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Attorneys for Plaintiff Rigoberto Rodriguez-Gonzalez on behalf of himself and on behalf of all similarly situated individuals

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN

RIGOBERTO RODRIGUEZ-GONZALEZ,
on behalf of himself and on behalf of all
similarly situated individuals,

Plaintiff,

v.

BOGDAN DELIVERY LLC, a Washington
limited liability company, and DOES 1
through 10, inclusive,

Defendants.

CASE NO: STK-CV-UOE-2023-8229

*Assigned to the Hon. George J. Abdallah,
Dept. 10A*

**DECLARATION OF DANIEL F. GAINES
IN SUPPORT OF REQUEST FOR
DISMISSAL OF CLASS AND
REPRESENTATIVE ACTION**

[Filed Concurrently: Request for Dismissal]

Action Filed: August 3, 2023

1 I, Daniel F. Gaines, declare as follows:

2 1. I am an attorney duly admitted to practice law in the State of California and I am a
3 managing shareholder at Gaines & Gaines, APLC, counsel of record for Plaintiff Rigoberto
4 Rodriguez-Gonzalez ("Plaintiff") in this matter. The matters set forth herein are of my own personal
5 knowledge, and if sworn as a witness, I could and would testify competently thereto.

6 2. On August 3, 2023, Plaintiff filed the instant Action seeking damages on a class wide
7 basis, on behalf of himself and on behalf of all similarly situated individuals for Defendant Bogdan
8 Delivery LLC's ("Defendant") alleged violations of California Labor Code and Business &
9 Professions Code, codified as § 17200, *et seq.* by allegedly failing to pay all minimum wages due,
10 reimburse all business-related expenses, issue complete and accurate wage statements, and timely pay
11 all wages due at separation of employment. The alleged violations occurred when Plaintiff's business
12 contracted with Defendant to provide delivery services in San Joaquin County, California.

13 3. On November 2, 2023, Plaintiff filed his First Amended Class and Representative
14 Action Complaint which added claims that Defendant allegedly violated the Private Attorneys'
15 General Act of 2004 ("PAGA"), codified as § 2698, *et seq.*

16 4. After conversations with Defendant's Counsel and a review of Plaintiff's deposition,
17 I have determined that the putative class is very small (approximately five members) and unlikely to
18 be certified on this basis; liability is disputed; Plaintiff's claims are defensible; and there will be
19 factual disparities among the putative class members which may render class certification unlikely on
20 that basis. This determination is based on information provided by Defendant in this matter and an
21 independent investigation by my office.

22 5. The Parties have negotiated a settlement of Plaintiff's individual claims only, and the
23 Class and PAGA claims on behalf of the Aggrieved Employees will be dismissed without prejudice,
24 as set forth in the concurrently-filed request for dismissal. Attached hereto as **Exhibit A** is a true and
25 correct copy of the Parties' Settlement Agreement.

26 6. The settlement of this Action does not provide for any consideration to any putative
27 class member in the Action nor does it provide for the waiver, settlement, or release of any claims
28 asserted on behalf of any putative class member in the Action other than Plaintiff. Further, the

1 settlement does not contemplate the waiver of PAGA claims asserted on behalf of any alleged
2 employee or the State, such that there is no allocation of civil penalties in the Settlement.

3 7. No notice is required to be given to the putative class because no notice of the pending
4 Action was ever given; there has been no publicity of which the Parties are aware; neither Plaintiff
5 nor my office have communicated with any absent class members about the Action; consequently, no
6 absent putative class member will suffer prejudice as a result of this dismissal.

7 8. Plaintiff, therefore, requests that the Court enter a dismissal of this action *with*
8 *prejudice* as to Plaintiff's individual claims and *without prejudice* as to the class and representative
9 action claims, pursuant to the request submitted concurrently herewith.

10 9. Concurrent with the filing of this Request for Dismissal, Plaintiff has submitted the
11 Settlement Agreement to the LWDA in compliance with Labor Code section 2699(1)(2).

12 I declare under penalty of perjury under the laws of the State of California that the foregoing
13 is true and correct and was executed on March 25, 2024, at Westlake Village, California.

