of the courts of the State of California. I manage the employment department within my firm where I am also a Partner. I represent Plaintiff in this action and I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I submit this declaration in support of Plaintiff's Motion for Preliminary Approval of this Class Action Settlement. If called as a witness, I could and would competently testify thereto.

1 **COUNSEL'S EXPERIENCE**

2 2. I have been a member, in good standing, of the State Bar of California since 2001.
3 I am admitted to practice in the United States District Courts for the Central and Southern
4 District of California and the Ninth Circuit Court of Appeal and have tried cases in various
5 courts in California.

6 3. I have handled well over 500 employee vs. employer litigation matters during my
7 23 years in practice. Over the last 17 years, my practice has almost entirely consisted of
8 representing employees, the majority of which has included class action and representative
9 action wage and hour matters. In total, I have handled well over 300 class action and
10 representative action wage/hour cases, and have been appointed by the court as class counsel and
11 have received final court approval and judgment in over half of those actions to date, and
12 anticipate receiving final approval in many more of those in the future.

13 4. As part of these settlements and judgments, I have recovered well in excess of
14 \$250 million in damages for my clients and the class members (who often work as nurses,
15 ambulance drivers, technicians, warehouse workers, truck drivers, sales, professional
16 occupations and countless other trades). My team and I once held the record for the largest
17 PAGA-only case in California's history - a \$12.5 million-dollar court approved settlement,
18 which followed extensive litigation, summary adjudication and writs to the CA Supreme Court
19 against a Fortune 50 company (*Garcia v. Macy's*, San Bernardino Superior Court).

20 5. I have tried two major class and PAGA cases against Fortune 100 companies over
21 the last few years. I was lead counsel in a PAGA case that my firm tried in the Orange County
22 Superior Court and received a \$425,000 judgment. I was co-counsel in a class action case
23 against Walmart that was tried to the jury in District Court, wherein the jury awarded Plaintiffs
24 over \$6 million. Both cases were appealed, and ultimately the jury trial verdict was affirmed and
25 the PAGA case was reversed and remanded.

26 6. I was named by the LA Times as one "Southern California Leading Lawyers" in
27 the May 2023 issue of Consumer Attorney's of Southern California (a recognition given to 17
28 employment/labor law attorneys in 2023). Additionally, over the last 5+ consecutive years, I

have been selected by my peers as a “Super Lawyer” in Employment Litigation, a distinction that only 5% of lawyers receive.

BRIEF SUMMARY OF THE SETTLEMENT

7. Following a contested litigation process, Plaintiff and Defendant (collectively, the “Parties”) finalized a Class Action and PAGA Settlement Agreement and Release of Claims (the “Settlement Agreement” or “S.A.”), which is attached hereto as **Exhibit 1**.

8. The Settlement Agreement seeks to release and discharge Defendant from the claims brought against them in exchange for Defendant’s agreement to pay \$450,000 on a non-reversionary, non-claims made basis (each Class Member will receive his/her share of the Net Settlement Amount without having to submit a claim form or take any action). As set forth in the motion and Settlement Agreement, Plaintiff seeks to represent “All current and former California resident truck drivers employed by Defendant Aggressive Transport Ltd-USA during the Class Period of June 8, 2019, through October 25, 2024.”

9. Under the terms of the Settlement Agreement, Defendant will not oppose my firm’s application for a reasonable award of attorneys’ fees not to exceed \$150,000 (1/3 of the Settlement Amount), litigation expenses not to exceed \$25,000, Administration Costs up to \$7,000, PAGA penalties of \$30,000 (75% to the LWDA and 25% to the Aggrieved Employees on a pro rata basis), and a Service Payment not to exceed \$10,000 to Plaintiff Ana Ortega (“Class Representative”). After subtracting the agreed-upon deductions from the Settlement Amount, approximately \$228,000 will be available to pay the individual settlement amounts to approximately the Class Members who do not opt-out of the settlement, as follows:

<i>Gross Settlement Amount</i>	\$ 450,000.00
Attorneys’ Fees (1/3)	\$ 150,000.00
Litigation Costs (not to exceed)	\$ 25,000.00
Administrator Costs (not to exceed)	\$ 7,000.00
PAGA Penalties	\$ 30,000.00
Class Representative Service Payment	\$ 10,000.00
<i>Net Settlement Amount</i>	\$ 228,000.00

10. Assuming 85 Class Members, the average payment will be approximately \$2,682.35 (\$228,000 / 85). However, the actual payments will be calculated on a pro-rata basis according to the number of Weeks Worked by each Class Member during the Class Period. In addition, approximately the PAGA “Aggrieved Employees” will receive a share of the \$7,500 PAGA Penalties (25% of the \$30,000 allocation), shared pro-rata based on Weeks Worked during the PAGA Period.

11. Each Class Member will receive the Class Notice, explaining the nature of the case, and the process for participating, objecting and opting-out, and advising of his/her estimated settlement payment and the number of Weeks he/she is credited with working during the Class Period which is attached hereto as **Exhibit 2**.

PROCEDURAL BACKGROUND

12. My office has performed considerable work and diligently investigated and prosecuted this case to a successful conclusion. Our work has resulted in the creation of a significant settlement fund for the benefit of the Class. We efficiently communicated and exchanged information informally with Defense counsel which enabled the parties to successfully settle the case. Because of the risks involved in litigating the case and the contested legal and factual issues, we believe this settlement to be fair, reasonable, and adequate.

13. After being retained by Plaintiff, we sent a letter to Defendant requesting the production of Plaintiff's personnel and timekeeping records in order to further evaluate her wage and hour claims. On June 7, 2023, we submitted a letter to the California Labor Workforce Development Agency (the "LWDA") for civil penalties under the Private Attorney General Act of 2004 (the "PAGA"), which is attached hereto as **Exhibit 3**.

14. Then, on June 8, 2023, my office (on behalf of Plaintiff) filed this class action, alleging putative class and representative PAGA claims, including: (a) failure to pay minimum wages, (b) failure to pay nonproductive time under Labor Code 226.2, (c) failure to reimburse business expenses; (d) failure to failure to timely pay wages upon separation of employment, (e) failure to provide accurate itemized wage statements, (f) unfair and unlawful competition, and (g) related claims under PAGA.

1 15. Defendant retained counsel and immediately began to defend the case. The
2 Parties then engaged in substantial written discovery as Plaintiff prepared for class certification.
3 Ultimately, after discussions among counsel, the Parties agreed to attend private mediation prior
4 to further discovery and motion practice.

5 16. In preparation for mediation, the Parties informally exchanged documents and
6 information that allowed both sides to calculate the potential damages and evaluate potential risk,
7 including policies and procedures pertaining to the claims, statistics relating to the number of
8 current and former employees, number of shifts, pay periods worked, and other things. This
9 information enabled both parties to take a deep dive into the claims. Additionally, during this
10 process, Plaintiff and her counsel analyzed, researched, and investigated the potential issues,
11 including matters related to the calculation of damages, trial, and appellate issues and risks.

12 17. On October 25, 2024, Plaintiff and Defendant participated in a full-day mediation
13 with Hon. Daniel Buckley (Ret.), a retired judge who now serves as a mediator. At the
14 conclusion of mediation, extensive arm's-length negotiations, and after issuance of a mediator's
15 proposal, the Parties reached a global settlement and entered into the Settlement Agreement. The
16 Parties now seek the Court's preliminary approval of the Settlement.

17 **THE SETTLEMENT IS FAIR, JUST, AND REASONABLE**

18 18. The settlement was the product of extensive arm's length negotiations, facilitated
19 by an experienced mediator. Though cordial and professional, the settlement negotiations were
20 adversarial and non-collusive in nature. The settlement reached is the product of substantial
21 effort by the parties and their counsel. Although we believed that there was a possibility of
22 certifying the claims, we recognized the potential risk, expense, and complexity posed by
23 litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or
24 on the damages awarded, and/or on an appeal that can take several more years to litigate.

25 19. The settlement will result in a fair payment to each Class Member based on the
26 percentage of weeks worked during the Class Period and other factors as set forth in the
27 Settlement Agreement. As set forth hereinabove, Plaintiff and her counsel have diligently
28 investigated the claims and defenses on behalf of the Class Members and worked to achieve a

1 resolution of the claims to maximize the recovery by avoiding further expenditure of attorneys'
2 fees and costs. After evaluating the significant risks attendant with further litigation described
3 above and weighing them against the benefits of a known compromise and settlement as set forth
4 in the Settlement Agreement, settlement on the terms agreed to is believed to be in the best
5 interest of Plaintiff and the Class, and is a fair and reasonable resolution of the claims alleged.

6 20. My office brought to bear a great deal of experience in negotiating the settlement
7 of this case. As detailed herein, my office engaged in the necessary discovery and investigation,
8 making it possible to exercise informed judgment throughout the settlement process, including
9 significant document review (e.g. documents pertaining to Defendant's policies and procedures,
10 personnel documents, among others), and conducted an extensive analysis of the detailed class-
11 wide data provided by Defendant.

12 21. Based on my experience in other cases, including wage and hour matters, I
13 believe I am qualified to evaluate the class claims and viability of defenses in this class action.
14 In this case, the recovery for each class member is reasonable, fair, and adequate, and a
15 settlement at this time is in the best interests of the class. The settlement provides each class
16 member with compensation for the alleged violations when viewed in relation to the costs and
17 risks inherent in obtaining class certification and proceeding to trial.

18 22. Plaintiff's counsel, as well as Defendant's counsel, fully endorse the terms and
19 conditions of the settlement as set forth in the abovementioned Settlement Agreement.

20 23. Of course, the settlement amount represents a compromise figure, taking into
21 account the various risks surrounding class certification and the merits of Defendant's asserted
22 defense. Nevertheless, the settlement provides for fair and adequate payments to the class
23 members, with no reversion to Defendants.

24 **PLAINTIFF'S REQUESTED ENHANCEMENT PAYMENT**

25 24. Plaintiff seeks an enhancement payment of \$10,000 for her service to the class,
26 which I believe is fair and warranted. Plaintiff came forward in an effort to effectuate a policy
27 and practice change that benefitted all other Class Members, and to recover unpaid wages. She
28 assumed significant risk in bringing this litigation—namely, had she lost, she would have been

1 ordered to pay Defendant's costs.

2 25. Plaintiff provided invaluable assistance to my office and the Class in this case,
3 including providing factual background for the Class Complaint; reviewing the litigation
4 documents; providing information and documents about Defendant's policies and practices;
5 participating in phone calls to discuss litigation and settlement strategy; drafting responses to
6 formal discovery; and reviewing the settlement documents. Plaintiff agreed to participate in this
7 case with no guarantee of personal benefit. At final approval, Plaintiff will submit a
8 comprehensive declaration setting forth all of the reasons why she believes that the service award
9 should be approved.

10 **ADEQUACY OF COUNSEL AND THE PROVISIONAL REASONABLENESS OF THE**
11 **REQUESTED FEES AND COSTS**

12 26. As set forth above, I have handled well over 300 class and representative actions,
13 have been appointed as class counsel and have successfully resolved over half of those cases, and
14 many others remain pending and will successfully resolve in the future.

15 27. When this case was taken on a contingency fee basis, with my firm agreeing to
16 assume responsibility for all litigation costs, the ultimate result was far from certain. In the
17 course of this litigation, my firm paid all costs including filing fees, court costs, research fees,
18 and mediation costs. There was never a guarantee that we would recoup those expenditures.

19 28. It is my experience that attorney fee awards of one-third of a common fund
20 settlement is the standard in California. In this case, my firm agreed to seek one-third of the
21 Settlement Amount for attorneys' fees. Defendant does not oppose this fee request. The fee is
22 further warranted because it is within the range of reasonableness typically awarded in class
23 actions. The costs are reasonably capped at \$25,000 and will be based on the actual amount of
24 costs incurred at the time of final approval.

