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individually, and on behalf of Aggrieved
Employees pursuant to the California
Private Attorneys General Act

[Additional Counsel on Next Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DARREN GARCIA, an individual on behalf
of himself and all others similarly situated,

Plaintiff,

vs.

CLEARFREIGHT, INC., a California
Corporation; and DOES 1 through 50, inclusive,

Defendants.

ALEJANDRA JIMENEZ, individually, and
on behalf of Aggrieved Employees pursuant to
the California Private Attorneys General Act

Plaintiffs,

vs.

CLEARFREIGHT INC., a California
corporation; and DOES 1 through 25, inclusive,

Defendants.

Case No. 23STCV22946 (Lead)
(Consolidated with Case No. 23STCV28938)

*Assigned for all purposes to Hon. Carolyn B. Kuhl,
Dept. 12*

**DECLARATION OF JONATHAN M. GENISH
IN SUPPORT OF PLAINTIFFS' MOTION
FOR APPROVAL OF PAGA SETTLEMENT
AND AWARD OF PAGA COUNSEL FEES
PAYMENT, PAGA COUNSEL LITIGATION
EXPENSES PAYMENT, ENHANCEMENT
PAYMENT, AND ADMINISTRATION
EXPENSES PAYMENT**

Date: November 20, 2024
Time: 10:30 a.m.
Department: 12

Garcia Complaint Filed: September 21, 2023
Garcia FAC Filed: November 27, 2023
Jimenez Complaint Filed: November 28, 2023
Garcia SAC Filed: August 2, 2024

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TAYLOR EDWARD LEBOWE, on behalf of
8 themselves and others similarly situated

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1. I am a shareholder and the founder of Blackstone Law, APC, attorneys of record for Plaintiff Alejandra Jimenez (“Plaintiff Jimenez”). I am an attorney admitted to practice in all Courts of the State of California. I submit this declaration in support of Plaintiffs Darren Garcia, Taylor Lebowe, and Alejandra Jimenez’s (collectively, “Plaintiffs”) Motion for Approval of PAGA Settlement and Award of PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, Enhancement Payment, and Administration Expenses Payment (“Motion”). I have personal knowledge of the facts contained herein, and, if called to testify, I could and would competently do so.

2. I received my law degree from Benjamin N. Cardozo School of Law and was admitted to the California State Bar in 2008. During law school, I clerked at the litigation firm Oved & Oved, LLP and was published several times in various small publications. Upon graduation, I was hired by Freedman & Taitelman, LLP as an associate and remained employed there from September 2008 through August 2015. During my tenure, I managed hundreds (perhaps thousands) of complex litigation cases, ranging from employment, corporate, entertainment, and general business litigation matters, though my primary area of expertise was employment, both single plaintiff and representative actions.

3. On the vast majority of those cases, I was the only or primary attorney managing the case and thus obtained extensive experience. In that capacity, I conducted wage and hour and wrongful termination labor and employment intakes; was the primary contact for all clients; took and defended hundreds (if not thousands) of depositions; propounded and responded to all discovery; prepared and opposed all motions and pleadings, including dispositive and certification motions; strategized on all cases; attended all hearings; attended all mediations; coordinated with class action administrators; prepared and worked with experts; first and second chaired multiple trials and arbitrations; and engaged in all other intricate facets of litigation. During that time, I represented a wide range of clients from sole proprietorships to Fortune 500 companies in state, federal, complex, and appellate courts.

1 Many of the cases I managed were highly publicized, with articles written about them in the Los
2 Angeles Times, Deadline, The Hollywood Reporter, Business Insider, Law360, and others. Super
3 Lawyers has regularly honored me as a Southern California Rising Star since 2012.

4 4. In February 2018, I started the law firm of Blackstone Law, APC, representing
5 plaintiffs in individual and representative employment litigation. The firm has grown exponentially
6 over the past six-plus years, now maintaining twenty highly pedigreed attorneys working on almost
7 exclusively labor and employment class actions, California Labor Code Private Attorney General Act
8 of 2004 (“PAGA”) cases, and individual matters, with roughly 15% of the firm focused on other
9 complex general litigation matters.

10 5. I have considerable experience in handling class and representative action lawsuits
11 throughout my career and have been approved as counsel in a number of cases, including, most
12 recently:

- 13 • *Consumer Protection Group, LLC v. A. D. Sutton & Sons, Inc.*, Los Angeles County
14 Superior Court, Case No. 19STCV29979, a private attorney general action for penalties
15 pursuant to Health and Safety Code section 25249.7.
- 16 • *Consumer Protection Group, LLC v. Shaxon Industries, Inc., et al.*, Los Angeles
17 County Superior Court, Case No. 19STCV30306, a private attorney general action for
18 penalties pursuant to Health and Safety Code section 25249.7.
- 19 • *Consumer Protection Group, LLC v. Home Depot U.S.A., Inc.*, Los Angeles County
20 Superior Court, Case No. 19STCV30445, a private attorney general action for penalties
21 pursuant to Health and Safety Code section 25249.7.
- 22 • *Eric Savoy v. Collector’s Universe, Inc., et al.*, Central District Court of California,
23 Case No.: 8:20-cv-00632-DOC-ADS (remanded to Orange County Superior Court,
24 Case No. 30-2020-01130892-CU-RI-CXC), a consumer fraud class action.

25 6. Blackstone Law, APC has been counsel of record on several class action and PAGA
26 actions that have since been resolved, the most recent of which are as follows:

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- *David Williams v. Rancho Nicasio, LLC*, Marin County Superior Court, Case No. CIV2203067, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Bobby Birdi v. Lucid USA, Inc.*, Alameda County Superior Court, Case No. 21CV003541, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Alexis Cardoza v. BHFC Operating LLC*, Los Angeles County Superior Court, Case No. 21STCV34040, approved as counsel in settlement of representative wage and hour action pursuant to PAGA.
- *Theresa Bendorf, et al. v. Sea World LLC, et al.*, San Diego County Superior Court, Case No. 37-2021-00034922-CU-OE-CTL, preliminarily approved as class counsel, in association with other counsel, in settlement of wage and hour class and PAGA action.
- *Victor De La Cruz v. Northwest Pipe Company*, San Bernardino County Superior Court, Case No. CIVSB2211140, preliminarily approved as class counsel in settlement of wage and hour class and PAGA action.
- *Maria Ayala, et al. v. SDH Services West, LLC*, Kern County Superior Court, Case No. BCV-21-101933, approved as class counsel in final settlement of wage and hour class action.
- *Alfredo Sanchez v. Greenworld, Inc.*, Riverside County Superior Court, Case No. CVRI2105756, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Michael Bravo v. Michels Pacific Energy, Inc.*, Santa Clara County Superior Court, Case No. 22CV403427, preliminarily approved as class counsel in settlement of wage and hour class and PAGA action.
- *Oscar Bryant v. Midwest Construction Services, Inc. dba Trillium*, San Bernardino County Superior Court, Case No. CIVSB2121529, approved as class counsel in settlement of wage and hour class action.

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- *Matthew Savattieri v. AMI Expeditionary Healthcare, LLC, et al.*, Los Angeles County Superior Court, Case No. 21STCV33372, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Lexy Barajas, et al. v. H. W. Hunter, Inc.*, Los Angeles County Superior Court, Case No. 22STCV01892, approved as counsel in settlement of representative wage and hour action pursuant to PAGA.
- *Alejandro Valdez v. C.H.I. Automart, Inc.*, Los Angeles County Superior Court, Case No. 21STCV40168, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Sheizan Bawa v. Meathead Movers, Inc.*, Orange County Superior Court, Case No. 30-2021-01211895-CU-OE-CXC, approved as counsel in settlement of representative wage and hour action pursuant to PAGA.
- *Tanisha Lopez, et al. v. Restorix Health, Inc.*, Los Angeles County Superior Court, Case No. 21STCV33067, approved as class counsel, in association with other counsel, in final settlement of wage and hour class and PAGA action.
- *Perla Soto, et al. v. Nippon Express U.S.A., Inc.*, Los Angeles County Superior Court, Case No. 21STCV24902, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Angel Garcia, et al. v. J&B Investments, Inc., et al.*, San Bernardino County Superior Court, Case No. CIVSB2208601, approved as class counsel, in association with other counsel, in final settlement of wage and hour class and PAGA action.
- *Sindy Aviles, et al. v. Freeway Insurance Services America, LLC*, Los Angeles County Superior Court, Case No. 21STCV34864, approved as counsel, in association with other counsel, in settlement of representative wage and hour action pursuant to PAGA.
- *Alexander Gnaedig, et al. v. Favorite Healthcare Staffing, Inc.*, Los Angeles County Superior Court, Case No. 21STCV20904, approved as class counsel, in association with other counsel, in final settlement of wage and hour class and PAGA action.

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- *Richard Evans v. My Paint Stop, LLC, et al.*, Contra Costa County Superior Court, Case No. MSC21-01812, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Jose Luis Parada George v. Main Electric Supply Company, LLC, et al.*, Orange County Superior Court, Case No. 30-2021-01220136-CU-OE-CXC, approved as counsel in settlement of representative wage and hour action pursuant to PAGA.
- *Samia Salazar Yunis v. Sharif Jewelers*, Sacramento County Superior Court, Case No. 34-2020-00290080, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Daniel Analco v. Felix Chevrolet, LP, et al.*, Los Angeles County Superior Court, Case No. 21STCV36654, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Sasha Aiono v. Benefit Cosmetics*, Los Angeles County Superior Court, Case No. 21STCV33719, approved as counsel in settlement of representative wage and hour action pursuant to PAGA.
- *Anthony DiRico v. Seek Capital, LLC*, Los Angeles County Superior Court, Case No. BC698076, approved as class counsel in final settlement of wage and hour class and PAGA action.

7. I am currently the managing partner overseeing roughly 500 labor and employment cases, approximately 80% of which include a wage and hour component. The majority of those cases are wage-and-hour putative class actions or representative PAGA actions seeking relief on behalf of thousands of California employees.

Procedural History of the Actions

8. Defendant ClearFreight, Inc. (“Defendant”) is a global logistics company that handles international freight transportation services. Defendant employed Plaintiff Jimenez as an hourly-paid, non-exempt Import Traffic Coordinator from approximately October 2021 to March 2023, Plaintiff Darren Garcia (“Plaintiff Garcia”) as an hourly-paid, non-exempt Ocean Export Coordinator from approximately September 2022 through May 2023, and Plaintiff Taylor Lebowe (“Plaintiff Lebowe”)

as an hourly-paid, non-exempt Import Specialist from approximately January 2022 to March 2023.

9. On September 1, 2023, Plaintiff Jimenez provided written notice by electronic submission to the California Labor and Workforce Development Agency (“LWDA”) and by U.S. Certified Mail to Defendant, pursuant to California Labor Code § 2699.3, of the specific provisions of the California Labor Code alleged to have been violated by Defendant. A true and correct copy of the notice is attached hereto as **Exhibit 1**.

10. On September 21, 2023, Plaintiff Garcia provided written notice by electronic submission to the LWDA and by U.S. Certified Mail to Defendant, pursuant to California Labor Code § 2699.3, of the specific provisions of the California Labor Code alleged to have been violated by Defendant. Also on September 21, 2023, Plaintiff Garcia filed a Class Action Complaint against Defendant in the action entitled *Darren Garcia v. ClearFreight, Inc.*, Los Angeles County Superior Court Case No. 23STCV22946 (“*Garcia Action*”) alleging class action claims based on various alleged wage and hour violations. On November 27, 2023, Plaintiff Garcia filed a First Amended Class Action Complaint in the *Garcia Action* alleging an additional cause of action under PAGA.

11. On November 28, 2023, Plaintiff Jimenez filed a Complaint for Enforcement Action Under the Private Attorneys General Act, Cal. Labor Code §§ 2698 *Et Seq* (“*Jimenez Operative Complaint*”) in the action entitled *Alejandra Jimenez v. ClearFreight Inc.*, Los Angeles County Superior Court Case No. 23STCV28938 (“*Jimenez Action*”) alleging one cause of action under PAGA.

12. On March 8, 2024, Plaintiffs Garcia and Lebowe provided an amended written notice by electronic submission to the LWDA and by U.S. Certified Mail to Defendant. A true and correct copy of the notice is attached hereto as **Exhibit 2**.

13. On March 23, 2024, pursuant to the joint stipulation of Plaintiff Garcia and Defendant, the Court entered an Order, dismissing the class claims in the *Garcia Action* without prejudice.

14. On April 11, 2024, the Court entered a Minute Order, which related the *Garcia Action* and *Jimenez Action* (together, “*Actions*”) and designated the *Garcia Action* as the lead case.

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1 15. On August 2, 2024, Plaintiffs Garcia and Lebowe filed a Second Amended Complaint
2 for Representative Action for Penalties Under Private Attorneys General Act, Labor Code § 2698 *et*
3 *seq.* (“*Garcia* Operative Complaint”) in the *Garcia* Action, which, *inter alia*, added Plaintiff Lebowe
4 as a named plaintiff. The *Jimenez* Operative Complaint and the *Garcia* Operative Complaint are the
5 operative complaints in the Actions (together, “Operative Complaints”).

6 16. On September 9, 2024, pursuant to the joint stipulation of Plaintiffs and Defendant
7 (collectively, the “Parties”), the Court entered an Order, which consolidated the Actions and deemed
8 the *Garcia* Action the lead case.

9 17. During the course of informal discovery in the Actions, PAGA Counsel conducted an
10 intense investigation into the facts of the Actions. This included obtaining data, information, and
11 documents relating to the underlying alleged violations, including, but not limited to, Plaintiffs’
12 employee files, a sampling of Aggrieved Employees’ time and payroll data, Defendant’s Employee
13 Handbook, and Aggrieved Employees’ data points so that Plaintiffs could assess the number of alleged
14 potential violations and value of the recoverable penalties, as well as evaluate the strengths and
15 weaknesses of their claims.

16 18. Based on the data, information, and documents received, as well as thorough
17 discussions with Defendant’s counsel, PAGA Counsel was able to (i) determine the total number of
18 distinct individuals falling within the definition of “Aggrieved Employees” for the relevant statutory
19 period, (ii) the number of affected pay periods at issue among them, and (iii) construct a damages
20 model that calculated the maximum realistic amount of PAGA penalties that could be levied against
21 Defendant within the relevant statutory period. Defendant, however, disputed Plaintiffs’ claims and
22 disputed both the existence of and extent of liability as alleged by Plaintiffs, which allowed PAGA
23 Counsel to further assess the strength of Plaintiffs’ claims. PAGA Counsel’s experience in litigating
24 similar representative wage and hour claims, the degree of investigation that was conducted here, and
25 the amount of data, information, and documents that was obtained, was sufficient to determine the
26 potential value of the PAGA claims, and to evaluate the strength of these claims for purposes of
27 settlement.