14
15 
16 _____
DANIEL F. GAINES

EXHIBIT A

CONFIDENTIAL SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Confidential Settlement Agreement and General Release ("Agreement") is between Bogdan Delivery, LLC, on behalf of its parents, subsidiaries, and successors (collectively, the "Company") and Rigoberto Rodriguez-Gonzalez in his individual capacity and in his capacity as the sole owner/member of Brother's Express Carrier LLC ("Rodriguez-Gonzalez") and Brother's Express Carrier LLC (collectively, "Owner Operator"). These are referred to as the "Parties" herein.

On or about November 7, 2022, Owner Operator and the Company entered into a Contract Carrier Broker Agreement through which Owner Operator was to provide delivery services. On August 3, 2023, Rodriguez-Gonzalez filed a Complaint in San Joaquin County Superior Court, Case No. CV-UOE-2023-0008299, against Bogdan Delivery LLC (the "Litigation").

Both the Company and Owner Operator wish to resolve all matters, known or unknown, arising out of Owner Operator's engagement with the Company. The Parties engaged in arms-length settlement negotiations and the negotiations resulted in a compromise and settlement of all claims or disputes whatsoever that Owner Operator has or might have against the Company, regardless of whether these claims or disputes are now known or unknown.

This Agreement is dated ~~03/19/2024~~ 3/13/2024 which is the date the Agreement was presented to Owner Operator for consideration. A.R.G.

Based on the above recitals, the Parties agree that the following terms will apply only if all conditions of this Agreement are met:

Article 1. The Company's Obligations

1.1. Consideration. In consideration for Owner Operator's signature on this Agreement, the Company will pay Fourteen Thousand Dollars and Zero Cents (\$14,000.00) ("Consideration") to Brother's Express Carrier LLC and its attorneys no later than fourteen (14) calendar days after the Effective Date, defined in Section 3.6. One check for \$11,620.26 shall be paid to "Brother's Express Carrier LLC and one check for \$2,379.74 shall be paid to "Gaines & Gaines, APLC." Owner Operator acknowledges that this Consideration is reasonable, valuable, sufficient, and just compensation for the claims released in this Agreement. Brother's Express Carrier LLC and Gaines & Gaines, APLC will each will tender a tax form W-9 to the Company in order for it to process these payments and the Company will issue a form 1099-NEC to Brother's Express Carrier LLC and Gaines & Gaines, APLC.

1.2. Tax Treatment. Owner Operator accepts all liability for any tax consequences related to the payment under Section 1.1. If any taxing authority determines that any portion of the amounts paid by the Company under Section 1.1 should have been treated differently for tax purposes, Owner Operator agrees to pay all taxes, penalties, and interest assessed and to hold harmless and indemnify the Company for all amounts assessed. The Company makes no representation as to the taxability of the amounts paid under Section 1.1.

1.3. Requests for Dismissal with Prejudice. The Company's obligation to make any payment under this Agreement is expressly conditioned on Owner Operator completing the following tasks within two (2) business days of receiving a copy of this Agreement signed by the Company (which Company will provide within two business days after expiration of the Revocation Period, described below in Section 3.6): (1) filing a Request for Dismissal without Prejudice of the class claims in the San Joaquin County Superior Court, stating that all parties are to bear their own attorneys' fees and costs; (2) submitting a Request for Dismissal with Prejudice of all claims on behalf of Rigoberto Rodriguez-Gonzalez individually, stating that all parties are to bear their own attorneys' fees and costs; and (3) submitting a declaration in support of dismissal of class and representative action.

Article 2. Owner Operator's Obligations

2.1. Authority. Owner Operator represents and warrants that it has all necessary authority to enter into this Agreement (including, on behalf of his Rodriguez-Gonzalez's marital community or registered domestic partnership, if any, and on behalf of Brother's Express Carrier LLC, its owners, agents, and affiliates) and that Owner Operator has not transferred any interest in any claims. Owner Operator understands and acknowledges that it is releasing claims that it could assert on its own behalf or on behalf of its agents, representatives, and heirs.

2.2. Forfeiture of Consideration. If Owner Operator breaches any obligations under this Agreement, including specifically Owner Operator's obligations under Article 2, Owner Operator understands that it will forfeit and will not be entitled to any Consideration under Section 1.1 above.