25 **SETTLEMENT ADMINISTRATOR**

26 29. The parties request that the Court appoint Phoenix Settlement Administrators to
27 serve as the Administrator. Phoenix is experienced in administering class action settlements and
28 has provided a proposal to administer this settlement for \$6,492.56, which is less than the

1 maximum costs of \$7,000 noted above, which is attached hereto as **Exhibit 4**.

2 **SUBMISSION TO THE LWDA**

3 30. Plaintiff has concurrently submitted the settlement and motion documents to the
4 LWDA in accordance with Labor Code § 2699(1)(2). The proof of submission is attached hereto
5 as **Exhibit 5**.

6 **EXHIBITS AND CONCLUSION**

7 31. A true and correct copy of the Settlement Agreement is attached as **Exhibit 1**.

8 32. A true and correct copy of the proposed Class Notice is attached hereto as **Exhibit**
9 **2**.

10 33. A true and correct copy of Plaintiff's letter to the LWDA is attached hereto as
11 **Exhibit 3**.

12 34. A true and correct copy of Phoenix's proposal to administer the Settlement is
13 attached as **Exhibit 4**.

14 35. A true and correct copy of the LWDA's confirmation of receipt of this Motion,
15 Declarations and exhibits is attached hereto as **Exhibit 5**.

16 36. For the foregoing reasons, it is respectfully requested that the Court grant
17 preliminary approval of the settlement as being fair, reasonable, and in the best interests of the
18 class, as well as preliminarily approve the requested attorneys' fees, costs, and enhancement
19 payment to the Class Representative.

20 I declare under penalty of perjury under the laws of the State of California that the
21 foregoing is true and correct. Executed on January 21, 2025, at Riverside, California.

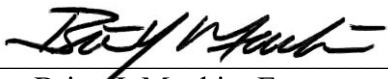
22
23 By: 
24 Brian J. Mankin, Esq.

EXHIBIT “1”

Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
Misty M. Lauby, Esq. [CSB No. 243009]
misty@lmlfirm.com
LAUBY, MANKIN & LAUBY LLP
5198 Arlington Avenue, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444

Attorneys for Plaintiff, on a representative basis and on behalf of all others similarly situated

Michael E. Lehman, Esq. [CSB No. 133523]
mlehman@tysonmendes.com
TYSON & MENDES
5250 N. Palm Ave, Ste 231
Fresno, CA 93704
Tel: (559) 500-2294
Attorney for Defendant, Aggressive Transport Ltd-USA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS

ANA ORTEGA, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

AGGRESSIVE TRANSPORT LTD-USA, a
California Corporation; and DOES 1 through
20, inclusive;

Defendants.

Case No.: CV-23-003207
*[Assigned to Hon. John R. Mayne, Dept. 21,
for all purposes]*

**CLASS ACTION AND PAGA
SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

1 This Class Action and PAGA Settlement Agreement and Release of Claims is entered
2 into by and between Plaintiff Ana Ortega, individually and on behalf of all others similarly
3 situated, and on behalf of the State of California, and Defendant Aggressive Transport Ltd-USA,
4 and is approved by their respective counsel of record, subject to the terms and conditions hereof
5 and the Court's approval.

6 **A. Definitions**

7 1. "Action" or "Lawsuit" means and refers to the case entitled *Ortega v. Aggressive*
8 *Transport Ltd-USA*, Stanislaus County Superior Court, Case No. CV-23-003207.

9 2. "Administrator" means and refers to Phoenix Settlement Administrators, the
10 third-party class action settlement administrator agreed to by the Parties, that will provide the
11 Notice to the Class Members and distribute the settlement amounts as described in this
12 Agreement.

13 3. "Administration Costs" means the costs payable from the Settlement Amount to
14 the Administrator for administering this Settlement, including, but not limited to, printing,
15 distributing, and tracking documents for this Settlement, tax reporting, and deposit of the
16 employee and employer share of payroll taxes, unclaimed property due diligence, reporting and
17 remittance obligations, distributing the Settlement Amount, and providing necessary reports and
18 declarations, as requested by the Parties. The Administration Costs shall be paid from the
19 Settlement Amount, including, if necessary, any such costs in excess of the amount represented
20 by the Administrator as being the maximum costs necessary to administer the Settlement.

21 4. "Aggrieved Employee(s)" all current and former California resident truck drivers
22 employed by Defendant and who drove in California at any time during the PAGA Period.

23 5. "Agreement" or "Settlement Agreement" or "Settlement" shall mean this Class
24 Action and PAGA Settlement Agreement and Release of Claims.

25 6. "Class" is defined as all current and former California resident truck drivers
26 employed by Defendant and who drove in California at any time during the Class Period.

27 7. "Class Member(s)" refers to individual members of the Class.
28

1 8. “Class Counsel” refers to Brian Mankin and Misty Lauby of Lauby, Mankin &
2 Lauby LLP.

3 9. “Class Data” means a complete list that Defendant will diligently and in good
4 faith compile from its records and provide to the Administrator on one spreadsheet which shall
5 include, for each Class Member, the individual’s full name, last known address, Social Security
6 Number, total Weeks Worked during the PAGA Period and the Class Period.

7 10. “Class Period” is deemed to be any time during the period of June 8, 2019,
8 through October 25, 2024.

9 11. “Class Representative” or “Plaintiff” means and refers to Plaintiff Ana Ortega.

10 12. “Complaint” refers to the operative first amended class and PAGA representative
11 action complaint filed in the Action.

12 13. “Court” (or “Judge”) means the California Superior Court, County of Stanislaus.

13 14. “Defendant” means and refers to Aggressive Transport Ltd-USA.

14 15. “Defendant’s Counsel” or “Defense Counsel” means and refers to Tyson &
15 Mendes.

16 16. “Effective Date” means the latest of the following dates: (i) if no Class Member
17 timely and properly intervenes, or files a motion to vacate the judgment approving the Settlement
18 Agreement under Code of Civil Procedure § 663, then the date of the Court’s Final Approval of
19 the Settlement; (ii) if a Class Member intervenes, or files a motion to vacate the judgment
20 approving the Settlement Agreement, then sixty-one (61) calendar days following the date the
21 Court enters an order granting Final Approval, assuming no appeal is filed; or (iii) if a timely
22 appeal is filed, then the date of final resolution of that appeal or other collateral attack (including
23 any requests for rehearing and/or petitions for *certiorari*), resulting in final judicial approval of
24 the Settlement.

25 17. “Escalator Clause:” Defendant represents that there are approximately 81 Class
26 Members who collectively worked approximately 7,120 work weeks in California during the
27 Class Period. The Parties agree that, should the total number of Workweeks exceed 7,832 (which
28 is 10% more than Defendant’s representation), then the Settlement Amount shall increase by

1 \$63.20 (Settlement Amount divided by 7,120) for each additional Workweek above 7,832.

2 18. “Final Approval” refers to the order of the Court granting final approval of this
3 Settlement Agreement and entering a judgment approving this Agreement on substantially the
4 terms provided herein or as may be modified by subsequent agreement of the Parties.

5 19. “Individual Class Payment” refers to each Participating Class Member’s share of
6 the Net Settlement Amount, as further discussed in Paragraph 47 (c) below.

7 20. “Individual PAGA Payment” refers to each Aggrieved Employee’s share of the
8 PAGA Penalties, as further discussed in Paragraph 47(c) below.

9 21. “Net Settlement Amount” is the Settlement Amount less the Attorneys’ Fees and
10 Costs Award, the Service Payment to the Class Representative as awarded by the Court, the
11 Administration Costs, and PAGA Penalties, as further discussed in Paragraph 47(b) below.

12 22. “Notice” means the notice of proposed class settlement that will be sent to the
13 Class Members and which will advise each Class Member of the settlement and his or her
14 estimated Individual Class Payment and Individual PAGA Payment and will further advise of the
15 setting of a Final Approval Hearing.

16 23. “Response Deadline” is 30 calendar days from the date the Notice is mailed to the
17 Class Members.

18 24. “Objecting Class Member” means a Class Member, other than Plaintiff, who
19 submits a valid and timely objection to the terms of this Agreement, pursuant to Paragraph 68(c)
20 below.

21 25. “PAGA Penalties” means the amount that the Parties have agreed to pay to the
22 Labor and Workforce Development Agency (“LWDA”) in connection with the California Labor
23 Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”), as well
24 as the Individual PAGA payment allocated to each Aggrieved Employee.

25 26. “PAGA Period” is deemed to be any time during the period of June 8, 2022,
26 through October 25, 2024.

27 27. “Participating Class Member” means any and all Class Members who are deemed
28 to participate and receive an Individual Class Payment and do not opt-out by submitting a timely

1 and valid Request for Exclusion.

2 28. “Parties” means Plaintiff and Defendant, collectively.

3 29. “Preliminary Approval Date” means the date the Court approves the Settlement
4 Agreement and enters the Preliminary Approval Order.

5 30. “Preliminary Approval Order” means the judicial Order to be entered by the
6 Court, upon the application or motion of the Plaintiff, preliminarily approving this Settlement
7 and providing for the issuance of the Notice Packet to the Class, an opportunity to opt out of the
8 Settlement, an opportunity to submit timely objections to the Settlement, and setting a final
9 approval hearing on the fairness of the terms of Settlement, including approval of attorneys’ fees
10 and costs. Provided that the motion is consistent with the terms herein, Defendant will not object
11 to Plaintiff’s motion for preliminary approval but will be provided with an opportunity to review
12 and comment upon the motion before it is filed.

13 31. “QSF” means the Qualified Settlement Fund set up by the Administrator for the
14 benefit of the Participating Class Members and Aggrieved Employees, and from which the
15 settlement payments shall be made.

16 32. “Released Class Claims” includes all claims stated in the Complaint and those
17 based solely upon the facts in the complaint, including: (a) failure to pay minimum wages, (b)
18 failure to pay nonproductive time under Labor Code 226.2, (c) failure to reimburse business
19 expenses; (d) failure to failure to timely pay wages upon separation of employment, (e) failure to
20 provide accurate itemized wage statements, (f) unfair and unlawful competition, and (h) all other
21 claims for statutory penalties based on the facts or claims alleged in the Complaint. The time
22 period governing the Released Class Claims shall be the Class Period.

23 33. “Released PAGA Claims” or “PAGA Claims” means any and all PAGA claims
24 that Plaintiff alleged against the Released Parties, on behalf of the Aggrieved Employees and the
25 State of California, based on the facts stated in the Complaint and in the LWDA notice letter,
26 including all PAGA claims seeking civil penalties premised upon: (a) failure to pay minimum
27 wages, (b) pay nonproductive time under Labor Code § 226.2, (c) failure to reimburse business
28 expenses, (d) failure to timely pay wages (§204)(e) failure to failure to timely pay wages each

1 period and upon separation of employment, (f) failure to provide accurate itemized wage
2 statements, and (g) all other claims for civil penalties recoverable under the Private Attorneys
3 General Act, Labor Code §§ 2698 *et seq.* based on the facts or claims alleged in the Complaint.
4 The time period governing the Released PAGA Claims shall be any time during the PAGA
5 Period.

6 34. “Released Parties” means Defendant and its parents, subsidiaries, directors,
7 owners, shareholders, officers, agents, attorneys, servants, joint employers and employees, past
8 and present, and each of them and anyone acting in concert with foregoing.

9 35. “Request for Exclusion” shall have the meaning ascribed to it in Paragraph 68(a)
10 below.

11 36. “Service Payment” or “Service Award” means an amount up to \$10,000.00
12 approved by the Court to be paid to Class Representative Ana Ortega in addition to her
13 Individual Class Payment as a Participating Class Member and Individual PAGA Payment as an
14 Aggrieved Employee.