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19. On April 30, 2024, the Parties participated in a formal mediation conducted by Tagore Subramaniam, Esq., a neutral and respected mediator with extensive experience in complex wage and hour matters, during which the Parties were able to reach an agreement to resolve the Actions in their entirety. Attached hereto as **Exhibit 3** is a true and correct copy of the PAGA Settlement Agreement (“Agreement” or “Settlement Agreement”) entered into between the Parties.

20. The Parties believe the Settlement Agreement is fair, reasonable, and adequate. The Parties understand, acknowledge, and agree that the Settlement Agreement constitutes a compromise of Plaintiffs' PAGA claims, and that it is the desire and intention of the Parties to affect a final and complete resolution of the Actions.

21. Defendant denies all of the claims in the Actions, and does not waive, but rather expressly reserves, all rights to challenge all such claims and allegations upon all legal, procedural, and factual grounds should the Settlement Agreement not become final. The Settlement Agreement reflects a compromise reached to end litigation in the Actions. Following significant investigation and extensive settlement negotiations, Plaintiffs now seek approval of the proposed Settlement Agreement, which will resolve all representative claims alleged in the Actions.

Notice to the LWDA

22. In accordance with California Labor Code sections 2699 *et. seq.* and concurrently with the filing of this Motion, a copy of the proposed Settlement Agreement was submitted to the LWDA via online submission through the LWDA's website on August 30, 2024. A true and correct copy of the email from the LWDA confirming receipt is attached hereto as **Exhibit 4**.

Summary of the Terms of the Settlement Agreement

23. For purposes of settlement only, the Parties have agreed that the “Aggrieved Employees” shall be defined as all current and former non-exempt employees who worked for Defendant in the State of California during the PAGA Period. The “PAGA Period” is the period from September 1, 2022 to June 30, 2024. Based on its records, Defendant has represented that there are approximately 72 Aggrieved Employees who worked 2,250 pay periods as of April 30, 2024.

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1 24. The Parties have agreed to settle the PAGA claims at issue in the Actions for a non-
2 reversionary Gross Settlement Amount of Two Hundred Ninety Thousand Dollars and Zero Cents
3 (\$290,000.00). The Gross Settlement Amount is a common fund and therefore includes all requested
4 costs, fees, and other allocations. The Gross Settlement Amount includes: (1) PAGA Counsel's fees
5 in the amount of one-third (1/3) of the Gross Settlement Amount, equaling Ninety-Six Thousand Six
6 Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$96,666.67); (2) PAGA Counsel's actual litigation
7 costs and expenses in the amount of Fourteen Thousand Nine Hundred Four Dollars and Eighty-Seven
8 Cents (\$14,904.87); (3) Enhancement Payment in the amount of Five Thousand Dollars and Zero
9 Cents (\$5,000.00) to Plaintiff Lebowe; and (4) Administration Expenses Payment, not to exceed Four
10 Thousand Dollars and Zero Cents (\$4,000.00).

11 25. After the above-estimated amounts are deducted from the Gross Settlement Amount,
12 the Net Settlement Amount will amount to approximately One Hundred Sixty-Nine Thousand Four
13 Hundred Twenty-Eight Dollars and Forty-Six Cents (\$169,428.46), of which seventy-five percent
14 (75%), or One Hundred Twenty-Seven Thousand Seventy-One Dollars and Thirty-Five Cents
15 (\$127,071.35), will be paid to the LWDA ("LWDA PAGA Payment"), and twenty-five percent (25%),
16 or Forty-Two Thousand Three Hundred Fifty-Seven Dollars and Eleven Cents (\$42,357.11), will be
17 distributed and paid to Aggrieved Employees on a pro rata basis based on their number of pay periods
18 they each worked for Defendant for at least one day during the PAGA Period ("PAGA Pay Periods").

19 26. Within fifteen (15) calendar days of the Effective Date, Defendant will deliver
20 Aggrieved Employee identifying information in Defendant's possession including each Aggrieved
21 Employee's full name, last-known mailing address, Social Security number, and number of PAGA
22 Pay Periods (collectively, "Aggrieved Employee Data") to the Administrator in the form of a
23 Microsoft Excel spreadsheet.

24 27. Within thirty (30) calendar days of the Effective Date, Defendant will fund the Gross
25 Settlement Amount by transmitting the funds to the Administrator.

26 28. Within seven (7) calendar days after Defendant funds the Gross Settlement Amount,
27 the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment,
28 the Administration Expenses Payment, the Enhancement Payment, the PAGA Counsel Fees Payment,

1 and the PAGA Counsel Litigation Expenses Payment. Disbursement of the PAGA Counsel Fees
2 Payment and PAGA Counsel Litigation Expenses Payment will not precede disbursement of
3 Individual PAGA Payments.

4 29. Prior to mailing the Individual PAGA Payment checks, the Administrator will update
5 the Aggrieved Employees' mailing addresses using the National Change of Address Database.
6 Additionally, for all Individual PAGA Payment checks that are returned as undeliverable without a
7 USPS forwarding address, the Administrator will conduct an investigation and search for current
8 Aggrieved Employees' mailing addresses using all reasonably available sources, methods, and means
9 including, but not limited to, the National Change of Address database, skip traces, and direct contact
10 by the Administrator with the Aggrieved Employees ("Aggrieved Employee Address Search").
11 Within seven (7) calendar days of receiving a returned check, the Administrator will re-mail the check
12 to the USPS forwarding address provided or to an address ascertained through the Aggrieved
13 Employee Address search. The Administrator will promptly send a replacement check to any
14 Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved
15 Employee prior to the void date.

16 30. Individual PAGA Payment checks that are issued to Aggrieved Employees will be valid
17 and negotiable for up to one hundred and eighty (180) calendar days after the checks are initially
18 mailed to the Aggrieved Employees, and thereafter, will be canceled. Any funds associated with such
19 canceled checks will be distributed to California Controller's Unclaimed Property Fund in the name
20 of the Aggrieved Employee.

21 31. If the actual number of pay periods during the period September 1, 2022 through April
22 30, 2024 is more than ten percent (10%) above 2,250, then the Gross Settlement Amount will be
23 increased by the percentage in excess of this ten percent (10%) threshold.

24 **The Agreement is Fair and Reasonable and Took Into Consideration the Strengths and**
25 **Weaknesses of Plaintiffs' Claims and the Defenses thereto, as well as the Risks and Benefits of**
26 **the Agreement**

27 32. Here, the Agreement is presumptively fair because: (1) it occurred after counsel for the
28 Parties engaged in significant investigation to evaluate the strength and potential value of the PAGA

claims, and the risks of litigating these claims through trial; and (2) it was negotiated at great length and effort by counsel with significant experience in similar complex labor and employment matters.

33. These cases and settlement address important employee protections embodied in the California Labor Code. Plaintiffs' core allegations are that Defendant systematically violated the California Labor Code by, *inter alia*, failing to properly pay wages for all hours worked, failure to pay overtime at the correct rate, failing to provide compliant meal and rest periods, failure to pay premiums at the correct rate of pay, failing to timely pay wages during employment and upon termination, failing to maintain accurate payroll records, failing to provide accurate wage statements, and failing to reimburse necessary business expenses.

34. Defendant maintained several defenses to Plaintiffs' theories of liability, which, if successfully argued and proven, had the potential to eliminate or substantially reduce recovery. Throughout this litigation, Defendant maintained, and continues to maintain, that it had, and continues to have, compliant employment policies and practices throughout the time period at issue. Defendant denies that it ever violated any provision of the California Labor Code, including, but not limited to, those sections for which Plaintiffs seek penalties under PAGA. Defendant further denied, and continues to deny, that the lawsuits are appropriate for representative treatment for any purpose other than settlement. Defendant also challenged Plaintiffs' standing as aggrieved employees and denied that any of Defendant's other employees whom Plaintiffs seek to represent are aggrieved. Defendant also argued that an important feature of PAGA is that the Court retains discretion to lower the penalties if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is "unjust, arbitrary and oppressive, or confiscatory."

35. Even if violations of the California Labor Code occurred, which Defendant denies, Defendant contended that said violations would only be considered "initial violations" and thus heightened "subsequent violation" penalties were not warranted.

36. Defendant also contended that, with respect to PAGA claims, the Court was unlikely to assess cumulative penalties for the maximum number of possible, separate California Labor Code violations, because it would be unjust, arbitrary, oppressive, and/or confiscatory, especially where certain conduct may be regulated by multiple provisions of the California Labor Code that are

1 interrelated and work in tandem. As such, Defendant contended that cumulative penalties and
2 heightened penalties would be unjust, arbitrary, oppressive, and confiscatory.

3 37. While Plaintiffs maintain that their PAGA claims have merit, in reaching the
4 Agreement, Plaintiffs and their counsel took into account the strengths and weaknesses of each side's
5 position, and the uncertainty of how the cases might have concluded as litigation continued, at trial,
6 and/or upon appeal. The Agreement achieves a sizeable benefit obtained.

7 38. Prior to mediation, Defendant represented that approximately 72 Aggrieved Employees
8 worked a total of 2,250 pay periods during the time period between September 1, 2022 through April
9 30, 2024 ("relevant time period").

10 39. As set forth in the Motion, the California Labor Code does not set forth the criteria by
11 which a PAGA settlement is to be evaluated; it is presumed that a reviewing court may take into
12 consideration some of the factors that courts use when reviewing a class action settlement.¹ "[A]
13 PAGA claim asserted on a non-class representative basis...is not considered a class action but a law
14 enforcement action, and therefore does not have to meet the requirements of [a class action]." *Casida*
15 *v. Sears Holdings Corp.*, 2012 U.S. Dist. LEXIS 9302 at *8 (E.D. Cal. Jan. 25, 2012). However, a
16 discussion of the strengths and weaknesses of each claim, along with an estimate of the total potential
17 recovery is as follows:

18 *i. Unpaid Wages*

19 40. Plaintiffs alleged that Defendant failed to compensate Plaintiffs and the Aggrieved
20 Employees at their applicable minimum, regular, and overtime rates for their work, and failed to
21 compensate them for all hours that they worked. Plaintiffs further alleged that Defendant required
22 Plaintiffs and the other Aggrieved Employees to perform work off-the-clock by requiring them to
23 coordinate shipments from overseas to be delivered throughout the country after clocking out for both
24 purported meal periods and the ends of shifts. Plaintiffs reported that on some occasions supervisory
25 and managerial staff would instruct employees to clock out at the end of the day and then finish
26 remaining work. Plaintiffs also alleged that Plaintiffs and other Aggrieved Employees were required

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28 ¹ As this is not a class action, the *Kullar* factors pertaining to the risk of maintaining class action status through trial and the reaction of class members to the proposed settlement are inapplicable.

1 to perform pre-shift work activities off-the-clock, including passing through security in the building
2 lobby and waiting several minutes for the work computers to connect to the VPN and load the
3 timekeeping software. Additionally, Plaintiffs alleged that Plaintiffs and other Aggrieved Employees
4 were required to perform post-shift work activities, which included operational work and creating
5 files, and occasionally having to drive to FedEx after clocking-out. Moreover, Defendant and
6 Defendant's customers contacted Plaintiffs and other Aggrieved Employees on their personal cell
7 phones while they were off the clock. Additionally, Plaintiffs alleged that Defendant failed to pay
8 overtime compensation at the rate of one and one-half times the regular rate of pay by failing to include
9 all non-discretionary compensation into the regular rate calculation.

10 41. Defendant denied these claims, arguing that its overtime policies and practices comply
11 with California. Defendant further contended that its non-exempt employees were responsible for
12 accurately recording their own hours and that it was not aware that any work had been performed off-
13 the-clock. Defendant also argued that its overtime calculations lawfully included all forms of
14 compensation, including bonuses and commissions. Defendant also produced payroll data evidencing
15 overtime paid to its employees.

16 42. If a violation was found to have occurred in every one of the aggregate pay periods
17 within the relevant time period, the potential maximum exposure for this claim would be \$225,000.²

18 *ii. Meal Periods*

19 43. Plaintiffs asserted that Defendant failed to provide employees with lawful meal periods.
20 For example, Plaintiffs reported that their meal breaks were often interrupted by work-related
21 questions from supervisors and customers. Additionally, Plaintiffs alleged that throughout the relevant
22 time period, Defendant failed to provide timely, uninterrupted second meal periods of the requisite
23 length. Plaintiffs' analysis of a random sampling of time data revealed that in 69% of all pay periods
24 there was at least one unique meal period violation.

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27 ² While the California Labor Code provides for \$100 for the first violation and up to \$250 for each subsequent violation
28 (depending on the underlying violation), Plaintiffs used this simple computation of the total number of aggregate pay
periods times a \$100 penalty for analysis purposes only to account for the argument that the imposition of PAGA penalties
is discretionary and courts have the power to reduce or assess penalties based on the specifics of each case.

1 44. Defendant argued that the Aggrieved Employees were permitted, if not encouraged, to
2 take their meal breaks. Defendant also argued that its written meal break policy was lawful and
3 employees' time records reflected that they took lawful meal periods. Defendant further contended
4 that it paid premiums at the regular rate of pay whenever an employee did not have the opportunity to
5 take a lawful meal period. Moreover, litigating the meal period claims would be inherently difficult
6 as it would need to be proven that compliant meal periods were not provided, but time records would
7 not indicate whether or not a meal period was interrupted.

8 45. If a violation was found to have occurred in every one of the aggregate pay periods
9 within the relevant time period, the potential maximum exposure for this claim would be \$225,000.

10 *iii. Rest Periods*

11 46. Plaintiffs argued that Defendant failed to schedule, permit, or authorize compliant rest
12 periods. Plaintiffs alleged that Plaintiffs and other Aggrieved Employees were unable to take their
13 rest breaks because of the need to respond to time sensitive duties and work-related calls. Plaintiffs
14 reported that if they were able to take a rest break, they were frequently interrupted by supervisors,
15 coworkers, and/or customers. In response, Defendant pointed to their written rest break policies as
16 being compliant with California law. Here, Plaintiffs faced the challenge of having to prove each
17 alleged rest period violation with only testimony from Aggrieved Employees.