2.3. Agreement Confidentiality. As further specific consideration, Owner Operator agrees that the terms of this Agreement are intended to be confidential between the Parties. Except in response to a lawful subpoena, court order, as required to obtain Court approval of the dismissal of the claims in the settlement, as required to comply with the Private Attorneys General Act ("PAGA"), or governmental administrative request, as permitted in Section 2.4 of this Agreement, or as otherwise permitted by law, Owner Operator will not discuss the terms of this Agreement with any independent contractor, carrier, or owner operator of the Company. Owner Operator may discuss the terms of this Agreement with its spouse or registered domestic partner, attorney(s), or financial advisor(s), so long as Owner Operator advises them that it is bound by a strict confidentiality clause and that their disclosure will constitute a breach of Owner Operator's obligations. The Parties understand that a redacted copy of this Agreement with the dollar amounts set forth in paragraph 1.2 shall be submitted to the Court and the LWDA in connection with the dismissal without prejudice of the class and PAGA claims.

2.4. Limits on Agreement Confidentiality. Owner Operator acknowledges and understands that nothing in this Agreement prevents Rigoberto Rodriguez-Gonzalez from discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that he has reason to believe is unlawful.

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2.5. Status of Relationship Between the Parties. The Parties acknowledge that the Company has reasonable and legitimate challenges to any assertion of an employment relationship between the Company and Owner Operator, and Owner Operator acknowledges that Rodriguez-Gonzalez was not an employee of the Company for tax purposes.

2.6. Injunctive Relief. Owner Operator agrees that in the event Owner Operator materially breaches any of the provisions in Article 2, damages would be difficult, if not impossible, to ascertain. Owner Operator agrees that, in addition to and without limiting any other remedy or right it may have, the Company will have the right to an immediate injunction or such other equitable relief enjoining any such threatened or actual breach. The existence of this right will not preclude the Company from pursuing any other rights and remedies at law or in equity which it may have, including the recovery of damages.

2.7. Waiver and Release.

(a) Owner Operator hereby releases and forever discharges all of the "Released Parties" (defined below) from all past, present, or future causes of action, liabilities, claims, debts, and obligations that arose before Owner Operator signed this Agreement, whether known or unknown, related to any term, condition, event, conduct, or circumstance related to or arising from Owner Operator's relationship with the Company, occurring up to the date Owner Operator signs the Agreement ("Claims"). Such Claims include, but are not limited to, breach of contract, breach of duty, tort claims, negligence claims, denial of benefits, termination in violation of public policy, defamation, wage payment claims, leave claims, claims of discrimination, harassment, and/or retaliation based on any category or activity protected by federal, state, or local law, and violation of any federal or state health statutes and/or regulations. The Claims released include any cause of action or potential liability under federal, state, or local statute, law, ordinance, rule, regulation or guideline, as well as any contract, or common law, which Owner Operator has or may have against any of the Released Parties herein (hereinafter, the "Released Claims"). This Agreement does not release any claims or rights that as a matter of law cannot be waived.

(b) "Released Party" or "Released Parties" means Bogdan Delivery LLC, and any of its affiliates, subsidiaries, partnerships, or joint ventures and the benefit plans of each such entity; and with respect to each such entity: (i) all past, present, and future employees, managers, supervisors, fiduciaries, directors, trustees, officers, owners, shareholders, partners, members, representatives, agents, contractors, attorneys, successors, assigns, insurers, whether acting in their individual or official capacities, and (ii) all predecessors, successors, and assigns.

(c) Nothing in this Agreement prohibits Owner Operator from reporting potential violations of the law or filing a charge or complaint with an appropriate governmental agency. This Agreement is not intended to prevent Owner Operator from recovering any bounties or other rewards offered by the government or available under the law. Owner Operator does not need prior authorization to make any such report, and Owner Operator is not required to notify the Company that it has made such report. However, Owner Operator agrees

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that it is not entitled to, and will not accept, any monetary recovery directly from the Company as a result of filing any such report, disclosure, charge, or complaint.

(d) Waiver of Unknown Claims Under Civil Code Section 1542. Owner Operator understands that it may later discover claims or facts that may be different from, or in addition to, those that Owner Operator now knows or believes to exist regarding the subject matter of the release contained in this Section 2.7, and which, if known at the time of signing this Agreement, may have materially affected this Agreement and Owner Operator's decision to enter into it and grant the release contained in this Section 2.7. Nevertheless, Owner Operator intends to fully, finally, and forever settle and release all claims against the Released Parties that now exist, may exist, or previously existed, as set out in the release contained in this Section 2.7, whether known or unknown, foreseen or unforeseen, or suspected or unsuspected, and the release given herein is and will remain in effect as a complete release, notwithstanding the discovery or existence of such additional or different facts. Owner Operator hereby waives any right or claim that might arise as a result of such different or additional claims or facts.