15 37. “Settlement Amount” is \$450,000.00, subject to the Escalator Clause and
16 exclusive of Defendant’s obligation to fund its share of payroll taxes, as further discussed in
17 Paragraph 47(c) below.

18 38. “Work Weeks” or “Weeks Worked” in the context of a Class Member means any
19 and all work weeks during the Class Period during which the Class Member worked at least one
20 day in California for Defendant. Likewise, in the context of Aggrieved Employees, it means any
21 and all weeks worked during the PAGA Period during which the Aggrieved Employee worked at
22 least one day in California for Defendant.

23 **B. General Terms**

24 39. Pursuant to Labor Code section 2699.3, subdivision (a), Plaintiff gave timely
25 written notice to Defendant and the LWDA by sending the PAGA notice letter. The LWDA did
26 not assert jurisdiction over the PAGA Claims.

27 40. On June 8, 2023, Plaintiff filed a putative class action complaint against
28 Defendant in Stanislaus County Superior Court. Plaintiff later filed the operative First Amended

1 Complaint, alleging putative class and representative PAGA claims, including: (a) failure to pay
2 minimum wages, (b) failure to pay nonproductive time under Labor Code 226.2, (c) failure to
3 reimburse business expenses; (d) failure to failure to timely pay wages upon separation of
4 employment, (e) failure to provide accurate itemized wage statements, (f) unfair and unlawful
5 competition, and (g) related claims under PAGA.

6 41. Defendant denies Plaintiff's claims and allegations and contend that the Action is
7 not suitable for class certification.

8 42. The Class Representative believes she can proceed with the representative and
9 class claims, that the Action is meritorious, and that class certification is appropriate.

10 43. The Parties have conducted a thorough investigation into the facts of the Action.
11 This includes conducting an extensive exchange of informal discovery, including a sampling of
12 payroll and timekeeping records for Class Members. Class Counsel is both knowledgeable about
13 and has done extensive research with respect to the applicable law and potential defenses to the
14 claims of the Class. Class Counsel has diligently pursued an investigation of the Class
15 Members' claims against Defendant. Based on the foregoing data and on their own independent
16 investigation and evaluation, Class Counsel is of the opinion that the settlement with Defendant
17 for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable,
18 and adequate and is in the best interest of the Class Members in light of all known facts and
19 circumstances, including the risk of significant delay and uncertainty associated with litigation,
20 various defenses asserted by Defendant, and numerous potential appellate issues.

21 44. On October 25, 2024, Plaintiff and Defendant participated in a full-day mediation
22 with Hon. Daniel Buckley (Ret.), a retired judge who now serves as a mediator. At the
23 conclusion of mediation, extensive arm's-length negotiations, and after issuance of a mediator's
24 proposal, the Parties reached a global settlement and entered into this Agreement.

25 45. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts
26 to be performed or judgment to be entered pursuant to the terms of the Settlement and
27 Agreement, shall be construed as an admission by Defendant of any wrongdoing or violation of
28 any statute or law or liability on the claims or allegations in the Action.

1 46. Stipulation for Class Certification. For settlement purposes only, Defendant will
2 stipulate that the Participating Class Members may be conditionally certified as a Class. This
3 stipulation to certification is in no way an admission that class action certification is proper and
4 shall not be admissible in this or in any other action except for the sole purposes of enforcing this
5 Agreement. Should, for whatever reason, the Court fail to issue Final Approval, the Parties’
6 stipulation to class certification as part of the Settlement shall become null and void ab initio and
7 shall have no bearing on, and shall not be admissible in connection with, the issue of whether
8 certification would be appropriate in a non-settlement context. Defendant expressly reserves its
9 rights and declare that it would continue to oppose class certification and the substantive merits
10 of the case should the Court fail to issue Final Approval. Plaintiff expressly reserves her rights
11 and declares that she will continue to pursue class certification and a trial should the Court fail to
12 issue Final Approval.

13 **C. Terms of Settlement**

14 47. The financial terms of the Settlement are as follows:

15 (a) Settlement Amount: The Parties agree to settle this Action for the
16 Settlement Amount, subject to the Escalator Clause and Defendant’s obligation to separately pay
17 the share of payroll taxes owed on the wage portion of the Individual Class Payments, which is
18 the maximum amount that will be paid by Defendant and includes Individual Class Payments,
19 Class Counsel’s Attorneys’ Fees and Costs Award, the Service Payment to the Class
20 Representative, Administration Costs, and PAGA Penalties.

21 (b) Net Settlement Amount: The “Net Settlement Amount” is defined as the
22 Settlement Amount less the Attorneys’ Fees and Costs Award, the Service Payment to the Class
23 Representative as awarded by the Court, the Administration Costs, and PAGA Penalties. If the
24 Court reduces the Attorneys’ Fees and Costs Award, Service Award, or Administrator Costs, or
25 either increases or decreases the amount allocated to the PAGA Penalties, the difference shall be
26 placed in the Net Settlement Amount and allocated to the Class.

27 (c) Calculation of Individual Class Payments: The Individual Class Payment
28 for each Class Member will be calculated by the Administrator using the Class as follows.

Compensable workweeks will be all Weeks Worked by the Class Members during the Class Period. The dollars per compensable work week will be calculated by dividing the total Weeks Worked by Class Members into the Net Settlement Amount to determine a per work week value (“Workweek Value”). The Workweek Value will be multiplied by the number of Weeks Worked by a Participating Class Member during the Class Period to determine the distribution for a Participating Class Member. If there are any timely submitted Requests for Exclusion, the Administrator shall proportionately increase the Individual Class Payments for each Participating Class Member so that the amount actually distributed to Participating Class Members equals 100 percent of the Net Settlement Amount.

(d) Allocation of Individual Class Payments: The Individual Class Payments to Participating Class Members will be allocated as follows: 20% will be allocated as wages subject to withholding of all applicable local, state, and federal taxes; and 80% will be allocated for interest and statutory penalties (pursuant to, *e.g.*, California Labor Code sections 203, 210, 226) from which no taxes will be withheld. The Administrator will issue to each Participating Class Member an Internal Revenue Service Form W-2 and comparable state forms with respect to the wage allocation and a Form 1099 with respect to the penalties and interest allocations.

(e) Service Payment to Class Representative: The amount, if any, awarded to the Class Representative as a Service Payment will be set by the Court in its discretion, not to exceed \$10,000, in exchange for the service that Plaintiff performed on behalf of the Class. Defendant agrees not to oppose this request. The Service Payment to the Class Representative will be paid out of the Settlement Amount. The Class Representative will be issued an IRS Form 1099 in connection with this payment and shall be solely and legally responsible to pay all applicable taxes on this payment. The Parties agree that any amount awarded as the Service Payment to the Class Representative less than the requested amount shall not be a basis for Class Counsel to void this Settlement Agreement. Should the Court approve a lesser amount for the Service Payment, the difference shall be added to the Net Settlement Amount to be distributed to the Participating Class Members.

1 (f) Attorneys' Fees and Costs Award: Defendant agrees to not oppose a
2 request by Class Counsel to the Court for an award of attorneys' fees of one-third of the
3 Settlement Amount, plus reasonable litigation costs not to exceed \$25,000 ("Attorney's Fees and
4 Cost Award"). Defendant agrees not to oppose any contention by Class Counsel that attorneys'
5 fees should be based on the common fund theory. The Attorney's Fee and Cost Award shall be
6 paid from the Settlement Amount, and, except for this award, Defendant shall have no further
7 obligation to pay any attorneys' fees, costs, or expenses to Class Counsel. Should the Court
8 approve a lesser amount than what is sought by Class Counsel, the difference shall be added to
9 the Net Settlement Amount to be distributed to the Participating Class Members. Any Court
10 order awarding less than the amount sought by Class Counsel shall not be grounds to rescind the
11 Settlement Agreement or otherwise void the Settlement. The Administrator shall issue to Class
12 Counsel an IRS Form 1099 reflecting the amount of attorneys' fees and costs awarded by the
13 Court.

14 (g) Administration Costs: The fees and other charges of the Administrator
15 will be paid from the Settlement Amount, not to exceed \$6,492.56, unless (1) the Escalator
16 Clause is triggered (whereby any reasonable increase in Administration Costs shall be paid from
17 the increased Settlement Amount, subject to Court approval), or (2) as otherwise approved by all
18 Parties and the Court.

19 (h) PAGA Penalties: The Parties agree that \$30,000 is allocated to PAGA
20 Penalties, and is to be paid from the Settlement Amount, subject to Court approval. Of this
21 amount, \$22,500 (75%) shall be paid to the LWDA in satisfaction of civil penalties under the
22 Private Attorney General Act of 2004 ("PAGA") and \$7,500 (25%) will form the Individual
23 PAGA Payments to the Aggrieved Employees, which shall be calculated and allocated pro-rata
24 on a Work Week basis, which will be treated entirely as civil penalties and shall be reported as
25 required on an IRS Form 1099. Class Counsel shall give proper notice to the LWDA of the
26 Settlement.

27 (i) Tax Liability: Class Counsel and Defendant make no representations as to
28 the tax treatment or legal effect of settlement amounts called for hereunder, and Plaintiff and the

1 Class Members are not relying on any statement or representation by Class Counsel or Defendant
2 in this regard. Plaintiff, Participating Class Members, and Aggrieved Employees understand and
3 agree that they will be solely responsible for the payment of any taxes and penalties assessed on
4 their respective Individual Class Payments and Individual PAGA Payments, described herein.
5 Forms 1099 will be distributed in the manner required by the Internal Revenue Code of 1986 (the
6 “Code”) and consistent with this Agreement. If the Code, the regulations promulgated
7 thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes
8 set forth in this Section may be modified in a manner to bring Defendant into compliance with
9 any such changes. Plaintiff, Participating Class Members, and Aggrieved Employees understand
10 and agree that they will be solely responsible for the payment of any taxes and penalties assessed
11 on their respective payments described herein.

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

1 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
2 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
3 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR
4 ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS
5 LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF
6 THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING
7 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

8 (k) "Non-Reversionary" Settlement. This is a "non-reversionary" settlement.
9 Under no circumstances will any portion of the Settlement Amount revert to Defendant.
10 Participating Class Members and Aggrieved Employees will not have to make a claim in order to
11 receive an Individual Class Payment or Individual PAGA Payment. Distributions, in the form of
12 Individual Class Payment or Individual PAGA Payments will be made directly to each
13 Participating Class Member and Aggrieved Employee. The Administrator shall be responsible
14 for accurately and timely reporting and remittance obligations with respect to unclaimed funds as
15 a result of a Participating Class Member and/or Aggrieved Employee not cashing any checks
16 delivered pursuant to the Settlement by the check cashing deadline, as set forth herein.

17 (l) Class Counsel and Plaintiff believe that the Settlement is fair and
18 reasonable and will so represent same to the Court.

19 **D. Release by the Participating Class Members**

20 48. Upon entry of the Final Approval Order and Defendant's funding of the
21 Settlement Amount and the required employer-side payroll taxes, and except as to such rights or
22 claims as may be created by this Agreement, Plaintiff and the Participating Class Members, on
23 behalf of themselves and their respective representatives, agents, heirs, and assigns, will forever
24 completely release and discharge the Released Parties from the Released Class Claims for the
25 Class Period.

26 49. Each Participating Class Member will be deemed to have made the foregoing
27 Release as if by manually signing it.
28

1 50. Class Representative, on behalf of herself and the Class, acknowledges and agrees
2 that the claims for unpaid wages and untimely payment of wages in the Action are disputed, and
3 that the payments set forth herein constitute payment of all sums allegedly due to her. Class
4 Representative, on behalf of herself and the Class, acknowledges and agrees that Labor Code §
5 206.5 is not applicable to the Parties or Settlement. Labor Code § 206.5 provides in pertinent
6 part as follows: “An employer shall not require the execution of any release of any claim or right
7 on account of wages due, or to become due, or made as an advance on wages to be earned, unless
8 payment of those wages has been made.”