18 47. If a violation was found to have occurred in every one of the aggregate pay periods
19 within the relevant time period, the potential maximum exposure for this claim would be \$225,000.

20 *iv. Unreimbursed Business Expenses*

21 48. Plaintiffs alleged that Aggrieved Employees received work-related phone calls and text
22 messages on their personal cell phones from their supervisors and customers and were not
23 compensated by Defendant. Plaintiffs also asserted that Defendant required Plaintiffs and Aggrieved
24 Employees to use their home internet connection during the times they worked remotely but were not
25 reimbursed in any amount to fulfill their job responsibilities.

26 49. Defendant contended that it had a policy and practice of reimbursing employees for
27 necessary business-related expenses. Defendant further contended that, with respect to the alleged
28 expenses for which Plaintiff and Aggrieved Employees never requested reimbursement from

Defendant, it did not know and had no reason to know that alleged business-related expenses had been incurred.

50. If a violation was found to have occurred in every one of the aggregate pay periods within the relevant time period, the potential maximum exposure for this claim would be \$225,000.

v. Derivative Claims

51. As with all derivative claims, success depends on the success of the underlying claims. Here, Plaintiffs' claims for inaccurate wage statements, failure to pay all wages due during employment and upon termination, and failure to keep requisite payroll records would only succeed if the underlying claims for failure to pay wages for off-the-clock work, failure to pay overtime, and failure to pay premiums for all meal and rest periods not lawfully provided were successful. Therefore, these claims were subject to the same risks of failure as discussed above.

52. Again, if a violation was found to have occurred in every one of the aggregate pay periods within the relevant time period, the potential maximum exposure for this claim would be \$225,000.

vi. Total PAGA Penalties

53. PAGA Counsel considered information obtained through investigations and obtained from Plaintiffs and Aggrieved Employees, as well as data provided by Defendant, and created valuation models. Based thereon and assuming that the Court would be satisfied that the PAGA claims were susceptible to being efficiently tried and adjudicated on a representative basis, and that it could be shown that civil penalties under the California Labor Code are owed of one penalty per pay period during the relevant time period, Defendant's estimated total exposure was \$1,125,000. However, PAGA Counsel considered the defenses asserted, information and evidence obtained, and circumstances in these cases, which posed risks to representative adjudication and monetary recovery. PAGA Counsel also considered the fact that, by law, the Court has the discretion to reduce and/or assess lower penalties, that it was not clear that heightened penalties would apply, and that stacking and/or cumulative penalties may not be allowed. Accordingly, a discount of 50% was applied to account for the risks associated with proving the underlying violations and the cost and delay in recovering the alleged potential penalties (bringing the value of this claim closer to \$562,500), and a

discount of 40% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of this claim closer to \$337,500). In light thereof, the Gross Settlement Amount of \$290,000 is a significant settlement.

The Amount in the Settlement Agreement

54. The Net Settlement Amount is currently estimated to be One Hundred Sixty-Nine Thousand Four Hundred Twenty-Eight Dollars and Forty-Six Cents (\$169,428.46). After all deductions from the Gross Settlement Amount are made for the PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, Enhancement Payment, and Administration Expenses Payment, One Hundred Twenty-Seven Thousand Seventy-One Dollars and Thirty-Five Cents (\$127,071.35) (i.e. 75% of the Net Settlement Amount) will go to the LWDA, and Forty-Two Thousand Three Hundred Fifty-Seven Dollars and Eleven Cents (\$42,357.11) (i.e. 25% of the Net Settlement Amount) will go to the Aggrieved Employees, as required by California Labor Code § 2699(i) (“civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the Labor and Workforce Development Agency . . . and 25 percent to the aggrieved employees.”). There is no reason to doubt the fairness of the proposed plan of allocation of the Net Settlement Amount as it fully complies with California Labor Code section 2699(i).

55. The Settlement Agreement is a compromise of highly disputed claims. Plaintiffs and their counsel recognize the expense and length of continued proceedings necessary to litigate the matter through trial and any possible appeals. Plaintiffs and their counsel have also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation. Plaintiffs and their counsel are also aware of the burdens of proof necessary to establish liability, both generally and in response to Defendant’s defenses thereto, and the difficulties in establishing Defendant’s liability for, and the right to recover, penalties on behalf of Plaintiffs, the State of California, and other Aggrieved Employees. Plaintiffs and their counsel have also taken into account Defendant’s agreement to enter into a settlement that confers significant relief upon the Aggrieved Employees and the State of California. Considering all of the facts in this case, Plaintiffs and their counsel have determined that the Agreement represents a fair, adequate, and reasonable resolution of the PAGA claims, and that it is in the best interests of the Aggrieved Employees and the

1 State of California.

2 56. The result achieved in these cases is well within the range of what is considered an
3 acceptable settlement under the circumstances, especially when compared to the settlement of PAGA
4 claims in other cases.

5 **The Agreement was Negotiated by Experienced Counsel**

6 57. PAGA Counsel is experienced in complex representative and class action wage-and-
7 hour litigation. In the view of PAGA Counsel, the benefits conferred by the Agreement are eminently
8 fair and reasonable, and in the best interests of the State of California and the Aggrieved Employees
9 in light of the risk, delay, and uncertainty of continued litigation and the substantial monetary benefits
10 provided for by the Agreement.

11 58. Here, the extent of informal discovery conducted was sufficient to enable PAGA
12 Counsel to evaluate the strength and value of the PAGA claims for purposes of settlement. The
13 settlement negotiations were conducted by highly capable and experienced counsel. PAGA Counsel
14 are respected members of the bar with strong records of vigorous and effective advocacy, and are
15 experienced in handling complex wage and hour class action litigation. Accordingly, PAGA Counsel
16 had sufficient information and experience to act intelligently in negotiating the Agreement.

17 **The Requested PAGA Counsel Fees Payment is Fair and Reasonable**

18 59. PAGA Counsel's application for attorneys' fees in light of the facts and circumstances
19 surrounding the cases is well-within the range of reasonableness. PAGA Counsel has vigorously
20 litigated these cases since they were commenced, with the very real possibility of an unsuccessful
21 outcome and no fee recovery of any kind.

22 60. In the present cases, PAGA Counsel has borne all of the risks and costs of litigation
23 and will not receive any compensation until recovery is obtained. PAGA Counsel is experienced in
24 complex wage-and-hour litigation and used that experience to obtain a favorable result for Plaintiffs,
25 the Aggrieved Employees, and the State of California. Considering the amount of fees requested,
26 work performed, risks incurred, and experience of PAGA Counsel in handling similar matters,
27 Plaintiffs maintain that the requested attorneys' fees of one-third (1/3) of the Gross Settlement Amount
28 (i.e., \$96,666.67) are reasonable and should be awarded.

1 61. The effectiveness of PAGA Counsel’s prosecution of this matter has translated into
2 tangible monetary benefits for the Aggrieved Employees as follows: (1) Aggrieved Employees will
3 obtain monetary recovery over a relatively short period of time, as opposed to waiting additional years
4 for the same, or potentially worse, result; (2) a guaranteed result that compares favorably with other
5 representative PAGA actions of these types, given the strengths and weaknesses of the cases; and (3)
6 significant savings in PAGA Counsel’s fees and/or costs that would have only increased significantly
7 had the cases progress through trial and/or appeals. The attorneys who worked on the *Jimenez* Action
8 are all experienced in litigating wage and hour matters as follows:

9 a. Miriam L. Schimmel is a 28-year litigator who joined Blackstone in June 2022,
10 following ten years of working with two well-known plaintiff-side wage and hour law firms in Los
11 Angeles. Her billable rate is \$1,050, which is well within the prevailing rate for attorneys with her
12 experience in my area of practice in Southern California.

13 b. Joana Fang is a highly skilled eight-year lawyer who is part of the team at Blackstone
14 that litigated this matter. She is a 2015 graduate of Loyola Law School, and a 2011 graduate of
15 University of California, Berkeley where she was a double major in Legal Studies and Media Studies.
16 Since passing the Bar, Ms. Fang has exclusively represented plaintiffs in wage and hour litigation, as
17 well as catastrophic injury complex litigation. Her hourly rate of \$750 is reasonable based on her
18 education and experience and is in line with the market rate.

19 c. Alexandra Rose joined Blackstone from a highly reputable employment law firm. She
20 graduated from the University of California, Los Angeles with a Bachelor of Arts degree in 2016 and
21 from New England Law | Boston with a Juris Doctor degree in 2019. She was admitted to the State
22 Bar of California in December of 2019. Her hourly rate of \$695 is reasonable based on her education
23 and experience and is in line with the market rate.

24 d. Jared C. Osborne recently joined Blackstone also from a highly reputable employment
25 law firm. He graduated from New York University with a Bachelor of Arts degree in 2009 and from
26 University of Southern California with a Juris Doctor degree in 2020. He was admitted to the State
27 Bar of California in February 2021. His hourly rate of \$650 is reasonable based on his education and
28 experience and is in line with the market rate.

62. Blackstone Law, APC has spent approximately 162.80 total hours litigating this matter. To date, our total fees incurred amount to \$144,452. Each attorney who worked on this matter engaged in a multitude of tasks, including communicating with the client and defense counsel; investigating the facts and researching applicable legal issues; drafting pleadings, discovery, and briefs; reviewing documents; preparing for and attending mediation; and facilitating the settlement by reviewing and/or drafting the settlement documents and documents for obtaining settlement approval. A summary of Blackstone's lodestar for each attorney who worked on this matter is as follows:

<u>Attorney</u>	<u>Position</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Jonathan M. Genish	Managing Partner	15.60	\$1,150	\$17,940
Miriam L. Schimmel	Senior Counsel	66.70	\$1,050	\$70,035
Joana Fang	Senior Associate	30.0	\$750	\$22,500
Alexandra Rose	Associate	25.6	\$695	\$17,792
Jared C. Osborne	Associate	24.9	\$650	\$16,185

63. We expect to spend an additional 10 hours (\$9,000) in connection with finalizing the Motion, preparing for the approval hearing, and managing the Agreement through its conclusion, including anticipated communications with defense counsel, the Administrator, and our client. Based thereon, the total amount of Blackstone's fees through closure of this matter are estimated to be approximately \$153,452.

The Requested PAGA Counsel Litigation Expenses Payment is Fair and Reasonable

64. The Agreement provides for reimbursement of litigation costs and expenses of up to \$18,000.00. Blackstone seeks reimbursement of a total of \$12,498.13 in litigation costs and expenses. A true and correct itemized list of my firm's litigation costs and expenses is attached hereto as **Exhibit 5**. This amount was reasonable and necessary in the prosecution of this matter.

The Administration Expenses Payment is Fair and Reasonable

65. As set forth in the Settlement Agreement, the Parties have agreed to retain, subject to approval by the Court, ILYM Group, Inc. to handle the administration of the Agreement. The fees and expenses of the Administrator are estimated not to exceed \$4,000.00. These costs include, but are

not limited to, expenses for preparing, printing, and mailing the Cover Letter and Individual PAGA Payment checks to the Aggrieved Employees, re-mailing the returned Individual PAGA Payment checks to any new addresses obtained, and handling inquiries from Aggrieved Employees regarding the Agreement, among other things. Accordingly, the Court should grant approval of the Administration Expenses Payment in the amount of up to \$4,000.00 to IYLM Group, Inc., a necessary third-party for handling the settlement process.

The Enhancement Payment Is Fair and Reasonable

66. As part of the Settlement Agreement, Plaintiffs respectfully request a reasonable Enhancement Payment of Five Thousand Dollars and Zero Cents (\$5,000.00) to Plaintiff Lebowe. This Enhancement Payment is eminently reasonable given the time and effort Plaintiff Lebowe spent on this matter, his services on behalf of the State of California and the Aggrieved Employees, and his broader, general release of claims.

67. Plaintiffs Garcia and Jimenez have executed separate agreements to settle and resolve their individual claims with Defendant.

68. By initiating and pursuing the Actions, Plaintiffs stepped into the shoes of the State of California and undertook the responsibilities of serving in representative capacities. Plaintiffs were available whenever Plaintiffs' counsel needed them and actively tried to obtain information that would benefit the prosecution of the Actions.

69. Accordingly, Plaintiffs respectfully submit that it is appropriate and just for Plaintiff Lebowe to receive an Enhancement Payment in the amount of Five Thousand Dollars and Zero Cents (\$5,000.00) in addition to the Individual PAGA Payment he will receive as an Aggrieved Employee, for his services on behalf of the State of California and the other Aggrieved Employees, as well as for his broader, general release of claims.

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Pending Actions

70. Neither I nor Plaintiff Jimenez are aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Agreement.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 13, 2024, at Beverly Hills, California.



Jonathan M. Genish

Exhibit 1

September 1, 2023

PAGA Claim Notice Via Online Electronic Submission

California Labor & Workforce Development Agency

800 Capitol Mall, Suite 5000 (MIC-55)

Sacramento, CA 95814

<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

RE: *Alejandra Jimenez v. ClearFreight Inc.*

Dear Representative:

This office represents Alejandra Jimenez (“Claimant”) with respect to her claims under the California Labor Code against ClearFreight Inc. (including any and all affiliates, subsidiaries, parents, directors, and officers thereof) (collectively referred to herein as “Employers”). This letter is being sent simultaneously to Employers by certified mail.

Employers employed Claimant from approximately October 2021 to March 2023 as a non-exempt, hourly-paid employee. During her employment with Employers, Claimant was employed as a Traffic Coordinator at the 1960 E. Grand Ave., El Segundo, CA 90245 location.

Claimant intends to bring a representative action seeking penalties for violations of the California Labor Code which are recoverable under the Labor Code Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.* (“PAGA”). Claimant is seeking penalties on behalf of herself and in a representative capacity on behalf of the State of California and all current and former hourly-paid and/or non-exempt employees who worked for Employers in the State of California during the relevant statutory period (“Aggrieved Employees”). This letter is being sent in compliance with California Labor Code section 2699.3 and shall serve as Claimant’s notice of the provisions of the California Labor Code alleged to have been violated, including the facts and theories in support thereof.

As detailed below, Employers violated several of California’s wage and hour laws during Claimant’s employment, including but not limited to California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802, and the Industrial Welfare Commission Wage Orders (“IWC Wage Orders”). The claims made on behalf of Claimant and Aggrieved Employees are based upon the following facts and theories:

1. FAILURE TO PAY FOR ALL TIME WORKED AT CORRECT RATES OF PAY, INCLUDING MINIMUM WAGES, STRAIGHT TIME WAGES, AND OVERTIME COMPENSATION

Employers have engaged in numerous unlawful practices which resulted in the failure to pay Claimant and other Aggrieved Employees for all time worked at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation.