Owner Operator has been made aware of, and understands, the provisions of California Civil Code Section 1542 ("Section 1542"), which provides:

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

Owner Operator expressly, knowingly, and intentionally waives all rights, benefits, and protections of Section 1542 and of any other state or federal statute or common law principle limiting the scope of a general release as to the Released Parties.

(e) Owner Operator affirms that it will not initiate any action, claim or suit with respect to the Released Claims. Except as may be required by subpoena, court order, or as permitted by other force of law. Owner Operator agrees not to assist any individual or entity in commencing or prosecuting any action or proceeding against any Released Party connected to any matter arising from any event that has occurred up to the date that Owner Operator signed this Agreement.

2.8. No Future Relationship between the Parties. Owner Operator acknowledges that it is in its best interest to forego any future relationship with the Company. Owner Operator is released from providing delivery or other professional services under any prior agreement with the Company and has no intention of pursuing any future working relationship with the Company.

2.9. Indemnification. Owner Operator agrees to indemnify and hold the Released Parties harmless from and against all losses, costs, damages and expenses (including, but not limited to, attorneys' fees) the Company or the Released Parties incur, arising out of a breach of Section 2.7 (Waiver and Release). Owner Operator represents as a material part of this

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Agreement that there are no claims capable of being asserted against the Released Parties which it has not asserted or which could have been asserted on its behalf.

2.10. Neutral Reference; Non-Disparagement. Neither Owner Operator nor the Company shall disparage the services provided by the other. Upon inquiry by a prospective employer or contracting party, the Company shall disclose only the dates within which Owner Operator performed contracted services for Company, and a description of the services performed for the Company.

Article 3. Review and Return of the Agreement

In accordance with the Older Workers' Benefit Protection Act and California law, Owner Operator expressly acknowledges the following:

3.1. Release of Claims Under the Age Discrimination in Employment Act of 1967 (ADEA) and Older Workers Benefit Protection Act (OWBPA). Rodriguez-Gonzalez acknowledges that, if he were deemed to be an employee of the Company, he may be entitled to protections under OWBPA and the ADEA, and the Waiver and Release provision in Section 2.7 includes the waiver and release of all claims under the Age Discrimination in Employment Act of 1967 (ADEA). This Agreement is not intended to prohibit any claim challenging the validity of the waiver and release under the ADEA, to the extent the ADEA is applicable.

3.2. Owner Operator has a right to consult with legal counsel before signing the Agreement and has consulted with legal counsel before signing the Agreement.

3.3. This Agreement is written in a manner that Owner Operator understands.

3.4. Owner Operator is entering into this Agreement knowingly, voluntarily, and deliberately and with full understanding of its consequences.

3.5. Consideration Period. Owner Operator has twenty-one (21) calendar days from the date Owner Operator received the Agreement to consider this Agreement before signing it ("Consideration Period"). The Parties agree that any modifications, material or otherwise, made to this Agreement do not restart or affect in any manner the Consideration Period. Owner Operator may use as much or as little of the Consideration Period before signing as Owner Operator wishes. If Owner Operator does not sign and return this Agreement before the end of the Consideration Period, it will not become effective or enforceable, and Owner Operator will not receive the consideration identified in Section 1.1 or the other benefits described in this Agreement. If Owner Operator signs the Agreement before the Consideration Period expires, Owner Operator has decided voluntarily not to wait the full 21-day period.

3.6. Revocation Period and Effective Date. Owner Operator has seven (7) calendar days after signing this Agreement to revoke it. To revoke this Agreement after signing it, Owner Operator's counsel must deliver a written notice of revocation to the Company's counsel, Beth

R.R.G.

Agreed by:
BOGDAN DELIVERY, LLC

DocuSigned by:

[Name] Jeff Christiansen
[Title] cfo
Date: March 23, 2024 | 12:12 PM PDT

RIGOBERTO RODRIGUEZ-GONZALEZ

Signature
Date: 03 / 13 / 2024

BROTHER'S EXPRESS CARRIER LLC

By: Rigoberto Rodriguez-Gonzalez
Owner
Date: 03 / 13 / 2024

Owner Operator's Initials A.R.G