9 **E. Release of PAGA Claims**

10 51. Upon entry of the Final Approval Order and Defendant’s funding of the
11 Settlement Amount and the required employer-side payroll taxes, Plaintiff – in her individual
12 capacity and on behalf of the State of California and LWDA – shall completely release and
13 discharge the Released Parties from the Released PAGA Claims for the PAGA Period.

14 52. Regardless of submitting a valid Request for Exclusion, neither Plaintiff nor any
15 Aggrieved Employee shall have the right to opt-out or otherwise exclude themselves from
16 releasing the Released PAGA Claims.

17 **F. Release by Plaintiff and Class Representative**

18 53. Class Representative does hereby, for herself and her spouses, heirs, successors,
19 beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians,
20 personal representatives, and assigns forever and completely release and discharge the Released
21 Parties from any and all charges, complaints, claims, liabilities, obligations, promises,
22 agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs,
23 losses, debts, and expenses (including back wages, statutory penalties, civil penalties, liquidated
24 damages, exemplary damages, interest, attorneys’ fees, and costs) of any nature whatsoever,
25 from the beginning of time through the execution of this Agreement, whether known or
26 unknown, suspected or unsuspected, including but not limited to all claims arising out of, based
27 upon, or relating to Class Representative’s employment with Defendant or the remuneration for
28 or termination of such employment (the “Class Representative’s Claims”).

1 54. Without limiting the generality of the foregoing, this general release by Plaintiff
2 includes all federal, state, and local statutory claims, federal and state common law claims
3 (including but not limited to those for contract, tort and equity), including without limitation the
4 Americans with Disabilities Act, Age Discrimination in Employment Act, Title VII of the Civil
5 Rights Act of 1964 (as amended), 42 USC sec. 1981, 42 USC sec. 1983, the Fair Labor
6 Standards Act, the Employment Retirement Security Income Act of 1974, the California
7 Constitution, the California Fair Employment and Housing Act, the California Unfair
8 Competition Act (California Business and Professions Code section 17200 et seq.), and the
9 California Labor Code.

10 55. Plaintiff agrees that there is a risk that any injury that she may have suffered by
11 reason of the Released Parties' relationship with him might not now be known, and there is a
12 further risk that said injuries, whether known or unknown at the date of this Settlement
13 Agreement, might possibly become progressively worse, and that as a result thereof further
14 damages may be sustained. Nevertheless, Plaintiff agrees to forever and fully release and
15 discharge the Released Parties and understands that by the execution of this Settlement
16 Agreement no further claims for any such injuries that existed at the time of the execution of this
17 Settlement Agreement may ever be asserted by Plaintiff with respect to claims arising in the time
18 period from the beginning of time to the execution of this Settlement Agreement.

19 56. Plaintiff expressly waives and relinquishes all rights and benefits afforded by
20 Section 1542 of the Civil Code of the State of California and does so understanding and
21 acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code
22 of the State of California states:

23 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
24 THAT THE CREDITOR OR RELEASING PARTY DOES NOT
25 KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
26 THE TIME OF EXECUTING THE RELEASE AND THAT, IF
27 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
28 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
 OR RELEASED PARTY.

1 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
2 full and complete release and discharge of all parties, Class Representative expressly
3 acknowledges that this Settlement Agreement is intended to include in its effect, without
4 limitation, all claims that Class Representative knew of, as well as all claims that she does not
5 know or suspect to exist in her favor against the Released Parties, or any of them, for the time
6 period from the beginning of time to the execution of this Settlement Agreement, and that this
7 Settlement Agreement contemplates the extinguishment of any such Class Representative's
8 Claims. Notwithstanding the above, the general release by Class Representative shall not extend
9 to claims for workers' compensation benefits, claims for unemployment benefits, claims for state
10 disability benefits, or other claims that may not be released by law.

11 57. It is the intent of the Parties that the Final Approval Order shall have full
12 equitable and collateral estoppel and res judicata effect to the fullest extent permitted by law with
13 regard to the Release by Participating Class Members, the Release of PAGA Claims and the
14 Release by Plaintiff and Class Representative.

15 **G. Interim Stay of Proceedings**

16 58. Pending completion of all of the prerequisites necessary to effectuate this
17 Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the Action
18 except such as is necessary to effectuate the Settlement.

19 **H. Notice Process**

20 59. Appointment of Administrator. The Parties have agreed to the appointment of the
21 Administrator to perform the duties of a settlement administrator, including mailing the Notice,
22 using standard devices to obtain forwarding addresses, independently reviewing and verifying
23 documentation associated with any claims or opt-out requests, resolving any disputes regarding
24 the calculation or application of the formula for determining the Individual Class Payment and
25 Individual PAGA Payments, drafting and mailing the settlement checks to Participating Class
26 Members and Aggrieved Employees, issuing all necessary tax forms, and performing such other
27 tasks as set forth herein or as the Parties mutually agree or that the Court orders.
28

1 60. Disputes Regarding Administration. Any and all disputes relating to
2 administration of the Settlement by the Administrator (except for disputes regarding Class Data)
3 shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms
4 and conditions of this Agreement, until Plaintiff and Defendant notify the Court that all
5 payments and obligations contemplated by this Agreement have been fully carried out. Prior to
6 presenting any issue to the Court, counsel for the Parties will confer in good faith to resolve the
7 dispute without the necessity of Court intervention. The Administrator shall also be responsible
8 for issuing to Plaintiff, Participating Class Members, and Aggrieved Employees, and Class
9 Counsel any Tax Forms as may be required by law for all amounts paid pursuant to this
10 Agreement.

11 61. Class Data. Within fourteen (14) days after entry of the Preliminary Approval
12 Order, Defendant shall provide the Class Data to the Administrator. The Administrator will run a
13 check of the Class Members' addresses against those on file with the U.S. Postal Service's
14 National Change of Address List. The Class Data provided to the Administrator will remain
15 confidential and will not be used or disclosed to anyone, except as required by applicable tax
16 authorities, pursuant to Defendant's express written consent, or by order of the Court. Although
17 Class Counsel will not be provided with the list of Class Data, nothing herein shall prevent Class
18 Counsel from communicating with Class Members regarding the Action and Settlement.

19 62. Total Workweeks. At least 5 days prior to mailing the Notice, the Administrator
20 shall provide a spreadsheet to Class Counsel and Defense Counsel containing a preliminary
21 calculation of all payments to be paid from the Settlement Amount, including the estimated
22 Individual Class Payments to each Class Member and Individual PAGA Payments to each
23 Aggrieved Employee (a person's name shall be redacted and a control number used in place of
24 the name). In the event that the total Workweeks worked by all Class Members triggers the
25 Escalator Clause, the Administrator shall notify the Parties of the increased Settlement Amount,
26 and related increased payments from the Settlement Amount, including increased Attorneys'
27 Fees and Costs and any increased Administration Costs, all of which shall be subject to Court
28 approval.

1 63. Notice. The Notice, as approved by the Court, shall be sent by the Administrator
2 to the Class Members, by first class mail, in English, within ten (10) calendar days following the
3 Administrator's receipt of the Class Data. The Administrator shall use standard devices,
4 including a skip trace, to obtain forwarding addresses of Class Members if any envelopes are
5 returned.

6 64. Returned Notice Packets. The Administrator will take steps to ensure that the
7 Notice is received by all Class Members, including utilization of the National Change of Address
8 Database maintained by the United States Postal Service to review the accuracy of and, if
9 possible, update a mailing address. Notices will be re-mailed to any Class Member for whom an
10 updated address is located within ten (10) calendar days following both the Administrator
11 learning of the failed mailing and its receipt of the updated address. The Notice shall be identical
12 to the original Notice, except that it shall notify the Class Member that the exclusion (opt-out)
13 request or objection must be returned by the later of the Response Deadline or fifteen (15) days
14 after the remailing of the Notice.

15 65. Presumption Regarding Receipt of Notice. It will be conclusively presumed that
16 if an envelope has not been returned to the Administrator by the Response Deadline that the
17 Class Member received the Notice.

18 66. Disputes Regarding Class Data. Class Members are deemed to participate in the
19 Settlement unless they opt out, and Aggrieved Employees may not opt out of the Released
20 PAGA Claims. The Notice will inform Class Members of his/her estimated Individual Class
21 Payment and Individual PAGA Payment, as well as the number of weeks he/she worked during
22 the Class Period and the PAGA Period. Class Members may dispute their Weeks Worked if they
23 feel they should be credited with more Weeks Worked in the Class Period and/or PAGA Period
24 in California than Defendant's records show by timely submitting evidence to the Administrator.
25 Defendant's records will be presumed determinative absent reliable evidence to rebut
26 Defendant's records, but the Administrator will evaluate the evidence submitted by the Class
27 Member and provide the evidence submitted to Class Counsel and Defense Counsel who agree to
28 meet and confer in good faith about the evidence to determine the Class Member's actual

1 number of Work Weeks and estimated Individual Class Payment and Individual PAGA Payment.
2 If Class Counsel and Defense Counsel are unable to agree, they agree to submit the dispute to the
3 Court to render a final decision. Class Members and Aggrieved Employees will have until the
4 Response Deadline to dispute Weeks Worked, object or opt out, unless extended by the Court.

5 67. Declaration of Due Diligence. The Administrator shall provide counsel for the
6 Parties, at least twenty-five (25) days prior to the final approval hearing, a declaration of due
7 diligence and proof of mailing with regard to the mailing of the Notice.

8 68. Class Members' Rights. Each Class Member will be fully advised of the
9 Settlement, the ability to object to the settlement, and the ability to opt out or request exclusion
10 from the Released Class Claims portion of the Settlement. The Notice will inform the Class
11 Members of the Court-established deadlines for filing objections or requesting exclusion from
12 the Settlement in accordance with the following guidelines:

13 (a) Requests for Exclusion from Class. Any Class Member, other than
14 Plaintiff, may request to be excluded from the Class by submitting a "Request for Exclusion" to
15 the Administrator, postmarked on or before the Response Deadline. The Request for Exclusion
16 should state:

17 "I WISH TO BE EXCLUDED FROM THE CLASS IN THE
18 AGGRESSIVE TRANSPORT LAWSUIT. I UNDERSTAND
19 THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT
20 CLASS, I WILL NOT RECEIVE MY INDIVIDUAL CLASS
21 PAYMENT FROM THIS LAWSUIT."

22 To be valid, any Request for Exclusion must include the full name, address, telephone
23 number, last four digits of the social security number or date of birth, and signature of the Class
24 Member requesting exclusion. The Request for Exclusion must be returned by mail to the
25 Administrator at the specified address set forth in the Notice. Any such Request must be made in
26 accordance with the terms set forth in the Notice. A Request for Exclusion will be timely only if
27 postmarked by the Response Deadline, unless the Parties otherwise agree in writing. Any Class
28 Member who timely requests exclusion in compliance with these requirements: (i) will not have

1 any rights under this Agreement, including the right to object, appeal, or comment on the
2 Settlement; (ii) will not be entitled to receive the Individual Class Payment under this
3 Agreement; and (iii) will not be bound by this Agreement, or the Judgment. Any Class Member
4 who is an Aggrieved Employee who requests timely exclusion will still be subject to the
5 Released PAGA Claims to the fullest extent permitted by law and receive an Individual PAGA
6 Payment. All Parties and their counsel, including Defendant's respective members, member
7 managers, owners, officers, and directors, shall not encourage or solicit opt-outs or objections,
8 directly or indirectly, through any means.

9 (b) Binding Effect on Participating Class Members. All Participating Class
10 Members will: (i) be bound by the terms and conditions of this Agreement, the Judgment, and
11 the releases set forth herein; and (ii) except as otherwise provided herein, will be deemed to have
12 waived all objections and oppositions to the fairness, reasonableness, and adequacy of the
13 Settlement.