California Labor Code sections 1194, 1197, and 1197.1 and IWC Wage Orders require employers to pay at least the legal minimum wage to their employees. California Labor Code sections 510 and 1198 and IWC Wage Orders further require employers to pay no less than one and one-half times the regular rate of pay of the employee for hours worked in excess of eight (8) hours in one workday, for hours worked in excess of forty (40) hours in one workweek, and for the first eight (8) hours worked on the seventh day of work in any one workweek, and to pay no less than twice the regular rate of pay of the employee for hours worked in excess of twelve (12) hours in one workday and for any work in excess of eight (8) hours on any seventh day of a workweek.

Throughout the relevant time period, Employers regularly required Claimant and other Aggrieved Employees to perform work off-the-clock. Employers failed to compensate Claimant and other Aggrieved Employees for any off-the-clock work, in violation of California law. This off-the-clock work included, amongst other things, requiring Claimant and other Aggrieved Employees to continue coordinating shipments from overseas to be delivered throughout the country after clocking out for purported meal periods and at the end of shift. Employers failed to compensate Claimant and other Aggrieved Employees for any of this off-the-clock work, in violation of California law. In addition, Employers utilized time rounding practices that resulted in the systematic underpayment of wages (including minimum wages, straight time wages and overtime wages) to Claimant and Aggrieved Employees.

Employers also failed to accurately record the actual time worked by Claimant and Aggrieved Employees. Moreover, the uncompensated work described herein was often performed when Claimant and other Aggrieved Employees had already worked eight (8) hours in a day and/or forty (40) hours in week resulting in a failure to pay overtime compensation. Finally, Employers failed to pay overtime to Claimant and Aggrieved Employees for all overtime hours worked based on regular rates of pay correctly calculated to include all applicable remuneration, including non-discretionary commissions, non-discretionary bonuses, and non-discretionary performance pay.

As a result of the foregoing practices, Employers have failed to pay Claimant and other Aggrieved Employees for all wages earned at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation. Accordingly, Employers violated IWC Wage Orders and California Labor Code sections 204, 510, 1194, 1197, 1197.1 and 1198.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to paragraph of the applicable IWC Wage Orders; penalties pursuant to California Labor Code sections 558, 1197.1, and 1199; and

attorneys' fees and costs.

2. FAILURE TO PROVIDE MEAL PERIODS AND PAY MEAL PERIOD PREMIUMS

California law requires employers to provide employees with an opportunity to take an uninterrupted meal period of no less than thirty (30) minutes before the end of the fifth hour of work when an employee works more than five (5) hours in a day. Cal. Lab. Code §§ 226.7, 512(a). A second meal period of no less than thirty (30) minutes must be provided before the end of the tenth hour of work when an employee works more than ten (10) hours in a day. Cal. Lab. Code §§ 226.7, 512(a). When an employer fails to provide a meal or rest period, an hour of pay at the employee's regular rate of compensation is owed to the employee. Cal. Lab. Code § 226.7(c).

During the relevant time period, Employers failed to provide Claimant and other Aggrieved Employees with legally-compliant 30-minute meal periods. Claimant and other Aggrieved Employees were required by Employers to work more than five (5) hours per day, but were not provided with uninterrupted 30-minute meal periods. Further, Claimant and other Aggrieved Employees were not provided with a second uninterrupted 30-minute meal period when they worked over ten (10) hours per day. Employers regularly required Claimant and other Aggrieved Employees to work through their first and second meal periods, to take their first meal period after their fifth (5th) hour of work, and/or to take their second meal periods after their tenth (10th) hour of work. Meal periods, when provided, were oftentimes interrupted or cut short.

Employers' policies, practices, and procedures were responsible for the violations alleged above and prevented Claimant and other Aggrieved Employees from taking timely, complete and duty-free meal periods because, amongst other reasons: (1) Employers did not have legally-compliant policies regarding the provision and timing of meal periods or systematically disregarded its own purported meal period policies; (2) Employers' management at various levels failed and refused to implement and enforce legally compliant meal period policies and practices; (3) Employers failed to adequately inform and train Claimant and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free meal periods; (4) Employers failed to adequately inform and train Claimant and other Aggrieved Employees about their right to premium wages for non-compliant meal periods; (5) Employers failed to ensure that there was adequate staffing to allow Claimant and other Aggrieved Employees to take timely, uninterrupted, and duty-free meal periods; (6) Employers required Claimant and other Aggrieved Employees to respond to work-related requests at all times, including during meal periods; and (7) Employers' policy and culture prevented Claimant and other Aggrieved Employees from taking timely, uninterrupted, and duty-free meal periods because of the priority placed on maximizing profits over employees' right to receive timely, uninterrupted, and duty-free meal periods.

Claimant and other Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the meal periods which were not provided to them in compliance with California law. Accordingly, Employers violated the applicable IWC Wage Orders and California

Labor Code sections 226.7, 512(a) and 1198.

Claimants and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to penalties paragraph of the applicable IWC Wage Orders; penalties pursuant to California Labor Code sections 558 and 1199; and attorneys' fees and costs.

3. FAILURE TO AUTHORIZE AND PERMIT REST PERIODS AND PAY REST PERIOD PREMIUMS

California law requires employers to authorize and permit employees to take an uninterrupted rest period of no less than ten (10) minutes rest for every four (4) hours, or major fraction thereof, worked. Cal. Lab. Code § 226.7. When an employer fails to authorize and permit a rest period, an hour of pay at the employee's regular rate of compensation is owed to the employee. Cal. Lab. Code § 226.7(c).

Employers failed to authorize and permit Claimant and other Aggrieved Employees to take legally-compliant 10-minute rest periods. Employers required Claimant and other Aggrieved Employees to work through rest periods. Claimant and Aggrieved Employees were not provided with uninterrupted, duty-free rest periods when they worked more than four (4) hours or a major fraction thereof. Further, Claimant and other Aggrieved Employees were not provided with a second uninterrupted, duty-free rest period when they worked more than six (6) hours in a day, or a third uninterrupted, duty-free rest period after working more than ten (10) hours in day. In the rare event that a rest period was taken, it was frequently interrupted or cut short. Moreover, Claimant and other Aggrieved Employees were not completely relieved of duty as required by *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257 (2016).

Employers' policies, practices, and procedures were responsible for the violations alleged above and prevented Claimant and other Aggrieved Employees from taking timely and complete rest periods because, amongst other reasons: (1) Employers did not have legally-compliant policies regarding the provision and timing of rest periods or systematically disregarded its own purported rest period policies; (2) Employers' management at various levels failed and refused to implement and enforce legally compliant rest period policies and practices; (3) Employers failed to adequately inform and train Claimant and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free rest periods; (4) Employers failed to adequately inform and train Claimant and other Aggrieved Employees about their right to premium wages for non-compliant rest periods; (5) Employers failed to ensure that there was adequate staffing to allow Claimant and other Aggrieved Employees to take timely, uninterrupted, and duty-free rest periods; (6) Employers required Claimant and other Aggrieved Employees to respond to work-related requests at all times, including during rest periods; and (7) Employers' policy and culture prevented Claimant and other Aggrieved Employees from taking timely, uninterrupted, and duty-free rest periods because of the priority placed on completing job requirements over employees' right to receive rest periods.

Claimant and other Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the rest periods which were not provided to them in compliance with California law. Accordingly, Employers violated the applicable IWC Wage Orders and California Labor Code sections 226.7, and 1198.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to penalties paragraph of the applicable IWC Wage Orders; Labor Code sections 558 and 1199 penalties; and attorneys' fees and costs.

4. FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, Employers have failed to timely pay all wages earned because Claimant and other Aggrieved Employees were not paid all the wages they were owed including, *inter alia*, overtime compensation, straight time wages, minimum wages, and meal and rest period premiums. Accordingly, Employers violated California Labor Code section 204(a).

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 210 and 1199; and attorneys' fees and costs.

5. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

California Labor Code section 226(a) requires an employer semimonthly or at the time of each payment of wages to furnish wage statements to its employees setting forth, *inter alia*, (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, and (8) the name and address of the legal entity that is the employer.

As a result of the practices described herein, the wage statements provided to Claimant and other Aggrieved Employees failed to include the actual hours worked (including time spent working off-the-clock), the actual gross wages earned (including wages owed for time spent working off the

clock and meal and rest period premiums), and the correct rates of pay. The wage statements provided to Claimant and other Aggrieved Employees also failed to include the name of the legal entity that employed Claimant and the Aggrieved Employees. Accordingly, Employers violated California Labor Code section 226(a).

Claimant and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to California Labor Code section 226.3; and attorneys' fees and costs.

6. FAILURE TO MAINTAIN ACCURATE RECORDS

California Labor Code section 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant time period, Employers have failed to maintain accurate records relating to Claimant and other Aggrieved Employees' work periods, meal periods, total daily hours worked, and total hours worked per payroll period. Accordingly, Employers violated the applicable IWC Wage Orders and California Labor Code sections 1198.5 and 1174(d).

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to paragraph of the applicable IWC Wage Orders; California Labor Code section 1174.5 penalties; and attorneys' fees and costs.

7. FAILURE TO REIMBURSE NECESSARY EXPENDITURES

California Labor Code sections 2800 and 2802 require an employer to reimburse its employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. The IWC Wage Orders require employers to provide employees with the tools or equipment necessary for the performance of their job. During the relevant time period, Claimant and Aggrieved Employees incurred necessary business-related expenses and costs that were not fully reimbursed by Employers. These costs include but are not limited to the usage of personal cell phones for work-related purposes.

Accordingly, Employers violated the IWC Orders **¡Error! No se encuentra el origen de la referencia.** and California Labor Code sections 2800 and 2802. Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to paragraph of the applicable IWC Wage Orders; and attorneys' fees and costs.

8. FAILURE TO TIMELY PAY ALL WAGES UPON TERMINATION OF EMPLOYMENT

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' 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.

During the relevant time period, upon the termination of employment (including but not limited to when they were temporarily laid off, laid off, discharged, and/or resigned), Aggrieved Employees were not paid all wages due to them within twenty-four (24) hours or even within seventy-two (72) hours for those who resigned. Specifically, as a result of Employers' practices of requiring Aggrieved Employees to work off-the-clock without compensation, failing to pay proper overtime compensation, unlawful rounding practices, failure to properly calculate regular rates, and failure to accurately record all hours actually worked, Employers failed to pay Aggrieved Employees for all straight time wage, minimum wages and overtime compensation owed to them upon termination of their employment. Employers also failed to pay Aggrieved Employees for meal period premiums and rest period premiums they were owed, amongst other wages. Accordingly, Employers violated California Labor Code sections 201 and 202.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to California Labor Code sections 203 and 1199; and attorneys' fees and costs.

9. EMPLOYER'S OTHER VIOLATIONS OF THE CALIFORNIA LABOR CODE

Finally, pursuant to *Huff v. Securitas Security Services USA, Inc.* (2018) 25 Cal.App.5th 745 ("*Huff*"), as an Aggrieved Employee, Claimant has standing, and intends, on behalf of LWDA, to pursue civil penalties against Employer for any and all other Labor Code violations committed by Employer. In *Huff*, the California Court of Appeals held that an employee alleging a single violation of the Labor Code under PAGA may also bring PAGA claims against Employer for all other alleged Labor Code violations, even those suffered by other employees of the same employer. According to the *Huff* decision, Employee, as an "aggrieved" employee affected by at least one Labor Code violation may, and hereby does, pursue penalties on behalf of LWDA for unrelated Labor Code violations by Employer.

Employers are in direct violation of numerous California wage and hour laws including but not limited to said sections stated above. We hereby provide notice under the California Labor Code Private Attorneys General Act of 2004, California Labor Code Sections 2698, et seq., and specifically ask for an investigation, or if the agency does not intend to investigate the alleged violations, a letter confirming the same so that we may allege a cause of action under PAGA against

Employers for the violations discussed in this letter.

This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3. By law, an employee alleging a violation of one of the above referenced sections must notify his or her employer and the Labor and Workforce Development Agency (LWDA) before he or she can invoke the provisions of Sections 2699, et seq., by seeking redress in court. Cal. Lab. Code § 2699.3(a)(1). The LWDA must then notify the employer and the employee within 60 calendar days regarding whether it intends to investigate the alleged violation. Cal. Lab. Code § 2699.3(a)(2)(B). If the LWDA advises it will not investigate, or if no notice is provided within 65 calendar days, the employee may file a lawsuit invoking the provisions under Labor Code § 2699. Cal. Lab. Code § 2699.3(a)(2)(A). It is Claimant's intention to file a civil complaint and to bring the appropriate claims under California Labor Code § 2699 on behalf of themselves, the State of California and all Aggrieved Employees should your office not address Employers' alleged violations within this time.

If you have any questions or require additional information, please do not hesitate to contact my office. Thank you for your attention to this matter.

BLACKSTONE LAW

Miriam Schimmel

Miriam Schimmel, Esq.

cc: By U.S. Certified Mail, Return Receipt Requested

ClearFreight Inc.

ATTN: Elaine Lim, Agent for Service of Process

1960 East Grand Avenue, Suite 700

El Segundo, California 90245

Exhibit 2

March 7, 2024

VIA ON-LINE SUBMISSION ONLY TO:

<https://dir.tfaforms.net/128> (copy by certified mail to all Defendants)

Private Attorneys General Act
Attn. PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

ClearFreight, Inc.
1960 East Grand Avenue, Suite 700
El Segundo, CA 90245
Certified Mail Tracking Number: 9414 8112 0620 4914 7310 29

Elaine Lim, Agent for Service
ClearFreight, Inc.
1960 East Grand Avenue, Suite 700
El Segundo, CA 90245
Certified Mail Tracking Number: 9414 8112 0620 4914 7193 48

**Re: Labor Code § 2698, *et seq.* Penalties – Amended PAGA Notice Letter to the LWDA
Darren Garcia v. ClearFreight, Inc., et al.
Superior Court for the County of Los Angeles**

LWDA Case No: LWDA-CM-983044-23

Gentlepersons:

This office represents Plaintiffs Darren Garcia and Taylor Edward Lebowe (collectively “Plaintiffs”) and other similarly situated aggrieved non-exempt, hourly employees aggrieved employees (collectively “Aggrieved Employees”) for violations of California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.* and 2802; provisions of the Industrial Welfare Commission (IWC) Wage Order(s); and California Business & Professions Code § 17200 *et seq.*

The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.* (“the Act”). Plaintiffs would like to bring a representative action, pursuant to the Act, on behalf of themselves and all other similarly situated Aggrieved Employees, and the State of California, against Defendants, ClearFreight, Inc., and DOES 1 through 50 inclusive (all defendants being referred to herein collectively as “Defendants”).