14 (c) Objections to Settlement. Any Class Member, other than Plaintiff, who
15 does not submit a valid and timely Request for Exclusion may object to the terms of this
16 Agreement. To object, a Class Member shall inform the Administrator, in writing, of his or her
17 objection which must be postmarked by the Response Deadline at the address set forth in the
18 Notice. Such objection shall include the Objecting Class Member's full name, address,
19 telephone number, last four digits of the social security number or date of birth, signature, and
20 dates of employment with Defendant, in addition to the case name and number, the basis for the
21 objection, including any legal support and each specific reason in support of the objection, as
22 well as any documentation or evidence in support thereof, and, if the Objecting Class Member is
23 represented by counsel, the name and address of his or her counsel. The Administrator shall
24 provide objections, if any, to Class Counsel and Defense Counsel within three (3) calendar days
25 of receipt, and the Administrator shall attach the same to its declaration of due diligence and file
26 with the Court prior to the Final Approval Hearing. An Objecting Class Member remains
27 eligible to receive monetary compensation from the Settlement. Plaintiff and Defendant shall not
28 be responsible for any fees, costs, or expenses incurred by an Objecting Class Member and/or his

1 or her counsel related to any objections to the Settlement. Submitting an objection does not
2 preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by
3 becoming a party of record by timely and properly intervening or filing a motion to vacate the
4 judgment under Code of Civil Procedure § 663.

5 (d) Failure to Object. Any Class Member who does not timely and properly
6 become a party of record by intervening or filing a motion to vacate the judgment waives any
7 and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding
8 and appellate proceeding, such as a motion to vacate judgment, motion for new trial, a motion
9 under California Code of Civil Procedure section 473, and extraordinary writs.

10 (e) Responses to Objections. Counsel for the Parties may file a response to
11 any objections submitted by an Objecting Class Member at least five (5) court days before the
12 date of the Final Approval Hearing.

13 (f) Class Members will have until the Response Deadline to object or submit
14 a Request for Exclusion to the Administrator by U.S. Mail. The Administrator shall disclose
15 jointly to Class Counsel and Defense Counsel what objections or Requests for Exclusion were
16 timely submitted on a weekly basis, and upon the request of Class Counsel or Defense Counsel.

17 69. Calculation of Employer's Share of Payroll Taxes. Within five (5) calendar days
18 of Final Approval, the Administrator shall provide Defense Counsel with the calculation of the
19 employer's share of payroll taxes to be paid by Defendant in addition to the Settlement Amount.

20 70. Funding of the Settlement Amount. Defendant shall fund the Settlement Amount,
21 plus Defendant's share of payroll taxes, based on the payment plan below by wiring the full
22 amount owed of each installment payment to the Administrator on or before each payment due
23 date.

24 (a) By June 15, 2025, Defendant shall fund one-half (50 percent) of the Settlement
25 Amount, plus the required employer-side taxes on that sum. The Administrator
26 shall hold this money in an interest-bearing account pending receipt of the full
27 Settlement Amount. In the event that Defendant fails to make this payment
28 within 5 calendar days of the due date, Class Counsel shall send a notice of

1 default to Defendant's Counsel. Defendant will then have seven (7) calendar days
2 after issuance of the notice of default to cure and bring all payments up to the
3 current required amount. If Defendant fails to timely cure the late payment, all
4 remaining balances shall immediately become due and payable.

5 (b) By the later of April 30, 2026, or 15 days after the Effective Date, Defendant shall
6 fund the second half (50 percent) of the Settlement Amount, plus the required
7 employer-side taxes on that sum, which represents the remaining balance of the
8 Settlement Amount.

9 71. Distribution of Funds. No later than ten (10) calendar days after the deposit of the
10 full Settlement Amount into the Administrator's account, the Administrator will mail the
11 Individual Class Payments and Individual PAGA Payment to Participating Class Members and
12 Aggrieved Employees, the payment to Class Counsel for the Attorneys' Fees and Costs Award,
13 any Service Payment to the Class Representative, the payment to the LWDA for PAGA
14 penalties, and will pay itself the Administration Costs.

15 72. Deadline for Cashing Settlement Checks. Participating Class Members and
16 Aggrieved Employees shall have 180 calendar days after mailing by the Administrator to cash
17 their settlement checks. The release will be binding even upon Participating Class Members who
18 do not cash their checks within the 180-day period. In the event that any settlement check is
19 returned to the Administrator within 180 days of mailing, the Administrator will, within five (5)
20 business days of receipt of the returned settlement check, perform a skip trace to locate the
21 individual, and notify Defense Counsel and Class Counsel of the results. If a new address is
22 located by these means, the Administrator will have ten (10) business days to re-issue the check.
23 Neither Defendant, Defense Counsel, Class Counsel, Plaintiff, nor the Administrator will have
24 any liability for lost or stolen settlement checks, forged signatures on settlement checks, or
25 unauthorized negotiation of settlement checks. Without limiting the foregoing, in the event a
26 Participating Class Member and/or Aggrieved Employee notifies the Administrator that he or she
27 believes that a settlement check has been lost or stolen, the Administrator shall immediately stop
28

1 payment on such check. If the check in question has not been negotiated prior to the stop
2 payment order, the Administrator will issue a replacement check.

3 (a) If any Participating Class Member's check is not cashed within the time
4 periods noted above, the check will be void and a stop-payment will be issued, and the
5 Administrator shall issue the unclaimed funds to the California State Controller's Office in the
6 name of the Class Member.

7 (b) If any Aggrieved Employee's check is not cashed within the time periods
8 noted above, the check will be void and a stop-payment will be issued, and the Administrator
9 shall issue the unclaimed funds to the California State Controller's Office in the name of the
10 Aggrieved Employee.

11 **I. Duties of the Parties Prior to the Court's Approval**

12 73. Promptly after execution of this Agreement, Plaintiff will move the Court for
13 Preliminary Approval of this Settlement and entry of the Preliminary Approval Order
14 accomplishing the following:

- 15 (a) Approving as to form and content the proposed Notice;
16 (b) Directing the mailing of the Notice by first class mail to the Class
17 Members;
18 (c) Preliminarily approving this Settlement;
19 (d) Preliminarily certifying the class for purposes of this Settlement;
20 (e) Advising the LWDA of the proposed Settlement; and
21 (f) Scheduling the Final Approval Hearing on the issue of whether this
22 Settlement should be finally approved as fair, reasonable, and adequate.

23 **J. Duties of the Parties Following Court's Final Approval**

24 74. In connection with the Final Approval Hearing provided for in this Agreement,
25 Class Counsel shall submit a proposed Final Approval Order:

- 26 (a) Approving the Settlement, adjudging the terms thereof to be fair,
27 reasonable and adequate, and directing consummation of its terms and provisions;
28

(b) Approving Class Counsel's application for an award of attorneys' fees and reimbursement of litigation costs and expenses, the Service Payment to the Class Representative, and the payment to the Administrator for costs of administering the settlement; and

(c) Entering judgment approving Settlement.

K. Voiding the Agreement

75. If the Court fails or refuses to issue the Final Approval Order or fails to approve any material condition of this Agreement which effects a fundamental change of the Settlement, the entire Agreement shall be rendered voidable and unenforceable as to all Parties herein at the option of either Party.

76. If the Settlement is voided or fails for any reason, Plaintiff and Defendant will have no further obligations under the Settlement, including any obligation by Defendant to pay the Settlement Amount, or any amounts that otherwise would have been owed under this Settlement.

77. If the Settlement is voided or fails for any reason, any costs incurred by the Administrator shall be borne equally by Defendant and Plaintiff, unless otherwise specified in this Agreement.

L. Other Terms

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

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

80. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to accomplish the terms of this Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Agreement and the terms set forth herein. As soon as practicable after execution of this Agreement, Class Counsel shall, with the assistance and

1 cooperation of Defendant and Defense Counsel, take all necessary steps to secure the Court's
2 preliminary and final approval of the settlement, and the final entry of judgment.

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

7 82. No Admission. Defendant denies any and all liability to Plaintiff and/or any Class
8 Member and/or Aggrieved Employee in this Action, as to any and all causes of action that were
9 asserted or that might have been asserted in this Action. Nonetheless, Defendant wishes to settle
10 and compromise the matters at issue in the Complaint to avoid further substantial expense and
11 the inconvenience and distraction of protracted and burdensome litigation. Defendant has taken
12 into account the uncertainty and risks inherent in litigation, and without conceding any infirmity
13 in the defenses that they have asserted or could assert against Plaintiff, have determined that it is
14 desirable and beneficial that Plaintiff's claims be settled in the manner and upon the terms and
15 conditions set forth in this Agreement.

16 83. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
17 Order, nothing contained herein, nor the consummation of this Agreement, is to be construed or
18 deemed an admission of liability, culpability, negligence, or wrongdoing on the part of
19 Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this
20 Agreement with the intention of avoiding further disputes and litigation with the attendant
21 inconvenience and expenses. This Agreement is a settlement document, and it, along with all
22 related documents such as the notices, and motions for preliminary and final approval, shall,
23 pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be
24 inadmissible in evidence in any proceeding, except an action or proceeding to approve the
25 settlement, and/or interpret or enforce this Agreement. The stipulation for class certification as
26 part of this Agreement is for settlement purposes only and if, for any reason the settlement is not
27 approved, the stipulation will be of no force or effect.

1 84. No Publicity. The Parties will not publicize the Settlement or disclose it to third
2 parties prior to the Court granting Preliminary Approval, except as required or necessary to
3 effectuate its terms and comply with law. After the Final Approval Date, Class Counsel and
4 Class Representative agree that they will not discuss the Settlement with the media, any
5 settlement and verdict reporting service, any social media postings, or other Internet postings.
6 Nothing herein shall be construed to prevent Class Counsel from the public filing of motions or
7 other case materials in the Action related to seeking and obtaining Court approval of this
8 Settlement and the related awards of attorneys' fees and costs, or to communications with Class
9 Members or their representatives about this Settlement, including through the posting of Court-
10 filed documents on Class Counsel's websites for access solely by the Class Members, or to
11 prevent the Parties or their representatives from communicating with financial or legal advisors
12 regarding the Settlement. In response to any media inquiry, Class Counsel may state only that
13 the Action has been settled on terms mutually agreeable to the Parties.

14 85. Notices. Unless otherwise specifically provided herein, all notices, demands or
15 other communications given hereunder shall be in writing and shall be deemed to have been duly
16 given as of the third business day after mailing by United States registered or certified mail,
17 return receipt requested, addressed:

18 *To the Class:*

19 Brian J. Mankin
20 **brian@lmlfirm.com**
21 Lauby, Mankin & Lauby LLP
22 5198 Arlington Ave, PMB 513
23 Riverside, CA 92504
24 Tel: (951) 320-1444 | Fax: (951) 320-1445

25 *To Defendant:*

26 Michael Lehman, Esq. [CSB No. 133523]
27 **mlehman@tysonmendes.com**
28 TYSON & MENDES
29 5250 N. Palm Ave, Ste 231
30 Fresno, CA 93704
31 Tel: (559) 500-2294

1 86. Construction. The Parties hereto agree that the terms and conditions of this
2 Agreement are the result of lengthy, intensive arm's-length negotiations between the Parties and
3 that this Agreement shall not be construed in favor of or against any Party by reason of the extent
4 to which any Party or his or its counsel participated in the drafting of this Agreement. Plaintiff
5 and Defendant expressly waive the common-law and statutory rule of construction that
6 ambiguities should be construed against the drafter of an agreement and further agree, covenant,
7 and represent that the language in all parts of this Agreement shall be in all cases construed as a
8 whole, according to its fair meaning.