Additionally, this correspondence will serve to satisfy the notice requirements under the Act, along with a copy of Plaintiff's Class Action Complaint, which is attached to this Notice letter. The Complaint is being concurrently filed in Los Angeles County Superior Court and will be assigned a local case number. The Complaint allegations and claims are incorporated into this Notice Letter.

We also set forth herein the facts and theories and the California Labor Code violations which Defendants engaged in with respect to Plaintiffs and all of their Aggrieved Employees in California. The attached Class Action Complaint provides the details of Plaintiff's class-wide claims and claims under the Act, and the applicable California law governing them. It, along with this Notice Letter, addresses in detail numerous violations that subject Defendants to civil and statutory penalties under the Act.

Relevant Facts

Plaintiffs were employed by Defendants as a non-exempt, hourly employee based out of Defendants' location in California. Aggrieved Employees include all non-exempt hourly employees of Defendants within the state of California from one year prior to the date of this letter and continuing through the present. Plaintiffs and Aggrieved Employees are collectively referred to herein as "Aggrieved Employees." Aggrieved Employees consistently worked at Defendants' behest and under their control and subject to their policies and practices without being paid all wages due. Plaintiffs are also informed and believe that there are other Aggrieved Employees employed by Defendants as non-exempt employees within the state of California within the statutory time period who suffer or suffered from the same wage and hour violations outlined below.

Defendants had a common policy and/or practice of failing to pay Aggrieved Employees minimum wages for all hours worked. Aggrieved Employees were either not paid by Defendants for all hours worked or were not paid at the appropriate minimum, regular and overtime rates. Plaintiffs also contends that Defendants failed to pay Aggrieved Employees all wages due and owing, including by requiring off the clock work, failing to incorporate non-discretionary bonuses, commissions, and/or cash awards into the regular rate of pay used to calculate and pay for overtime pay, double time pay, sick pay, PTO pay, and meal and rest break premiums, failing to provide meal and rest breaks, failing to furnish accurate wage statements, failing to timely pay wages including final wages, failing to maintain accurate records, and failing to reimburse for necessary business expenses all in violation of various provisions of the California Labor Code and applicable Wage Orders.

During the course of Aggrieved Employees' employment with Defendants, they were not paid all wages they were owed, including for all work performed resulting in off the clock work. Aggrieved Employees were required to perform pre-shift and post-shift off the clock work which they were not compensated for despite being subject to Defendants' control. Specifically, Aggrieved Employees were required to perform pre-shift work activities, including passing through security in the building lobby and waiting several minutes for the work computers to connect to the VPN and load the timekeeping software. Additionally, Aggrieved Employees



were required to perform post-shift work activities, including operational work and creating files. Additionally, Aggrieved Employees were required to drive to FedEx for work purposes but were not compensated for this time. Moreover, Defendants would contact Aggrieved Employees on their personal cell phones while they were off the clock.

Defendants also failed to pay Aggrieved Employees all wages due and owing because Defendants failed to incorporate non-discretionary, performance-based bonuses, commissions, and/or cash awards into the regular rate of pay. Contrary to the requirements of the Labor Code and IWC Wage Orders under California law, Defendants did not incorporate these non-discretionary, performance based bonuses, commissions, and/or cash awards paid to the Aggrieved Employees into the regular rate of pay Defendants used to calculate and pay for overtime, double time, sick pay, PTO pay, and meal and rest break premiums.

By implementing policies, programs, practices, procedures and protocols which resulted in off the clock work and the failure to incorporate non-discretionary bonuses, commissions, and/or cash awards into the regular rate of pay used to calculate and pay overtime, double time, sick pay, PTO pay, and meal and rest break premiums, Defendants' willful actions resulted in the systematic underpayment of wages and overtime pay to Aggrieved Employees. For example, the off the clock work addressed above caused Aggrieved Employees to begin receiving overtime pay later than they should have.

As a result of the above described requirements to work off the clock and the failure to incorporate non-discretionary bonuses, commissions, and/or cash awards into the regular rate of pay used to calculate and pay overtime, double time, sick pay, PTO pay, and meal and rest break premiums and the other wage violations they endured at Defendants' hands, Aggrieved Employees were not properly paid all wages earned and all wages owed to them by Defendants, including when working more than eight (8) hours in any given day and/or more than forty (40) hours in any given week. Moreover, the uncompensated time, discussed above, was worked by Aggrieved Employees in excess of 8 hours a day and/or 40 hours a week, further entitling Aggrieved Employees overtime wages which they were consistently denied, all in violation of Labor Code and applicable Wage Orders.

Additionally, Defendants failed to provide all the legally required unpaid, off-duty meal periods and all the legally required paid, off-duty rest periods to Aggrieved Employees, as required by the applicable Wage Order and Labor Code. Aggrieved Employees were required to perform work as ordered by Defendants for more than five (5) hours during a shift but were often required to do so without receiving a lawful and timely meal break. In addition to untimely meal periods, Defendants also required Aggrieved Employees to respond to work demands. Defendants placed their needs over Aggrieved Employees' lawful meal and rest breaks and this resulted in Aggrieved Employees often having to work through their scheduled meal and/or rest breaks, or otherwise taking shortened ones, because the demands of the job would not avail them the opportunity to take a lawfully uninterrupted and off duty meal and/or rest break.

On the occasions when Aggrieved Employees worked over 10 hours in a shift, Defendants also



failed to provide them with a second, uninterrupted, timely and duty-free meal period. As a result, Defendants' failure to provide Aggrieved Employees with all legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest periods is and will be evidenced by Defendants' business records, or lack thereof. Defendants also failed to pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective hourly rate of pay, including their earned commission, for each meal period or rest break that Defendants failed to provide or deficiently provided.

Therefore, Defendants have regularly required Aggrieved Employees to work shifts in excess of five (5) hours without providing them with uninterrupted meal periods of not less than thirty (30) minutes, and shifts in excess of (10) hours without providing them with second meal periods of not less than thirty minutes; nor did Defendants pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective hourly rate of pay, including their earned commission, for each meal period that Defendants failed to provide or deficiently provided.

Aggrieved Employees were also not authorized and permitted to take lawful rest periods, were systematically required by Defendants to work through or during breaks and were not provided with one (1) hour's wages in lieu thereof. To the extent Aggrieved Employees were able to take rest breaks, they were restricted from leaving the premises. Aggrieved Employees were restricted in their ability to take their full ten (10) minutes net rest time or were otherwise not provided with duty-free rest periods. Therefore, Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than ten minutes for every work period of four or more consecutive hours; or major fraction thereof, nor did Defendant pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided.

Defendants also consistently failed to issue accurate itemized wage statements as required by Labor Code § 226(a). Specifically, the wage statements given to Aggrieved Employees failed to incorporate non-discretionary bonuses, commissions, and/or cash awards into the regular rate of pay used to calculate and pay overtime compensation, double time pay, sick pay, PTO pay, and meal and rest break premiums. Thus, the wage statements do not provide accurate hourly rates for overtime and the statements do not comply with Labor Code § 226(a)(9). Additionally, the wage statements given to Aggrieved Employees failed to accurately account for unpaid wages and overtime because Defendants under-reported Aggrieved Employees' actual hours worked due to off the clock work. Moreover, the wage statements given to Aggrieved Employees failed to accurately account for premium pay for deficiently provided meal periods and rest breaks.

Additionally, Defendants failed to pay Aggrieved Employees all wages owed, as detailed above, at the time of their termination or within seventy-two (72) hours of their resignation, as required under Labor Code § 203. Specifically, Aggrieved Employees were not paid all regular and overtime wages because Defendants failed to pay for all hours worked by requiring off the clock work and failed to incorporate non-discretionary bonuses, commissions, and/or cash awards into the regular rate of pay used to calculate and pay for overtime, double time, sick pay, PTO pay,



and meal and rest break premiums. Further, Defendants failed to pay premium wages owed for unprovided meal periods and rest periods. Defendants' failure to pay said wages within the required time was willful within the meaning of Labor Code § 203.

Defendants also failed to reimburse Aggrieved Employees for necessary business expenses. Defendants required Plaintiffs to incur business expenses in the course of performing his required job duties for Defendants including for cell phone expenses, mileage, home internet fees, fees for supplies including paper and ink, and other work-from-home expenses including a keyboard and mouse. Upon information and belief, Aggrieved Employees incurred similar costs. These expenses incurred by Plaintiffs and Aggrieved Employees were necessary and required of them in performing their assigned job duties, but Defendants failed to reimburse Plaintiffs and Aggrieved Employees for all such necessary expenditures, thus entitling them to reimbursement according to proof as required under Labor Code § 2802 and the applicable provisions of the IWC Wage Orders.

PAGA Claim Details, Legal Bases for Violations and Penalties:

As addressed above and in further detail in the attached Class Action Complaint, Plaintiffs and the Aggrieved Employees complain of the following violations committed by Defendants:

Failure to Pay Minimum Wages

Defendants violated the law by failing to pay Aggrieved Employees minimum wages for all hours worked. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states, "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful." The applicable minimum wages fixed by the commission for work during the relevant period is found in the Wage Orders.

In California, employees must be paid at least the then applicable state minimum wage for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014, and paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Paragraph 2(H) of the applicable IWC Wage Orders defines "Hours Worked" as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Additionally, pursuant to Labor Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked. Defendants failed to do so.

California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states: "The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful." The minimum wage provisions of California Labor Code are enforceable by private civil action pursuant to Labor Code § 1194(a) which states: "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid



balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees and costs of suit."

As described in California Labor Code §§ 1185 and 1194.2, any action for wages incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also, California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in the absence of a contractually agreed upon one. The underpayment of wages to Aggrieved Employees is and has been a direct consequence of Defendants' unlawful compensation policies and practices, which applied uniformly to the Aggrieved Employees working at locations and work sites throughout California.

During the course of Aggrieved Employees' employment with Defendants, they were not paid all wages they were owed, including for all work performed resulting in off the clock work. Aggrieved Employees were required to perform pre-shift and post-shift off the clock work which they were not compensated for despite being subject to Defendants' control. Specifically, Aggrieved Employees were required to perform pre-shift work activities, including passing through security in the building lobby and waiting several minutes for the work computers to connect to the VPN and load the timekeeping software. Additionally, Aggrieved Employees were required to perform post-shift work activities, including operational work and creating files. Additionally, Aggrieved Employees were required to drive to FedEx for work purposes but were not compensated for this time. Moreover, Defendants would contact Aggrieved Employees on their personal cell phones while they were off the clock.

Defendants, and each of them, have also intentionally and improperly imposed difficult to attain job and shift scheduling requirements on Plaintiffs and the Aggrieved Employees, which resulted in off the clock work and underpayment of all wages owed to Employees over a period of time, while benefiting Defendants. During the relevant time period, Defendants thus regularly failed to pay minimum wages to Plaintiffs and the Aggrieved Employees, including by requiring systematic off the clock work. Defendants' uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the Aggrieved Employees as a whole, as a result of implementing a uniform policy and practice that denied accurate compensation to Plaintiffs and the other Aggrieved Employees as to minimum wage pay.

Defendants also failed to pay Aggrieved Employees all wages due and owing because Defendants failed to incorporate non-discretionary, performance-based bonuses, commissions, and/or cash awards into the regular rate of pay. Contrary to the requirements of the Labor Code and IWC Wage Orders under California law, Defendants did not incorporate these non-discretionary, performance based bonuses, commissions, and/or cash awards paid to the Aggrieved Employees into the regular rate of pay Defendants used to calculate and pay for overtime, double time, sick pay, PTO pay, and meal and rest break premiums.



In light of the forgoing, the Aggrieved Employees seek to recover wages and penalties. Aggrieved Employees are entitled to recover the unpaid minimum wages (including double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant to California Labor Code § 1194(a). Plaintiffs and the other Aggrieved Employees further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory and civil penalties against Defendants, in a sum as provided by the California Labor Code and/or other applicable statutes, including pursuant to Labor Code § 558, and Wage Order provisions. To the extent minimum wage compensation is determined to be owed to the Aggrieved Employees who have terminated their employment, Defendants' conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under California Labor Code § 203, which penalties are sought herein on behalf of these Aggrieved Employees. Defendants' failure to timely pay all wages owed also violated Labor Code § 204 and resulted in violations of Labor Code § 226 because they resulted in the issuance of inaccurate wage statements. Defendants' conduct as alleged herein was willful, intentional and not in good faith. Further, Plaintiffs and other Aggrieved Employees are entitled to seek and recover statutory costs.

Under the PAGA, and following exhaustion of the notice period, Plaintiffs are seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Pay Wages and Overtime in Violation of Labor Code § 510

Defendants violated the law by failing to pay Aggrieved Employees earned wages and overtime and double time. Specifically, Defendants had a consistent policy of not paying Employees wages for all hours worked, including hours at their required regular, overtime, and double-time rates, or of miscalculating them by not including all forms of remuneration in the regular rate of compensation. Defendants, and each of them, have intentionally and improperly caused Aggrieved Employees to work off the clock to avoid paying Aggrieved Employees all earned and owed straight time and overtime wages and other benefits.

Defendants also failed to pay Aggrieved Employees all wages due and owing because Defendants failed to incorporate non-discretionary, performance-based bonuses, commissions, and/or cash awards into the regular rate of pay. Contrary to the requirements of the Labor Code and IWC Wage Orders under California law, Defendants did not incorporate these non-discretionary, performance based bonuses, commissions, and/or cash awards paid to the Aggrieved Employees into the regular rate of pay Defendants used to calculate and pay for overtime, double time, sick pay, PTO pay, and meal and rest break premiums.

Defendants have violated Labor Code § 1194 and Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular hourly rates for hours worked in excess of eight hours in a workday or in excess of forty hours in any workweek or for the first eight hours



worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve hours in any one day or for hours worked in excess of eight hours on any seventh day of work in a workweek. Defendants had a consistent policy of not paying Employees wages for all hours worked, including by requiring off the clock work as addressed above and by under-reporting actual hours worked. With work shifts generally requiring eight hours or more of work on a given day, this unpaid off the clock work resulted in Aggrieved Employees working past eight hours on a shift or more than forty hours in a week, which required that they be paid at the correct overtime rate of 1.5 times their regular rate.

When considered in combination with the other wage violations addressed above, Aggrieved Employees were not properly compensated, nor were they paid overtime and double time rates for hours worked in excess of eight hours or twelve hours in a given day, and/or forty hours in a given week. Defendants did not make available to Employees a reasonable protocol for correcting time records when Employees worked overtime hours or to fix incorrect time entries or those that Defendants unlawfully under-recorded to the Employee's detriment. Defendants have also violated these provisions by requiring Plaintiffs and other similarly situated Aggrieved Employees to work through meal periods when they were required to be clocked out or to otherwise work off the clock to complete their daily job duties.

In light of the forgoing, Aggrieved Employees seek to recover wages and penalties pursuant to the California Labor Code, including Labor Code §§ 204, 510, 558, 1174, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including paragraphs 2(K), 2(S), 3(A), 4, and 20. Defendants are liable to Employees for the full amount of all their unpaid wages and overtime compensation, with interest, plus their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties against Defendants, and each of them, and any additional sums as provided by the Labor Code and/or other statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiffs are seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Meal-Period Liability Under Labor Code §§ 226.7 and 512 and Penalties

Defendants have regularly required Aggrieved Employees to work shifts in excess of five hours without providing them with uninterrupted meal periods of not less than thirty minutes as required under Labor Code §§ 226.7, 512, and paragraph 11 of the applicable Wage Orders. Specifically, Aggrieved Employees were forced to incur shortened meal periods, were provided with breaks late and well after the fifth hour of work, could not be relieved to take breaks, or were required to remain on-duty at all times and were unable to take off-duty breaks or were otherwise not provided with the opportunity to take required breaks.

On the occasions when Aggrieved Employees were provided with a meal period, it was often untimely or interrupted by having to respond to work demands or remain under Defendant's control, in violation of the Labor Code and applicable Wage Orders. On shifts over ten hours,



second meal periods were not provided. Defendants also failed to pay Aggrieved Employees “premium pay,” i.e. one hour of wages at each Aggrieved Employee’s effective regular rate of pay, for each meal period that Defendants failed to provide or deficiently provided, including by miscalculating any premium payments they did make. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their correctly calculated regular rate of compensation for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions. Defendants also miscalculated the rate at which they paid any meal period or rest period premiums when Defendant did attempt to pay them, resulting in further violations of section 226.7.

Under the PAGA, and following exhaustion of the notice period, Plaintiffs are seeking all civil and statutory penalties and wages as available and applicable under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199, 2699(f)(2) and 2699.5, and also for attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).

Rest-Break Liability Under Labor Code § 226.7 and Penalties

Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than ten minutes for every work period of four or more consecutive hours, as required under Labor Code § 226.7. Specifically, Defendants provided rest periods untimely or for shortened durations, and Defendants’ policies and procedures required Aggrieved Employees to remain under Defendants’ control during breaks to respond to job requirements.

Defendants also failed to pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided, or miscalculated any premiums paid. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their correctly calculated regular rate of compensation for each rest period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiffs are seeking all civil and statutory penalties and wages as available and applicable under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199, 2699(f)(2), and 2699.5, and also for attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Issue Accurate and Itemized Wage Statements in Violation of Labor Code § 226

California Labor Code § 226(a) requires an employer to furnish each employee with an accurate, itemized wage statements in writing. These statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee’s wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately



from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a), Aggrieved Employees suffered injuries, including among other things confusion over whether they received all wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing them to make mathematical computations to analyze whether the wages paid in fact compensated them correctly for all hours worked.

Defendants failed to provide accurate itemized wage statements in writing, as required by the Labor Code and paragraph 7 of the applicable IWC Wage Orders. Any wage statements given to Employees by Defendants necessarily failed to accurately account for wages, overtime, and premium pay, including by failing to pay for all hours worked, failure to pay for all overtime hours worked or at the correct rate of pay and for providing deficient meal periods and rest breaks, all of which Defendants knew or reasonably should have known were owed to the Employees, as alleged above.

In light of these violations, and pursuant to Labor Code §§ 226(a) and 226(e) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, Aggrieved Employees are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys' fees.

Under the PAGA, and following exhaustion of the notice period, Plaintiffs assert PAGA claims for failure to provide Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Plaintiffs and Aggrieved Employees under Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ..."

Failure to Issue Semimonthly Payments in Violation of Labor Code § 204

In failing to pay Aggrieved Employees wages, overtime, premium pay, etc., and failing to provide them with checks and wage statements, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as well as the meal and rest periods taken by Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC wage orders.



Defendants also required Aggrieved Employees to work hours off the clock for which they were not compensated, including during interrupted or otherwise on-duty meal and rest periods. Defendants also failed to pay all overtime premium wages owed for work conducted on a work shift and a workday, or miscalculated these premiums by not including all forms of remuneration in the regular rate, as addressed above. Therefore, when Aggrieved Employees received wage statements and pay checks, they did not compensate all hours worked on a timely basis, resulting in Defendants' systematic failure to pay all wages owed to Aggrieved Employees twice monthly in accordance with the requirements of Labor Code § 204. Additionally, by not providing wage statements as required under section 204, Defendants systematically violated Labor Code § 204 and § 226.

Given the above described off the clock work and deductions from hours worked perpetrated by Defendants' management, Plaintiffs were not paid at the correct overtime rate for all hours he worked after eight hours into a shift or over forty in a work week and that he was not paid all double time owed either. Defendants' uniformly applied payroll policies and practices thus resulted in further systematic and ongoing violations of the requirements of Labor Code § 204.

In light of the foregoing, Plaintiffs and Aggrieved Employees seek to recover wages and penalties, interest, fees and costs pursuant to Labor Code §§ 201.3, 210, 218.5, 558, and 1194. In failing to pay Aggrieved Employees minimum wages and overtime, by requiring off the clock work, by not providing proper meal and rest periods, failing to provide accurate itemized wage statements, and failing to pay Employees wages upon termination or timely upon resignation, all discussed above, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants also failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and paragraph 7 of the applicable IWC Wage Orders, entitling Aggrieved Employees to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

Under the PAGA, and following exhaustion of the notice period, Plaintiffs assert PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 203, 204, 2926, 2927, and 2699.5 seeking all civil penalties available and applicable under Labor Code §§ 204, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Keep Records In Accordance With Labor Code § 1174

Labor Code § 1174 requires employers to keep records showing payroll data and the hours worked daily by and the wages paid to employees. By failing to pay Aggrieved Employees proper wages, overtime, double time, premium pay, etc., and by not recording meal period start and end times, all discussed herein, Defendants failed to maintain proper employment records in accordance with Section 1174. In light of the foregoing, Plaintiffs and Aggrieved Employees seek to recover penalties pursuant to Labor Code §§ 1174.5 and 2699, *et seq.* Defendants have also failed to comply with paragraph 7 of the applicable California IWC Wage Orders by failing to maintain time records showing when the employee begins and ends each work period, meal



periods, wages earned pursuant to Labor Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions from payment of wages and accurately reporting total hours worked by the Aggrieved Employees, and they are entitled to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

Under the PAGA, and following exhaustion of the notice period, Plaintiffs assert PAGA claims for failure to provide Plaintiffs and the Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Plaintiffs and Aggrieved Employees under Labor Code §§ 226, 1174, 1198, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 558, 1174.5, 1199, and 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Waiting Time Penalties Pursuant to Labor Code § 203

Some Aggrieved Employees no longer work for Defendants; they either resigned or were terminated from Defendants' employ. Based on the forgoing, Defendants have had a consistent policy of failing to pay all wages earned by and owed to Aggrieved Employees at the time of their termination of within seventy-two hours of their resignation, as required by California under Labor Code § 203. In light of the forgoing, Plaintiffs and Aggrieved Employees seek to recover wages and penalties pursuant to Labor Code § 558 and further specifically seek penalties and wages under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

Under the PAGA, and following exhaustion of the notice period, Plaintiffs assert PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199, 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Reimburse for Necessary Business Expenditures in Violation of Labor Code § 2802

Defendants required Plaintiffs and the Aggrieved Employees to pay for necessary work related expenses they incurred. Defendants required Plaintiffs to incur business expenses in the course of performing his required job duties for Defendants including for cell phone expenses, mileage, home internet fees, fees for supplies including paper and ink, and other work-from-home expenses including a keyboard and mouse. Upon information and belief, Aggrieved Employees incurred similar costs.

Defendants systematically and uniformly failed to reimburse those lawful and necessary work related expenses or losses incurred in direct discharge of their job duties during employment with Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9. Defendants are liable for PAGA penalties resulting



from their failure to reimburse necessary business expenses incurred by the Aggrieved Employees. Accordingly, Aggrieved Employees are entitled to recover, and hereby seek through this Representative Action, all civil and statutory penalties authorized for violations of California Labor Code §§ 1198 and 2802, and Section 9(B) of the applicable IWC Wage Orders, and Plaintiffs seeks all civil and statutory penalties available and applicable under Labor Code §§ 2802 and 2699(f)(2), and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Unfair Competition Under Business and Professions Code § 17200, et seq.

Consequently, Defendants' conduct has been and continues to be unfair, unlawful, and harmful to Plaintiffs and Aggrieved Employees and the general public in violation of Business & Professions Code § 17200 *et seq.*

Plaintiffs' PAGA Claim under Labor Code § 2698 et seq. and Recovery Bases:

After complying with the notice procedures of Labor Code § 2699.3 and the running of the notice period after the filing of the attached Class Action Complaint, Plaintiffs will file an amended Complaint asserting, as a representative action on behalf of the California Attorney General and the other similarly Aggrieved Employees, a PAGA claim for violations of the above addressed underlying claims and seeking penalties as specified by the applicable corresponding provisions.

Plaintiffs and the Aggrieved Employees seek penalties under Labor Code §§ 2698 and 2699 for Defendants' violation of Labor Code provisions included under Labor Code § 2699.5, including the penalty provisions, without limitation, based, *inter alia*, on the following California Labor Code sections: §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.* and 2802, including as follows:

(a) **Wage Claims:** For failure to provide Plaintiffs and the Aggrieved Employees all earned regular pay and minimum wages for regular hours worked and for failure to pay overtime premium wages for overtime hours worked under Labor Code §§ 510, 1194(a), 1197, and 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1198, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(b) **Meal and Rest Period Claims:** For failure to provide Plaintiffs and the Aggrieved Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable, including under paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);



(c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide Plaintiffs and the Aggrieved Employees with wage statements or with accurate, itemized wage statements and failure to maintain employment records for Plaintiffs and Aggrieved Employees under Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ...";

(d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(e) Failure to Reimburse Business Expenses: For Defendants' failure to reimburse the necessary work related expenses incurred under Labor Code §§ 1197, 1197.1, 1198, and 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties available and applicable under Labor Code §§ 1197, 1197.1, 1198, 2802, 2699.5, and 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(f) All Alleged Violations of the IWC Wage Orders: For any above addressed violation of the applicable provisions of the IWC Wage Orders constituting violations of Labor Code § 1198 and Labor Code § 2699.5, and seeking penalties available and applicable under Labor Code § 2699(f)(2) and paragraph 20 of the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

We have been constrained to initially move forward with the filing of this Complaint, alleging the causes of action discussed herein, without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

This letter and the attached Complaint therefore provide the requisite notice under the Act to the LWDA and Defendants by setting forth the specific provisions of the Labor Code and related provisions Plaintiffs allege have been violated, including the facts and relevant theories alleged against ClearFreight, Inc. and any other named Defendants and joint employers. To prevent the violations described in the Complaint and herein from occurring, and to remedy past violations,

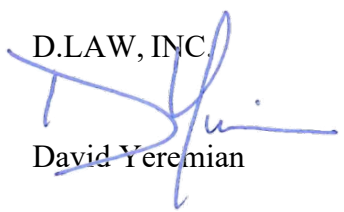


Plaintiffs respectfully request that the LWDA conduct an investigation into Defendants' employment practices in accordance with the Act.

Wherefore we request that you advise us, by certified mail within sixty days of the postmark on this letter, whether you intend to proceed with these claims or whether Plaintiff and the Aggrieved Employees should include them in an amended Labor Code § 2698 *et seq.* claim under the Act in an amended Complaint.

Regards,

D.LAW, INC.



David Yerejian

Cc: ClearFreight, Inc. by Certified Mail

Exhibit 3

PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement (“Agreement” or “Settlement Agreement”) is made by and between Plaintiffs Alejandra Jimenez, Darren Garcia, and Taylor Lebowe (collectively, “Plaintiffs”) and Defendant ClearFreight, Inc. (“CLEARFREIGHT” or “Defendant”). The Agreement refers to Plaintiffs and CLEARFREIGHT or Defendant collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

1.1. “Actions” means Plaintiffs’ PAGA lawsuits alleging wage and hour violations against CLEARFREIGHT captioned: (1) *DARREN GARCIA and TAYLOR LEBOWE, individually on behalf of themselves and all others similarly situated, Plaintiffs, vs. CLEARFREIGHT, INC., a California Corporation; and DOES 1 through 50, inclusive, Defendants*, Case No 23STCV22946, initiated on September 21, 2023 (“Garcia Action”); and (2) *ALEJANDRA JIMENEZ, individually, and on behalf of Aggrieved Employees pursuant to the California Private Attorneys General Act, Plaintiffs, vs. CLEARFREIGHT INC., a California corporation; and DOES 1 through 25, inclusive, Defendants*, Case No. 23STCV28938, initiated on November 28, 2023 (“Jimenez Action”), which have been deemed related and both of which are pending in the Superior Court of the State of California, County of Los Angeles.

1.2. “Administrator” means ILYM Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.

1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with approval of the Settlement.

1.4. “Aggrieved Employee(s)” means all current and former non-exempt employees who worked for Defendant in the State of California during the PAGA Period.

1.5. “Aggrieved Employee Data” means Aggrieved Employee identifying information in CLEARFREIGHT’s possession including each Aggrieved Employee’s full name, last-known mailing address, Social Security number, and number of PAGA Pay Periods.