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

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

17 89. Dispute Resolution. Prior to instituting legal action to enforce the provisions of
18 this Agreement or to declare rights and/or obligations under this Agreement, a Party shall
19 provide written notice to the other Party and allow an opportunity to cure the alleged
20 deficiencies, and Plaintiff and Defendant may agree to seek the help of the Mediator to resolve
21 any dispute they are unable to resolve informally. During this period, the Parties shall bear their
22 own attorneys' fees and costs. This provision shall not apply to any legal action or other
23 proceeding instituted by any person or entity other than Plaintiff or Defendant.

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

27 91. Integration Clause. This Settlement Agreement contains the entire agreement
28 between the Parties relating to the settlement and transaction contemplated hereby, and all prior

or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

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

93. Signatures of All Class Members Unnecessary to be Binding. It is agreed that, because the members of the Class are numerous, it is impossible or impractical to have each Class Member execute this Agreement. The Notice will advise all Class Members of the binding nature of the release provided herein and such shall have the same force and effect as if this Agreement were executed by each Class Member.

94. Counterparts. This Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully signed Agreement, which shall be binding upon and effective as to all Parties. Electronic signatures shall have the same force and effect as an original.

Dated: Jan 19, 2025

PLAINTIFF AND CLASS REPRESENTATIVE


Ana Ortega (Jan 19, 2025 18:17 PST)

Ana Ortega

Dated: _____

DEFENDANT AGGRESSIVE TRANSPORT LTD-USA

By: _____ (name)

_____ (title)

1 or contemporaneous agreements, understandings, representations, and statements, whether oral
2 or written and whether by a Party or such Party's legal counsel, are merged herein. No rights
3 hereunder may be waived except in writing.

4 92. Binding On Assigns. This Agreement shall be binding upon and inure to the
5 benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
6 successors, and assigns.

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8 because the members of the Class are numerous, it is impossible or impractical to have each
9 Class Member execute this Agreement. The Notice will advise all Class Members of the binding
10 nature of the release provided herein and such shall have the same force and effect as if this
11 Agreement were executed by each Class Member.

12 94. Counterparts. This Agreement may be executed in counterparts, and when each
13 Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an
14 original, and, when taken together with other signed counterparts, shall constitute one fully
15 signed Agreement, which shall be binding upon and effective as to all Parties. Electronic
16 signatures shall have the same force and effect as an original.

17
18 Dated: _____

PLAINTIFF AND CLASS REPRESENTATIVE

19
20 _____
Ana Ortega

21
22 Dated: January 21, 2025

DEFENDANT AGGRESSIVE TRANSPORT LTD-USA

23 _____
24 By: Brad MacDonald

25 Chief Executive Officer
26
27
28

1 **APPROVED AS TO FORM:**

2
3 Dated: 1/20/2025

CLASS COUNSEL
LAUBY, MANKIN & LAUBY LLP

4 

5
6 Brian J. Mankin
Attorneys for Plaintiff

7
8 Dated: January 21, 2025

DEFENSE COUNSEL
TYSON & MENDES

9 

10 Michael Lehman, Esq.
11 Attorneys for Defendant

EXHIBIT “2”

COURT-APPROVED NOTICE OF CLASS ACTION SETTLEMENT

Ana Ortega v. Aggressive Transport Ltd-USA

(Stanislaus County Superior Court Case No. CV-23-003207)

***The Stanislaus County Superior Court 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 Defendant Aggressive Transport Ltd-USA (“Aggressive Transport”) for alleged violations of the California Labor Code.

The Action was filed by Ana Ortega (“Plaintiff” or “Class Representative”) and seeks payment of (1) unpaid wages and unreimbursed business expenses, statutory damages and penalties, interest and attorneys’ fees on behalf of a class of California resident truck drivers employed by Aggressive Transport and who drove in California (“Class Members”) at any time during the Class Period (which is June 8, 2019, through October 25, 2024); and (2) penalties under the California Private Attorneys General Act (“PAGA”) for all California resident truck drivers employed by Aggressive Transport and who drove in California at any time during the PAGA Period (which is June 8, 2022, to October 25, 2024) (“Aggrieved Employees”). (Plaintiff and Defendant shall be collectively referred to as the “Parties.”)

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendant to fund Individual Class Payments to Class Members, and (2) a PAGA Settlement requiring Defendant to fund Individual PAGA Payments to Aggrieved Employees 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 and PAGA Payments are shown in the charts below, along with the applicable data points from which these estimates are derived.

[CLASS MEMBER NAME] || [ID/CONTROL NUMBER]

Two Parts	Weeks Worked	Your Estimated Share
Class Member	INSERT (During Class Period)	\$INSERT (Individual Class Payment)
Aggrieved Employee	INSERT (During PAGA Period)	\$INSERT (Individual PAGA Payment)

Please note that the actual amount you receive may be different from the above and will depend on several 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.) If you believe that you worked more weeks during the periods discussed above, you can submit a challenge by **DATE**, 2025 (“**Response Deadline**”). 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 do 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 Aggressive Transport during the Class Period and/or the PAGA Period, you have a few options as shown in the Chart below:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

DO NOTHING AND RECEIVE A SETTLEMENT PAYMENT	If you want to receive your full settlement payment, then no further action is required on your part. You will automatically receive a settlement payment if the Settlement receives final approval by the Court. You will be bound by the terms of the Settlement Agreement and will give up your right to sue on the Released Class Claims described in Section 3 .
EXCLUDE YOURSELF	If you do not wish to participate in the settlement of the Class Claims, you may “optout” of the settlement of the Class Claims. If you choose to opt-out, you must submit a Request for Exclusion by [REDACTED], 2025 (see Section 6 for more details on how to opt-out). If you opt-out, you will no longer be a Class Member, and you will (1) <u>not</u> receive an Individual Class Payment, but you will preserve your right to pursue the Released Class Claims described below subject to applicable statutes of limitations, and (2) be barred from filing an objection to the settlement. 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 PAGA Claims. See Section 6 of this Notice.
OBJECT	If you decide to object to the settlement with respect to the Class Claims because you find it unfair or unreasonable, you must submit an Objection stating why you object to the settlement by [REDACTED], 2025 (see Section 7 for more details on how to object).
DISPUTE THE NUMBER OF WEEKS WORKED	If you believe the number of workweeks that you were credited with working in the chart above is incorrect, you may submit a written dispute to the Administrator (see Section 4 for more details on how to submit a Dispute). Aggressive Transport’s records will be presumed correct, but you may provide evidence to the Administrator showing how many Work Weeks you believe you should be credited.

YOU MAY ATTEND THE FINAL APPROVAL HEARING, BUT IT’S NOT REQUIRED

DATE: DATE, 2025 TIME: TIME A.M.	At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement. 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. See Section 8 of this Notice.
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1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former employee of Aggressive Transport. The Action accuses Defendant of violating California labor laws by failing to pay minimum and overtime wages, failure to provide meal and rest breaks, failure to reimburse business expenses, failure to timely pay wages each period and upon separation of employment, failure to provide accurate itemized wage statements, and practicing unfair and unlawful competition. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under PAGA.

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

Both Parties are represented by attorneys in the Action. See Section 9 below for Class Counsel’s contact information.

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

So far, the Court has made no determination whether Defendant or Plaintiff is correct on the merits. In the meantime, Plaintiff and Defendant hired an experienced, neutral mediator in an effort to resolve the Action by negotiating 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”), Plaintiff 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.

Plaintiff 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 \$450,000 as the "Settlement Amount." Defendant has agreed to pay a total Settlement Amount of \$450,000 and will deposit the Settlement Amount into an account controlled by the Administrator. The Administrator will use the Settlement Amount to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel's attorneys' fees and expenses, the Administrator's Costs, and PAGA Penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, North Bay will fund the Settlement in two installments, with the final payment in December 2026, assuming that no Class Member objects or intervenes in the Settlement, which will delay payments until after the deadline to file an appeal or an appeal is resolved.

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 Settlement Amount, the amounts of which will be decided by the Court at the Final Approval Hearing:

A. Up to one-third of the Settlement Amount (\$150,000.00) to Class Counsel for attorneys' fees and up to \$25,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.

B. Up to \$10,000 to the Class Representative as a Service Payment for litigating the Action, working with Class Counsel and representing the Class. The Class Representative's Service Payment will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.

C. **\$XX** to the Settlement Administrator for services administering the Settlement.

D. Up to \$30,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their share of Weeks Worked during the PAGA Period.

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 remainder (the "Net Settlement Amount") by making Individual Class Payments to Participating Class Members based on their number of Weeks Worked during the Class Period.

4. Taxes Owed on Payments to Class Members. Plaintiff and Defendant are asking the Court to approve an allocation of 20% of each Individual Class Payment to taxable wages ("Wage Portion") and 80% to penalties and interest ("Non-Wage Portion"). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendant will separately pay employer payroll taxes they owe on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff 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 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 are sent to the Controller's Unclaimed Property Fund, 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 Settlement, unless you opt-out of the Settlement, not later than the Response Deadline. See Section 6 of this Notice for details on how to Opt-Out.

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 to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff 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. Settlement Administrator. The Court has appointed a neutral company, **XX** (the "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also decide any Disputes over weeks worked, 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 Settlement Amount and separately paid all employer payroll taxes, 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 the Released Parties (defined below) entities for wages based on the facts alleged in the Action for the duration of the Class Period and PAGA Period, which are 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 representatives, agents, heirs, and assigns, release the Released Parties (which includes Defendant and its parents, subsidiaries, directors, owners, shareholders, officers, agents, attorneys, servants, joint employers and employees, past and present, and each of them and anyone acting in concert with foregoing) from all claims stated in the Complaint and those based solely upon the facts in the complaint, including: (a) failure to pay minimum wages, (b) failure to pay nonproductive time under Labor Code 226.2, (c) failure to reimburse business expenses; (d) failure to failure to timely pay wages upon separation of employment, (e) failure to provide accurate itemized wage statements, (f) unfair and unlawful competition, and (h) all other claims for statutory penalties based on the facts or claims alleged in the Complaint ("Released Class Claims"). The time period governing the Released Class Claims shall be the Class Period.

10. Release of Released PAGA Claims. After the Court's judgment is final, and Defendant has paid the Settlement Amount (and separately paid the employer-side payroll taxes), Plaintiff on behalf of herself, the State of California and the LWDA shall release the Released Parties (which includes Defendant and its parents, subsidiaries, directors, owners, shareholders, officers, agents, attorneys, servants, joint employers and employees, past and present, and each of them and anyone acting in concert with foregoing) of all PAGA claims that Plaintiff alleged against the Released Parties, on behalf of the Aggrieved Employees and the State of California, based on the facts stated in the Complaint and in the LWDA notice letter, including all PAGA claims seeking civil penalties premised upon: (a) failure to pay minimum wages, (b) pay nonproductive time under Labor Code § 226.2, (c) failure to reimburse business expenses, (d) failure to timely pay wages (§204)(e) failure to failure to timely pay wages each period and upon separation of employment, (f) failure to provide accurate itemized wage statements, and (g) all other claims for civil penalties recoverable under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.* based on the facts or claims alleged in the Complaint ("Released PAGA Claims"). The PAGA Released Claims do not release any Aggrieved Employees' claims for wages or statutory penalties. The time period governing the Released PAGA Claims shall be any time during the PAGA Period.

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

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Weeks Worked by all Participating Class Members during the Class Period, and (b) multiplying the result by the number of Weeks Worked by each individual Participating Class Member during the Class Period.

2. Individual PAGA Payments. The Settlement Administrator will calculate Individual PAGA Payments by (a) dividing \$7,500 by the total number of Weeks Worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by the number of Weeks Worked by each individual Aggrieved Employee during the PAGA Period.

3. Disputing Weeks Worked. The number of weeks you worked during the Class Period and PAGA Period, as recorded in Defendant's records, are stated in the first page of this Notice. You have until **DATE** ("Response Deadline") to dispute the number of Workweeks credited to you by submitting evidence to the Administrator.