- 1.6. “Aggrieved Employee Address Search” means the Administrator’s investigation and search for current Aggrieved Employees’ mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Aggrieved Employees.
- 1.7. “Approval Order” means the proposed Court order granting approval of the Settlement.
- 1.8. “CLEARFREIGHT” means the named Defendant ClearFreight, Inc..
- 1.9. “Court” means the Superior Court of California, County of Los Angeles.
- 1.10. “Defense Counsel” means Robert S. Blumberg and Brooke S. Hammond of Littler Mendelson, P.C..
- 1.11. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Approval Order and (b) the Judgment is final. The Judgment is final as of the day the Court enters the Judgment.
- 1.12. “Enhancement Payment” means the amount of Five Thousand Dollars and Zero Cents (\$5,000.00) to be paid to Plaintiff Taylor Lebowe, or such amount as approved by the Court as set forth in Paragraph 3.2.3.
- 1.13. “Gross Settlement Amount” means Two Hundred Ninety Thousand Dollars and Zero Cents (\$290,000.00) which is the total amount CLEARFREIGHT agrees to pay under the Settlement except as provided in Paragraph 8 below. The Gross Settlement Amount will be used to pay the Individual PAGA Payments, LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, Enhancement Payment, and the Administration Expenses Payment.
- 1.14. “Individual PAGA Payment” means an Aggrieved Employee’s pro rata share of 25% of the Net Settlement Amount calculated according to the number of PAGA Pay Periods the Aggrieved Employee worked during the PAGA Period.
- 1.15. “Judgment” means the judgment entered by the Court based upon the Approval Order.

- 1.16. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.17. “LWDA PAGA Payment” means the 75% of the Net Settlement Amount paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.18. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, Enhancement Payment, and Administration Expenses Payment. The remainder is allocated 25% to the Aggrieved Employees and 75% to the LWDA.
- 1.19. “PAGA Counsel” means Emil Davtyan, David Yeremian, Samantha Smith, and Natalie Haritounian of D.Law, Inc., counsel for Plaintiffs Garcia and Lebowe, and Jonathan M. Genish, Miriam L. Schimmel, Joana Fang, and Alexandra Rose of Blackstone Law, APC, counsel for Plaintiff Jimenez, the attorneys representing the Plaintiffs in the Actions.
- 1.20. “PAGA Counsel Fees Payment” and “PAGA Counsel Litigation Expenses Payment” mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Actions.
- 1.21. “PAGA Pay Period” means any pay period during which an Aggrieved Employee worked for CLEARFREIGHT for at least one day during the PAGA Period.
- 1.22. “PAGA Period” means the period from September 1, 2022 to June 30, 2024.
- 1.23. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.24. “PAGA Notices” means Plaintiffs’ letters to CLEARFREIGHT and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.25. “Plaintiffs” means Alejandra Jimenez, Darren Garcia, and Taylor Lebowe, the named Plaintiffs in the Actions.
- 1.26. “Released PAGA Claims” means the claims being released by the Plaintiffs, Aggrieved Employees, and the State of California and as described in Paragraph 5.2 below.
- 1.27. “Released Parties” means CLEARFREIGHT and each of its former and present

1 directors, officers, shareholders, owners, attorneys, insurers, predecessors, successors,
2 and assigns.

3 1.28. "Settlement" means the disposition of the Actions effected by this Agreement and the
4 Judgment.

5 **2. RECITALS.**

6 2.1. On September 21, 2023, Plaintiff Garcia commenced the *Garcia* Action by filing a
7 Class Action Complaint against Defendant alleging class action claims based on
8 various alleged wage and hour violations. On November 27, 2023, Plaintiff Garcia filed
9 a First Amended Class Action Complaint in the *Garcia* Action alleging an additional
10 cause of action under PAGA. On November 28, 2023, Plaintiff Jimenez commenced
11 the *Jimenez* Action by filing a Complaint for Enforcement Action Under the Private
12 Attorneys General Act, Cal. Labor Code §§ 2698 *Et Seq.* ("Jimenez Operative
13 Complaint") against Defendant alleging one cause of action under PAGA. The Parties
14 agree that Plaintiffs Garcia and Lebowe will file a Second Amended Class Action
15 Complaint ("Garcia Operative Complaint") in the *Garcia* Action, which will add
16 Plaintiff Lebowe as an additional named plaintiff. The Jimenez Operative Complaint
17 and Garcia Operative Complaint are the operative complaints in the Actions (together,
18 "Operative Complaints."). CLEARFREIGHT denies the allegations in the Operative
19 Complaints, denies any failure to comply with the laws identified in the Operative
20 Complaints, and denies any and all liability for the causes of actions alleged in the
21 Operative Complaints.

22 2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiffs gave timely written notice
23 to CLEARFREIGHT and the LWDA by sending the PAGA Notices.

24 2.3. On April 30, 2024, the Parties participated in an all-day mediation presided over by
25 Tagore Subramaniam Esq. which led to this Agreement to settle the Actions.

26 2.4. Prior to mediation, Plaintiffs obtained, through informal discovery, Plaintiffs'
27 personnel and payroll records, Defendant's policies, and the time and payroll data for
28 all the Aggrieved Employees during the applicable PAGA Period.

2.5. The Parties, PAGA Counsel, and Defense Counsel represent that they are not aware of any other pending matter or actions asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, CLEARFREIGHT promises to pay Two Hundred Ninety Thousand Dollars and Zero Cents (\$290,000.00) and no more as the Gross Settlement Amount. CLEARFREIGHT has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 4.2 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to CLEARFREIGHT.

3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Approval Order:

3.2.1. To PAGA Counsel: A PAGA Counsel Fees Payment of not more than one-third (1/3) of the Gross Settlement Amount, which is currently estimated to be Ninety-Six Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$96,666.67) and a PAGA Counsel Litigation Expenses Payment of not more than Eighteen Thousand Dollars (\$18,000.00). CLEARFREIGHT will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. Plaintiffs and/or PAGA Counsel will file an application or motion for the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Released Parties shall have no liability to PAGA Counsel or any other Plaintiffs' counsel arising from any claim to any portion of the PAGA

1 Counsel Fees Payment and/or PAGA Counsel Litigation Expenses Payment.
2 The Administrator will pay the PAGA Counsel Fees Payment and PAGA
3 Counsel Litigation Expenses Payment using one or more IRS 1099 Forms.
4 PAGA Counsel assumes full responsibility and liability for taxes owed on the
5 PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses
6 Payment and holds CLEARFREIGHT harmless, and indemnifies
7 CLEARFREIGHT, from any dispute or controversy regarding any division or
8 sharing of any of these payments.

9 3.2.2. To the Administrator: An Administration Expenses Payment not to exceed Four
10 Thousand Dollars and Zero Cents (\$4,000.00) except for a showing of good
11 cause and as approved by the Court. To the extent the Administrator's expenses
12 are less or the Court approves payment less than the amount requested, the
13 Administrator will allocate the remainder to the Net Settlement Amount.

14 3.2.3. To Plaintiff Lebowe: An Enhancement Payment of up to Five Thousand Dollars
15 and Zero Cents (\$5,000.00) to Plaintiff Lebowe for serving as a representative
16 plaintiff in the *Garcia* Action. CLEARFREIGHT will not oppose the request
17 for Court approval of this payment provided it does not exceed this amount. If
18 the Court approves an Enhancement Payment less than the amount requested,
19 the Administrator will allocate the remainder to the Net Settlement Amount.
20 The Administrator will report this payment on an IRS Form 1099 issued to
21 Plaintiff Lebowe.

22 3.2.4. To the LWDA and Aggrieved Employees: The Net Settlement Amount will be
23 allocated 75% to the LWDA PAGA Payment and 25% to the Individual PAGA
24 Payments.

25 3.2.4.1. The Administrator will calculate each Individual PAGA Payment by (a)
26 dividing the amount of the 25% share of the Net Settlement Amount by
27 the total number of PAGA Pay Periods worked by all Aggrieved
28 Employees during the PAGA Period and (b) multiplying the result by

each Aggrieved Employee's total number of PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.4.2. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Aggrieved Employee Data. Within fifteen (15) days of the Effective Date, CLEARFREIGHT will deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect the Aggrieved Employees' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of the Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. CLEARFREIGHT has a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which CLEARFREIGHT must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.

4.2. Funding of Gross Settlement Amount. CLEARFREIGHT shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than thirty (30) days after the Effective Date.

4.3. Payments from the Gross Settlement Amount. Within seven (7) days after CLEARFREIGHT funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Fees Payment, the PAGA

Counsel Litigation Expenses Payment, and the Enhancement Payment. Disbursement of the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments.

4.3.1. The Administrator will issue checks for the Individual PAGA Payments, along with a cover letter (“Cover Letter”) agreed to by the Parties and approved by the Court, in substantially the form attached hereto as “**Exhibit A**,” and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Administrator must update the recipients’ mailing addresses using the National Change of Address Database.

4.3.2. The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without a USPS forwarding address. Within seven (7) days of receiving a returned check, the Administrator must re-mail the check to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.

4.3.3. For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller’s Unclaimed Property Fund in the name of the Aggrieved Employee.

4.3.4. The payment of Individual PAGA Payments shall not obligate CLEARFREIGHT to confer any additional benefits or make any additional

1 payments to the Aggrieved Employees (such as 401(k) contributions or
2 bonuses) beyond those specified in this Agreement.

3 **5. RELEASES OF CLAIMS.** Effective on the Effective Date and date when CLEARFREIGHT
4 fully funds the entire Gross Settlement Amount, Plaintiffs, acting on behalf of the State of
5 California, the Aggrieved Employees, and the State of California, will release claims against
6 all Released Parties as follows:

7 5.1. Plaintiffs' Release. Plaintiffs, on behalf of themselves and their respective former and
8 present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs,
9 administrators, successors, and assigns generally, release and discharge the Released
10 Parties from all claims, transactions, or occurrences, that occurred during the PAGA
11 Period, including, but not limited to: all individual claims for unpaid wages or penalties
12 that were alleged or reasonably could have been alleged, based on the facts contained
13 in the Operative Complaints and the PAGA Notices ("Plaintiffs' Release"). The
14 Plaintiffs' Release does not extend to any claims or actions to enforce this Agreement,
15 or to any claims for vested benefits, unemployment benefits, disability benefits, social
16 security benefits, workers' compensation benefits that arose at any time, or based on
17 occurrences outside the PAGA Period. Plaintiffs acknowledge that Plaintiffs may
18 discover facts or law different from, or in addition to, the facts or law that Plaintiffs
19 now know or believe to be true but agree, nonetheless, that the Plaintiffs' Release shall
20 be and remain effective in all respects, notwithstanding such different or additional
21 facts or Plaintiffs' discovery of them.

22 5.1.1. Plaintiffs' Waiver of Rights Under California Civil Code Section 1542. For
23 purposes of the Plaintiffs' Release, Plaintiffs expressly waive and relinquish the
24 provisions, rights, and benefits, if any, of section 1542 of the California Civil
25 Code, which reads:

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

1 5.2. Release by the State of California and Aggrieved Employees:

2 The State of California with respect to the Aggrieved Employees and all Aggrieved
3 Employees are deemed to release, on behalf of themselves and their respective former
4 and present representatives, agents, attorneys, heirs, administrators, successors, and
5 assigns, the Released Parties from all claims for PAGA penalties that were alleged, or
6 reasonably could have been alleged, based on the PAGA Period facts stated in the
7 Operative Complaints and the PAGA Notices, including violation of California Labor
8 Code Sections 201, 202, 203, 204, 210, 221, 226(a), 226.3, 226.7, 246, 510, 512(a),
9 558, 1174, 1174.5, 1185, 1194, 1194.1, 1197, 1197.1, 1198, 1198.5, 1199, 2800, and
10 2802, and the applicable Industrial Welfare Commission Wage Orders.

11
12 **6. MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT.** The Parties agree
13 to jointly prepare and file an application or motion for approval of the Settlement.

14 6.1. Plaintiffs' Responsibilities. Plaintiffs will prepare and deliver to Defense Counsel all
15 documents necessary for obtaining approval of the Settlement under Labor Code
16 Section 2699, subd. (f)(2)) including (i) a draft proposed Approval Order; (ii) a signed
17 declaration from the Administrator attaching its "not to exceed" bid for administering
18 the Settlement and attesting to its willingness to serve; competency; operative
19 procedures for protecting the security of Aggrieved Employee Data; amounts of
20 insurance coverage for any data breach, defalcation of funds, or other misfeasance; all
21 facts relevant to any actual or potential conflicts of interest with Aggrieved Employees
22 or the LWDA; and the nature and extent of any financial relationship with Plaintiffs,
23 PAGA Counsel, or Defense Counsel; (iii) a signed declaration from PAGA Counsel
24 attesting to its timely transmission to the LWDA of all necessary PAGA documents
25 (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative
26 Complaints (Labor Code section 2699, subd. (l)(1)), and this Agreement (Labor Code
27 section 2699, subd. (l)(2)); and (iv) all facts relevant to any actual or potential conflict
28 of interest with Aggrieved Employees and/or the Administrator.

6.2. Responsibilities of PAGA Counsel and Defense Counsel. PAGA Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the application or motion for approval of the Settlement and, if necessary, obtaining a prompt hearing date for the motion and appearing in Court to advocate in favor of the motion. PAGA Counsel is responsible for delivering the Court's Approval Order to the Administrator.

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

7. **SETTLEMENT ADMINISTRATION.**

7.1. Selection of Administrator. The Parties have jointly selected ILYM Group, Inc. to serve as the Administrator and verified that, as a condition of appointment, ILYM Group, Inc. agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of the Administration Expenses Payment. The Parties and their counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

7.2. Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports to state and federal tax authorities.

7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.

7.4. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8. AGGRIEVED EMPLOYEE SIZE ESTIMATES AND ESCALATOR CLAUSE

Based on its records, CLEARFREIGHT estimates that there are approximately seventy-two (72) Aggrieved Employees who worked two thousand two hundred fifty (2,250) PAGA Pay Periods during the period September 1, 2022 through April 30, 2024. If the actual number of pay periods during this time period is more than ten percent (10%) above 2,250, then the Gross Settlement Amount will be increased by the percentage in excess of this ten percent (10%) threshold.

9. CONTINUING JURISDICTION OF THE COURT. The Parties agree that, after entry of the Judgment, the Court will retain jurisdiction over the Parties, the Actions, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

9.1. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment, the Parties and their respective counsel waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If another party appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

1 **10. ADDITIONAL PROVISIONS.**

2 10.1. No Admission of Liability or Representative Manageability for Other Purposes. This
3 Agreement represents a compromise and settlement of highly disputed claims. Nothing
4 in this Agreement is intended or should be construed as an admission by
5 CLEARFREIGHT that any of the allegations in the Operative Complaints have merit
6 or that CLEARFREIGHT has any liability for any claims asserted; nor should it be
7 intended or construed as an admission by Plaintiffs that CLEARFREIGHT's defenses
8 in the Actions have merit. The Parties agree that representative treatment is for
9 purposes of the Settlement only. If, for any reason the Court does not approve the
10 Settlement, CLEARFREIGHT reserves all available defenses to the claims in the
11 Actions, and Plaintiffs reserve the right to contest CLEARFREIGHT's defenses. The
12 Settlement, this Agreement, and the Parties' willingness to settle the Actions will have
13 no bearing on, and will not be admissible in connection with, any litigation (except for
14 proceedings to enforce or effectuate the Settlement and this Agreement).