You need to support your dispute by sending copies of pay stubs or other records. The Administrator will accept Defendant's calculation of Weeks Worked 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 challenges based on your submission and on input from Class Counsel 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 and Aggrieved Employees. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (*i.e.*, every Class Member who does not opt-out) and Aggrieved Employee. The single check will combine the Individual Class Payment and the Individual PAGA Payment, and will be issued in approximately December 2026.

2. Aggrieved Employees Only. If you opted out of the Class settlement, but qualify as an Aggrieved Employee, then the Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee, including those who opt out of the Class Settlement in approximately December 2026.

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 Settlement Administrator's contact information.

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

You will be treated as a Participating Class Member, participating fully in the Settlement, unless you opt-out of the Settlement, not later than the Response Deadline.

If you **do not** wish to take part in the release of the Class Claims in the Settlement, you may exclude yourself by sending to the Administrator a "Request for Exclusion" letter/card postmarked no later than , 2025 with your full name, address, telephone number, last four digits of your social security number or your date of birth, and signature. The Request for Exclusion should state:

"I WISH TO BE EXCLUDED FROM THE CLASS IN THE AGGRESSIVE TRANSPORT LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE MY INDIVIDUAL CLASS PAYMENT FROM THIS LAWSUIT."

Any person who submits a timely Request for Exclusion from the Class Claims (1) will not have any rights under this Settlement, including the right to object, appeal, or comment on the Settlement; (2) will not be entitled to receive an Individual Class Payment; (3) will preserve the right to pursue the Released Class Claims, and (4) will not be bound by this Settlement, or the Judgment. You must make the request yourself. If someone else makes the request for you, it will not be

valid. Send your request to be excluded to the Administrator by [REDACTED], 2025 (the “Response Deadline”), or it will be invalid. Section 9 of the Notice has the Administrator’s contact information.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Claims remain eligible to receive an Individual PAGA Payment.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. A Participating Class Member who disagrees with any aspect of the Settlement may wish to object. **The deadline for sending written objections to the Administrator is [REDACTED], 2025 (the “Response Deadline”).**

If you wish to object to the proposed Settlement, you or your own attorney must submit a written objection, and the objection must include your full name, address, telephone number, last four digits of the social security number or date of birth, signature, and dates of employment with Defendant Aggressive Transport, in addition to the case name and number (*Ortega v. Aggressive Transport Ltd-USA*, Case No. CV-23-003207), the basis for the objection, including any legal support and each specific reason in support of the objection, as well as any documentation or evidence in support thereof. Additionally, if you are represented by an attorney, the objection must include the name and address of your attorney. This objection and all supporting information must be sent to the Administrator at the address listed in Section 9, **postmarked** on or before [REDACTED], 2025. Class Members who object in writing to the proposed Settlement are not required to attend the Final Approval Hearing.

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. If you do not comply with these procedures and the deadline for objections, the Court may not consider your objection at the Final Approval Hearing, and you may lose the right to contest the approval of the Settlement. You are still eligible to receive a settlement payment should the settlement become Final even if you object to the settlement. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment before entry of judgment.

8. WHEN IS THE FINAL APPROVAL HEARING?

On [REDACTED], 2025, the Court will hold a public hearing in Department 21 of the Superior Court for the State of California, County of Stanislaus, [REDACTED], for the purposes of determining whether the proposed Settlement is fair, adequate and reasonable and should be approved, whether to approve Class Counsel’s applications for attorneys’ fees and costs, whether to approve the payments to the LWDA, and whether to approve Plaintiff’s request for the service award. This hearing may be continued or rescheduled by the Court. Objectors to the proposed settlement will be provided notice in the event that the Final Approval Hearing is continued to a later date. Class Members who support the proposed Settlement do not need to appear at the hearing and do not need to take any other action to indicate their approval.

9. HOW CAN I GET MORE INFORMATION?

If you have questions about this Notice, the process to Opt-Out or Object, or the Settlement, or if you did not receive this Notice in the mail and you believe that you are or may be a member of the Class, you may contact the Administrator for more information or to request that a copy of this Notice be sent to you in the mail. And you may also contact Class Counsel. Contact information for both the Administrator and Class Counsel is provided here:

Settlement Administrator	Class Counsel
Name Mailing Address Telephone Number	Brian Mankin, Esq. brian@LMLfirm.com Misty Lauby, Esq.

	<i>misty@LMLfirm.com</i> Lauby Mankin Lauby LLP 5198 Arlington Ave, PMB 513 Riverside, CA 92504 Tel: (951) 320-1444
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You may also seek advice and guidance from your own private attorney at your own expense, if you so desire.

This Notice is only a summary. For more detailed information, you may review the Settlement Agreement, containing the complete terms of the proposed Settlement, which is on file with the Court and attached to the Declaration of Brian J. Mankin in Support of Motion for Preliminary Approval of Class Action Settlement filed on DATE and available to be inspected at any time during regular business hours at the Office of the Clerk, Stanislaus County Superior Court, located at ADDRESS.

DO NOT TELEPHONE THE COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT

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 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. Section 9 of the Notice has the Administrator's contact information.

EXHIBIT “3”



June 7, 2023

Sent Via Online Filing to the LWDA

California LWDA
Attn: PAGA Administrator
455 Golden Gate Ave., 9th Fl.
San Francisco, CA 94102

Sent Via U.S. Mail and Certified Mail

Aggressive Transport Ltd., U.S.A.
13535 Highway 36E
Red Bluff, California 96080

Daniel MacDonald
3383 232nd St.
Langley, British Columbia V2Z 2H5
Canada

Herman Chan
3630 Trafalgar Street
Vancouver, British Columbia V6L 2M2
Canada

**Re: PAGA Civil Penalty Claim
Ana Ortega v. Aggressive Transport Ltd., U.S.A., et al.**

To the Labor and Workforce Development Agency, Aggressive Transport Ltd., U.S.A., Daniel MacDonald, Herman Chan, and all other affiliated entities and owners:

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, this letter shall serve as notification of the PAGA civil penalty claim of aggrieved employee Ana Ortega (“Claimant”), on behalf of the State of California and all Aggrieved Employees, against her employer(s), Aggressive Transport Ltd., U.S.A. and/or any affiliated entities, as well as its owners/officers Daniel MacDonald, Herman Chan, and others (the “Owners”) (collectively, the “Company”), for violations of Labor Code §§ 201, 202, 203, 204, 208, 210, 218.6, 221, 226, 226.2, 226.3, 256, 558, 1174(d), 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, among other sections inadvertently omitted, and/or sections of the applicable Industrial Welfare Commission Wage Order(s).

FACTUAL BACKGROUND

Claimant was employed by the Company from approximately October 2022 through April 2023 as a truck driver. Claimant alleges that she and all nonexempt employees that were employed by the Company (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and corresponding wage and hour violations to Claimant was subjected during her employment.

Notably, at all relevant times, Claimant and the Aggrieved Employees were only paid on a piece-rate (per-mile) basis but did not receive separate hourly compensation at no less than the minimum wage for unpaid, on-duty, time including tasks such as pre-trip and post-trip inspections, detention time, loading and

unloading time, completing paperwork, refueling or repair, and downtime between runs. Also, the piece-rate compensation paid to Claimant and the Aggrieved Employees often resulted in a payment of wages at less than the required California minimum wages for all hours worked. Furthermore, Claimant and the Aggrieved Employees were not provided proper minimum and regular wages due to Company's failure to accurately record and compensate for all hours worked. For example, Claimant and the Aggrieved Employees were often required to clock out for meal periods and/or rest breaks yet were under the Company's control and required to perform duties for the Company while off the clock. As a result of this policy and practice, Claimant and the Aggrieved Employees were required to perform off-the-clock work that the Company either knew or should have known they were performing. Also, the Company failed to pay Claimant and the Aggrieved Employees for rest and recovery periods and other nonproductive time as required by Labor Code § 226.2.

Also, the Company required Claimant and the Aggrieved Employees to incur necessary business-related expenses and costs without reimbursement, including, but not limited to, acquiring and maintaining a smart phone and related monthly data plan to communicate with the Company.

The Company also failed to comply with the mandates of Labor Code § 204 regarding the timing of the payment of wages to its employees each period, including meal and rest period premiums, and failed to comply with the mandates of Labor Code §§ 201 – 203 regarding payment of final wages upon separation of employment. Moreover, at all relevant times, the Company provided inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a).

Claimant alleges that she worked under the joint direction and control of the Company and the Owners and is informed and believes that each of them acted in all respects pertinent to this action as the agent of the others, carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of each are legally attributable to the others. On information and belief, a unity of interest and ownership between each exists such that the Company and the Owners acted as a single employer of Claimant and the Aggrieved Employees. Furthermore, on information and belief, the Company and the Owners are an integrated enterprise and should be treated as a single employer because the Company and the Owners share an interrelation of operations, with common human resources and personnel policies and shared common offices and facilities. Upon information and belief, the Company and the Owners share common management, a centralized control of labor operations, and common ownership or financial control.

Furthermore, Claimant alleges that the Owners are now and at all material times herein mentioned was the owners/officers of the Company, and Claimant's and the Aggrieved Employees' actual employer or, in the alternative, was an individual employed by the Company as a managerial and/or supervisory employee and/or agent. In addition, Claimant alleges that at all relevant times herein the Owners had the authority, in the interest of the Company to exercise independent judgment to hire, transfer, promote, discharge, assign, discipline, or take other similar actions against Claimant and the Aggrieved Employees, and were in Claimant's chain of command at the time of and direct participants in the wrongful conduct which constitutes the basis of Claimant's complaint herein. Claimant also alleges that the Company and the Owners are the agents, servants, employees, partners, affiliates, and/or representatives of each other, and were, at all times herein mentioned, acting within the course, scope, and purpose of such relationship(s) and with the knowledge, consent and/or ratification of each other. Furthermore, in conducting themselves in the manner described herein, the Company and the Owners were acting in active concert with on another such that the acts of each were fully attributable to the other in all material respects.

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Claimant also alleges that the Company was merely the alter ego of the Owners in that there existed a unity of interest and ownership such that any separateness between them ceased to exist and the Owners exercised undue dominance, control, influence, and management over the Company. Claimant further alleges that, at all relevant times, the Company has been inadequately capitalized to conduct its business, has failed to follow appropriate corporate formalities, and has simply been a shell and instrumentality through which the Owners have conducted their personal affairs. Accordingly, the corporate veil should be pierced, and any liability attached to the Company should be imposed jointly and severally against the Owners. Adherence to the fiction of the separate existence of the corporate entity of the Company would permit abuse of the corporate privilege, thereby sanctioning fraud and promoting injustice.

Also, in a separate, but not necessarily mutually exclusive, alternative theory of liability, Owners are liable for PAGA civil penalties under Labor Code § 558 as “other person(s)” who caused the violations regarding minimum wage among other claims. *See Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820 (“if there is evidence and a finding that a party other than the employer ‘violates, or causes to be violated’ the overtime laws (§ 558(a)) or ‘pays or causes to be paid to any employee’ less than minimum wage (§ 1197.1(a)), then that party is liable for certain civil penalties regardless of the identity or business structure of the employer”); *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S.Dist.LEXIS 40851 (holding the same)

Based on Claimant’s own personal observations, all Aggrieved Employees employed or formerly employed by the Company are entitled to similar wage and hour claims, as further set forth below.