15 10.2. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement
16 together with its attached exhibits shall constitute the entire agreement between the
17 Parties relating to the Settlement, superseding any and all oral representations,
18 warranties, covenants, or inducements made to or by any Party.

19 10.3. Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and
20 represent that they are authorized by Plaintiffs and CLEARFREIGHT, respectively, to
21 take all appropriate actions required or permitted to be taken by such Parties pursuant
22 to this Agreement to effectuate its terms, and to execute any other documents
23 reasonably required to effectuate the terms of this Agreement including any
24 amendments to this Agreement.

25 10.4. Cooperation. The Parties and their counsel will cooperate with each other and use their
26 best efforts, in good faith, to implement the Settlement by, among other things,
27 modifying the Agreement, submitting supplemental evidence, and supplementing
28 points and authorities as requested by the Court. In the event the Parties are unable to

1 agree upon the form or content of any document necessary to implement the Settlement,
2 or on any modification of the Agreement that may become necessary to implement the
3 Settlement, the Parties will seek the assistance of the mediator and/or the Court for
4 resolution.

5 10.5. No Prior Assignments. The Parties separately represent and warrant that they have not
6 directly or indirectly assigned, transferred, encumbered, or purported to assign,
7 transfer, or encumber to any person or entity and portion of any liability, claim,
8 demand, actions, cause of actions, or right released and discharged by the Parties in the
9 Settlement.

10 10.6. No Tax Advice. Neither Plaintiffs, PAGA Counsel, CLEARFREIGHT, nor Defense
11 Counsel are providing any advice regarding taxes or taxability, nor shall anything in
12 the Settlement be relied upon as such within the meaning of United States Treasury
13 Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

14 10.7. Modification of Agreement. This Agreement, and all parts of it, may be amended,
15 modified, changed, or waived only by an express written instrument signed by all
16 Parties or their representatives, and approved by the Court.

17 10.8. Agreement Binding. The Parties warrant that they understand and have full authority
18 to enter into this Agreement, and further intend that this Agreement will be fully
19 enforceable and binding on all Parties, and agree that it will be admissible and subject
20 to disclosure in any proceeding to enforce its terms, notwithstanding any mediation
21 confidentiality provisions that otherwise might apply under federal or state law. This
22 Agreement will be binding upon, and inure to the benefit of, the successors of each of
23 the Parties.

24 10.9. Applicable Law. All terms and conditions of this Agreement and its exhibits will be
25 governed by and interpreted according to the internal laws of the State of California,
26 without regard to conflict of law principles.

1 10.10. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation
2 of this Agreement. This Agreement will not be construed against any Party on the basis
3 that the Party was the drafter or participated in the drafting.

4 10.11. Confidentiality. To the extent permitted by law, all agreements made, and orders
5 entered during Actions and in this Agreement relating to the confidentiality of
6 information shall survive the execution of this Agreement.

7 10.12. Use and Return of Aggrieved Employee Data. Information provided to PAGA Counsel
8 pursuant to Cal. Evid. Code § 1152, and all copies and summaries of the Aggrieved
9 Employee Data provided to PAGA Counsel by CLEARFREIGHT in connection with
10 the mediation, other settlement negotiations, or in connection with the Settlement, may
11 be used only with respect to the Settlement, and no other purpose, and may not be used
12 in any way that violates any existing contractual agreement, statute, or rule of court.
13 Not later than ninety (90) days after the Administrator discharges its obligation to pay
14 out all Settlement funds, Plaintiffs shall destroy all paper and electronic versions of
15 Aggrieved Employee Data received from CLEARFREIGHT unless, prior to the
16 Administrator's payment of all Settlement funds, CLEARFREIGHT makes a written
17 request to PAGA Counsel for the return, rather than the destruction, of Aggrieved
18 Employee Data.

19 10.13. Headings. The descriptive heading of any section or paragraph of this Agreement is
20 inserted for convenience of reference only and does not constitute a part of this
21 Agreement.

22 10.14. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall
23 be to calendar days. In the event any date or deadline set forth in this Agreement falls
24 on a weekend or federal legal holiday, such date or deadline shall be on the first
25 business day thereafter.

26 10.15. Notice. All notices, demands, or other communications between the Parties in
27 connection with this Agreement will be in writing and deemed to have been duly given
28

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

To Plaintiffs Garcia and Lebow:

D.LAW, INC.
 Emil Davtyan
 Emil@d.law
 David Yeremian
 d.yeremian@d.law
 Samantha Smith
 s.smith@d.law
 Natalie Haritoonian
 n.haritoonian@d.law
 880 E Broadway
 Glendale, CA 91205
 Telephone: (818) 962-6465
 Fax: (818) 962-6469

To Plaintiff Jimenez

Jonathan M. Genish
 jgenish@blackstonepc.com
 Miriam L. Schimmel
 mschimmel@blackstonepc.com
 Joana Fang
 jfang@blackstonepc.com
 Alexandra Rose
 arose@blackstonepc.com
 BLACKSTONE LAW, APC
 8383 Wilshire Boulevard, Suite 745
 Beverly Hills, California 9021 1
 Telephone: (310) 622-4278

To CLEARFREIGHT:

Robert S. Blumberg
 rblumberg@littler.com
 Brooke S. Hammond
 bhammond@littler.com
 LITTLER MENDELSON P.C.
 2049 Century Park East
 5th Floor
 Los Angeles, California 90067.3107
 Telephone: 310.553.0308
 Fax No.: 800.715.1330

10.16. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each

of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

10.17. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

Dated: 07/01/2024



Plaintiff Alejandra Jimenez

Dated: _____

Plaintiff Darren Garcia

Dated: _____

Plaintiff Taylor Lebowe

Dated: 7/3/2024



Full Name: Holly Wiland

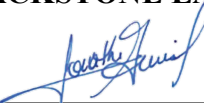
Title: CHRO/HRBP

On behalf of Defendant ClearFreight, Inc.

APPROVED AS TO FORM ONLY:

BLACKSTONE LAW, APC

Dated: July 1, 2024



Jonathan M. Genish

Attorneys for Plaintiff Alejandra Jimenez

D.LAW, INC.

Dated: _____

Emil Davtyan

David Yeremian

Natalie Haritounian

Attorneys for Plaintiffs Darren Garcia and Taylor Lebowe

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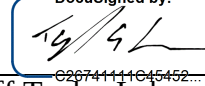
Dated: _____

Plaintiff Alejandra Jimenez

Dated: _____

Plaintiff Darren Garcia

Dated: 7/2/2024

DocuSigned by:

 C26741111C45452...
 Plaintiff Taylor Lebowe

Dated: 7/3/2024


 Full Name: Holly Wiland

Title: CHRO/HRBP
 On behalf of Defendant ClearFreight, Inc.

APPROVED AS TO FORM ONLY:

BLACKSTONE LAW, APC

Dated: _____

Jonathan M. Genish
Attorneys for Plaintiff Alejandra Jimenez

D.LAW, INC.

Dated: _____

Emil Davtyan
 David Yeremian
 Natalie Haritounian
Attorneys for Plaintiffs Darren Garcia and Taylor Lebowe

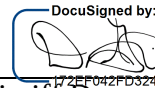
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Dated: _____

Plaintiff Alejandra Jimenez

Dated: 7/2/2024

DocuSigned by:

 172FF042FD324BA

Plaintiff Darren Garcia

Dated: _____

Plaintiff Taylor Lebowe

Dated: 7/3/2024



Full Name: Holly Wiland

Title: CHRO/HRBP

On behalf of Defendant ClearFreight, Inc.

APPROVED AS TO FORM ONLY:

BLACKSTONE LAW, APC

Dated: _____

Jonathan M. Genish

Attorneys for Plaintiff Alejandra Jimenez

D.LAW, INC.

Dated: 7/2/2024



Emil Davtyan

David Yeremian

Natalie Haritounian

Attorneys for Plaintiffs Darren Garcia and Taylor Lebowe

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LITTLER MENDELSON P.C.

Dated: 07/08/2024



Robert S. Blumberg
Brooke S. Hammond
Attorneys for Defendant ClearFreight, Inc.

EXHIBIT A

To: <<First Name>><<Last Name>>
<<Street Address>>
<<City>><<State>><<Zip>>

Re: Settlement Payment from *Darren Garcia and Taylor Lebowe v. Clearfreight, Inc.*, Los Angeles County Superior Court Case No. 23STCV22946 and *Alexandra Jimenez v. Clearfreight, Inc.*, Los Angeles County Superior Court Case No. 23STCV28938

Dear <<First Name>><<Last Name>>:

Please find enclosed a check in the amount of <<amount of payment>> (“Individual PAGA Payment”). This check is your payment from the settlement in the lawsuits entitled *Darren Garcia and Taylor Lebowe v. Clearfreight, Inc.*, Los Angeles Superior Court Case No. 23STCV22946 (“*Garcia Action*”) and *Alejandra Jimenez v. Clearfreight Inc.*, Los Angeles Superior Court Case No. 23STCV28938 (“*Jimenez Action*”) (collectively, “*Actions*”).

The *Garcia Action* was commenced on September 21, 2023 by Plaintiffs Darren Garcia and Taylor Lebowe and the *Jimenez Action* was commenced on November 28, 2023 by Plaintiff Alejandra Jimenez against ClearFreight, Inc. (“*Defendant*”), on behalf of the State of California, with respect to themselves and other alleged aggrieved employees, to seek recovery of civil penalties pursuant to the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“*PAGA*”), for multiple alleged violations of the California Labor Code and Industrial Welfare Commission Wage Orders. Prior to initiating the operative complaints in the *Actions* (“*Operative Complaints*”), Plaintiffs Darren Garcia, Taylor Lebowe, and Alejandra Jimenez (collectively, “*Plaintiffs*”) submitted letters to the California Labor and Workforce Development Agency (“*LWDA*”), pursuant to *PAGA*, to provide notice of their intent to seek civil penalties under *PAGA* for Defendant’s alleged violations of the California Labor Code and the applicable Industrial Welfare Commission Wage Orders (collectively, “*PAGA Notices*”).

Defendant denies all of Plaintiffs’ allegations and denies any wrongdoing of any kind associated with Plaintiffs’ allegations. A settlement was reached between Plaintiffs and Defendant.

On <<Date>>, the settlement was approved by the Court, with a portion to be paid to the LWDA and a portion to be paid to all current and former non-exempt employees who worked for Defendant in the State of California during the *PAGA Period* (“*Aggrieved Employees*”). The period September 1, 2022 to June 30, 2024 is the “*PAGA Period*.”

You are receiving a portion of the settlement (the enclosed Individual *PAGA Payment*) because you have been identified as an Aggrieved Employee. Your Individual *PAGA Payment* is based on the total number of pay periods that you worked for Defendant in California during the *PAGA Period*. The Individual *PAGA Payment* is considered to be 100% penalties, which will be reported on an IRS Form 1099 (if applicable). You are responsible for paying any and all taxes that may be due as a result of any payment issued to you under the settlement and should consult a tax advisor regarding the tax consequences of such payment.

Under the settlement, as of <<date of Effective Date and full funding of the Gross Settlement Amount>>, the State of California with respect to the Aggrieved Employees and all Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, Defendant and each of its former and present directors, officers, shareholders, owners, attorneys, insurers, predecessors, successors, and assigns from all claims for *PAGA* penalties that were alleged, or reasonably could have been alleged, based on the *PAGA Period* facts stated in the *Operative Complaints* and the *PAGA Notices*, in violation of California Labor Code Sections 201, 202, 203, 204, 210, 221, 226(a), 226.3, 226.7, 246, 510, 512(a), 558, 1174, 1174.5, 1185, 1194, 1194.1, 1197, 1197.1, 1198, 1198.5, 1199, 2800, and 2802, and the applicable Industrial Welfare Commission Wage Orders.

The enclosed check is valid for 180 calendar days from the original date of issuance and mailing, and if it is not cashed, deposited, or otherwise negotiated within the 180-day timeframe, it will be canceled, and the funds associated with the canceled check will be transmitted to the State Controller’s Office Unclaimed Property Division in your name and in the amount of your Individual *PAGA Payment*.

Do not call or write the Court, Office of the Clerk of the Court, Defendant, or Defendant’s counsel to ask questions about the settlement or to ask tax-related questions. If you have any such questions, you may contact [Administrator] at [toll-free phone number].

Exhibit 4

From: [DIR PAGA Unit](#)
To: [Stephany Sinaguinan](#)
Subject: Thank you for your Proposed Settlement Submission
Date: Friday, August 30, 2024 10:24:31 AM

[External Email].

08/30/2024 10:24:08 AM

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

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

Exhibit 5

Jimenez v. ClearFreight, Inc . - Case No. 23STCV28938

Date	Type of Expense	Description of Expense	Amount
6/30/2023	Mailing	Records Request to Agent for Service of Process for ClearFreight, Inc.	\$8.10
9/1/2023	Filing	LWDA: PAGA Notice	\$75.00
9/1/2023	Mailing	PAGA Notice to Agent for Service of Process for ClearFreight, Inc.	\$8.53
11/28/2023	Filing	Steno: PAGA Complaint and Initiating Documents	\$647.20
12/7/2023	Filing	Steno: Peremptory Challenge	\$99.00
12/16/2023	Filing	Steno: Personal Service of PAGA Complaint and Initiating Documents	\$233.95
1/26/2024	Filing	Steno: Notice of Case Management Conference	\$59.95
4/4/2024	Mediation	Mediation with Tagore Subramaniam	\$6,750.00
4/19/2024	Other	Steno: Court Service/Complex Fee	\$1,449.00
5/14/2024	Other	Creal & Creal (Expert Fee)	\$2,966.50
	Filing	Estimated Cost - Steno: Motion for Approval of PAGA Settlement & Initiating Documents	\$140.95
	Filing	Estimated Cost - Steno: Notice of Entry of Judgment or Order	\$59.95
TOTAL:			\$12,498.13