PAGA ASSESSMENT FOR FAILURE TO PAY WAGES

(Labor Code §§ 204, 221-223, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198; IWC Wage Order §§ 3, 4(B))

During their employment, Claimant and the Aggrieved Employees were paid on a piece-rate basis and did not receive separate hourly compensation at no less than the minimum wage for unpaid, on-duty, time including tasks such as mandatory paid rest breaks, pre-trip and post-trip inspections, detention time, loading and unloading time, completing paperwork, refueling or repair, and downtime between runs. Additionally, the piece-rate compensation paid to Claimant and the Aggrieved Employees often resulted in a payment of wages at less than the required California minimum wages for all hours worked. Therefore, this resulted in earned, but unpaid, minimum and regular wages due and owing to Claimant and the Aggrieved Employees. Accordingly, Labor Code §§ 210, 558, 1194.2, 1197.1, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay all wages including, but not limited to, minimum and regular wages in violation of the Labor Code and/or the IWC Wage Orders.

PAGA ASSESSMENT FOR FAILURE TO PROVIDE SEPARATE PAYMENT FOR REST AND RECOVERY PERIODS AND OTHER NONPRODUCTIVE TIME

(Labor Code § 226.2)

Labor Code § 226.2 requires employers that pay their employees on a piece-rate basis to provide separate payment for rest and recovery periods and other nonproductive time. Claimant and the Aggrieved Employees are and/or were employees of the Company who were paid on a piece-rate basis, yet the Company did not comply with the requirements of Labor Code § 226.2 for its piece-rate employees. As a

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888.959.8508

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result of these violations, penalties may be assessed pursuant to Labor Code § 2699, among possibly other sections.

PAGA ASSESSMENT FOR UNLAWFUL DEDUCTION OF WAGES

(Labor Code §§ 200, 221, 223)

California Labor Code § 200 defines wages to include “all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.” California Labor Code § 221 states that “[i]t shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” Labor Code § 221 reflects “‘California’s strong public policy favoring the protection of employees’ wages.’” *Sciborski v. Pacific Bell Directory* (2012) 205 Cal.App.4th 1152, 1166, quoting *Harris v. Investor’s Business Daily, Inc.* (2006) 138 Cal.App.4th 28, 40–41. Furthermore, Labor Code § 219 states that the protections of Labor Code § 221 cannot “be contravened or set aside by a private agreement.” Therefore, the rights under Labor Code § 221 are nonnegotiable and cannot be waived by the parties. See *Sciborski, supra* at 1166. Also, under Labor Code §§ 219 and 221, an employer may not “require its employees to consent to unlawful deductions from their wages.” *Hudgins v. Neiman Marcus Group, Inc.* (1995) 34 Cal.App.4th 1109, 1124.

Here, the Company had a policy of unlawfully deducting amounts from the wages of the Aggrieved Employees, including Claimant. Accordingly, Labor Code §§ 210, 225.5, 558, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it engaged in the unlawful deduction of wages.

PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES

(Labor Code § 2802; IWC Wage Order § 9(b))

Labor Code § 2802(a) states “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.” IWC Wage Order § 9(b) states “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer.”

Here, the Company required Claimant and the Aggrieved Employees to incur expenses in direct consequence of the discharge of their duties. For example, the Company required Claimant and the Aggrieved Employees to acquire and maintain a smart phone and related monthly data plan in order to log into an application that tracks mileage and GPS during the routes assigned to them by the Company. Additionally, the Company required Claimant and the Aggrieved Employees to incur costs and expenses related to tolls and gas, without reimbursement. Accordingly, Labor Code § 2699 imposes a penalty upon the Company for each such violation of Labor Code § 2802. Furthermore, Labor Code § 2802(b) states that “[a]ll awards made by a Court for reimbursement of necessary expenditures” shall carry interest, at the same rate as judgments in civil actions, and said interest will accrue from the date on which the employee incurred the necessary expenditure or loss including, but not limited to, reasonable costs and attorney’s fees incurred by the employee enforcing her rights granted pursuant to Labor Code § 2802.

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**PAGA ASSESSMENT FOR FAILURE TO PAY ALL WAGES DUE AND OWING
EACH PAYROLL PERIOD WITHIN THE TIME REQUIRED BY LAW**

(Labor Code §§ 204, 204.1, 208, 256 and 2699)

Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month. Labor Code § 204(d) states “[t]he requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

Here, the Company failed to timely pay all wages due and owing each period, including, but not limited to, all wages and wage premiums. As a result, penalties may be assessed pursuant to Labor Code §§ 203, 210, 256, and/or 2699.

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201, 202, 203, 256 and 2699)

Labor Code § 201(a) provides in pertinent part: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202(a) states in pertinent part “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours’ previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Labor Code § 203(a) states “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

As discussed above, the Company did not pay the Aggrieved Employees all wages that were due and owing within the required time following the end of their employment due to the violations discussed above. Furthermore, Claimant did not receive her final pay within the time required by Labor Code §§ 201 – 202. As a result, all such Aggrieved Employees are entitled to the “waiting time penalty.” (Labor Code §§ 203, 256.) Labor Code § 2699 also imposes a penalty.

**PAGA ASSESSMENT FOR
FAILURE TO PROVIDE ACCURATE, ITEMIZED WAGE STATEMENTS**

(Labor Code §§ 226, 226.3, and 1174)

Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, total hours worked, the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, all deductions, net wages earned, the inclusive dates of the pay period, the employee’s name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer,

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and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Furthermore, Labor Code § 226.2(a) states “[f]or employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period: [...] (2) the itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items specified in that subdivision, separately state the following, to which the provisions of Section 226 shall also be applicable: (A) the total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period [and] (B) [...] the total hours of other nonproductive time, [...] the rate of compensation, and the gross wages paid for that time during the pay period.”

Here, the Company failed to provide accurate itemized wage statements due to violations including: failure to accurately state total hours worked on the Aggrieved Employees’ wage statements; name and address of the legal entity that is the employer; failure to accurately state the number of piece-rate units earned by the Aggrieved Employees and any applicable piece-rate; failure to accurately state gross wages earned; failure to accurately state all deductions; failure to accurately state net wages earned; failure to state all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee; failure to state the total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period; and failure to state the total hours of other nonproductive time, [...] the rate of compensation, and the gross wages paid for that time during the pay period. Accordingly, Claimant and the Aggrieved Employees are entitled to damages under Labor Code § 226(e), including reasonable attorneys’ fees. Labor Code §§ 226.3 and 2699 also impose a civil penalty and/or assessment for these violations.

PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199

(Labor Code § 1199)

An employer violates Labor Code § 1199 if said employer: (a) requires or causes an employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission; (b) pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission; or, (c) violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission. Labor Code § 2699.5 specifically enumerates Labor Code § 1199 as a section to which the civil penalties under the PAGA apply. Therefore, as a result of the Company’s violations described herein, the Company is subject to the civil penalties in accordance with Labor Code § 2699.

ATTORNEYS’ FEES, INTEREST, AND PENALTIES

(Labor Code §§ 2699(f)(2), 2699(g)(1), 2699.5)

Labor Code § 2699(g)(1), give employees the right to recover in a civil action the unpaid balance of the full amount of wages, including interest thereon, penalties and other damages, as applicable, reasonable attorneys’ fees, and costs of suit. Additionally, Claimant seeks the assessment of penalties, including civil penalties, under Labor Code §§ 203, 210, 225.5, 226.3, 1174.5, 1197.1, 2699, among possibly other provisions inadvertently omitted herein. Furthermore, Claimant is entitled to bring a wage/hour claim on behalf of all current and former similarly situated employees of the Company. Thus, the Company is exposed to these same penalties for violations involving all Aggrieved Employees.

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Additionally, Claimant seeks attorney's fees pursuant to *C.C.P.* § 1021.5. Please construe this correspondence as Claimants' notification of alleged wrongdoing and attempted resolution in accordance with *C.C.P.* § 1021.5 and *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553.

CONCLUSION

Based on the foregoing, the Company may be liable for penalties, including unpaid wages under Labor Code § 558, related to the foregoing claims and remedies. If Claimant becomes aware of any additional claims for Labor Code violations related to her employment and/or other employees of the Company, she reserves the right to add new claims by amending this claim letter.

Should you have any questions, please feel free to give me a call. In the meantime, I look forward to your response.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'ms' followed by a stylized flourish.

By: Misty M. Lauby, Esq.

E-mail: misty@lmlfirm.com

Mailing Address

5198 Arlington Avenue, PMB 513, Riverside, CA 92504



Toll Free
888.959.8508

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11801 Pierce Street, Suite 200, Riverside, CA 92505

EXHIBIT “4”



January 9, 2025

CASE ASSUMPTIONS

Class Members	100
Opt Out Rate	1%
Opt Outs Received	3
Total Class Claimants	97
Subtotal Admin Only	\$6,492.56

Flat Fee Total \$6,492.56
For 100 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

Two Payments, One Disbursement & Two Tax Years

Case: Ortega v. Aggressive, Opt-Out Administration

Phoenix Contact: Michael E. Moore
 Contact Number: 949.331.0131
 Email: mike@phoenixclassaction.com

Requesting Attorney: Brian J. Mankin
 Firm: Lauby, Mankin & Lauby, LLP
 Contact Number: (951) 320-1444
 Email: brian@lmfirm.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PHX will need to adjust this Estimate accordingly.
 Estimate is based on **100** Class Members. Class data **Must** be sent in Microsoft Excel or uploaded in the same format. Class Data Must be sent in one spreadsheet, with no additional programming needed. A rate of \$150 per hour will be charged for any additional analysis or programming. Pricing good for 90 day

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item	Estimate
Programming Manager	\$100.00	2		\$200.00
Programming Database & Setup	\$100.00	2		\$200.00
Toll Free Setup*	\$100.00	1		\$100.00
Call Center & Long Distance	\$2.00	14		\$28.00
NCOA (USPS)	\$20.00	1		\$20.00
Total				\$548.00

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Website

Project Action	Rate	Hours/Units	Line Item	Estimate
Notice Packet Formatting	\$100.00	2		\$200.00
Data Merge & Duplication Scrub	\$0.10	100		\$10.00
Notice Packet & Opt-Out Form	\$1.50	100		\$150.00
Estimated Postage (up to 2 oz.)*	\$0.87	100		\$87.00
Static Website	\$200.00	1		\$200.00
Total				\$647.00

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



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CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Associate	\$55.00	2		\$110.00
Skip Tracing Undeliverables	\$1.00	15		\$15.00
Remail Notice Packets	\$1.00	12		\$12.00
Estimated Postage	\$0.87	12		\$10.44
Programming Undeliverables	\$50.00	2		\$100.00
			Total	\$247.44

Database Programming / Processing Opt-Outs, Deficiencies or Disputes

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Database	\$150.00	1		\$150.00
Non Opt-Out Processing	\$200.00	1		\$200.00
Case Associate	\$55.00	4		\$220.00
Deficiency & Dispute Letters	\$10.00	4		\$40.00
Case Manager	\$85.00	2		\$170.00
			Total	\$780.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Calculations	\$135.00	1		\$135.00
Disbursement Review	\$135.00	1		\$135.00
Programming Manager	\$95.00	2		\$190.00
QSF Bank Account & EIN	\$135.00	1		\$135.00
Check Run Setup & Printing	\$135.00	1		\$135.00
Mail Class Checks *	\$0.90	97		\$87.30
Estimated Postage	\$0.64	97		\$62.08
			Total	\$879.38

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing & Instructions for downloading tax forms from PHX secure portal



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Supervisor	\$115.00	2		\$230.00
Remail Checks (Postage Included)	\$2.00	20		\$40.74
Case Associate	\$55.00	3		\$165.00
Reconcile Uncashed Checks	\$85.00	5		\$425.00
Conclusion Reports	\$115.00	2		\$230.00
Case Manager Conclusion	\$85.00	3		\$255.00
Final Reporting & Declarations	\$115.00	3		\$345.00
IRS & QSF Annual Tax Reporting * (2 State Tax Reporting & Escheating to the State of CA Included)	\$850.00	2		\$1,700.00
Total				\$3,390.74

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$6,492.56



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CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are \$10.00 per opt-out.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

EXHIBIT “5”