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Attorneys for Plaintiffs Arthur Ponce and Shahlaa Raja,
on behalf of themselves and all "PAGA Settlement Employees"
pursuant to Labor Code § 2698 *et seq.*

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

ARTHUR PONCE, an individual,

Plaintiff,

v.

EXPRESS DRY, INC., a California
corporation, and DOES 1 through 10,
inclusive,

Defendant.

CASE NO: 37-2024-00022921-CU-OE-CTL

Assigned to the Honorable Loren G. Freestone,
Dept. C-64

**DECLARATION OF EVAN S GAINES IN
SUPPORT OF UNOPPOSED MOTION FOR
AN ORDER APPROVING SETTLEMENT
OF CLAIMS BROUGHT PURSUANT TO
THE PRIVATE ATTORNEYS GENERAL
ACT OF 2004, AWARDING ATTORNEYS'
FEES, COSTS, AND REIMBURSEMENT
OF SETTLEMENT ADMINISTRATION
EXPENSES, AND DISMISSING ACTION
WITH PREJUDICE**

Date: January 30, 2026
Time: 10:30 a.m.
Dept.: C-64

Complaint Filed: May 16, 2024

1 I, EVAN S. GAINES, hereby declare and state as follows:

2 1. I am an attorney duly admitted to the practice of law in the State of California. I am
3 the principal of Gaines Law Corporation, counsel for Plaintiffs Arthur Ponce ("Ponce") and Shahlaa
4 Raja ("Raja") (collectively, "Plaintiffs") in this action. I have personal knowledge of the facts set
5 forth herein and if called as a witness to testify to them, I could and would do so competently.

6 **Counsel's Experience and Recommendation:**

7 2. I obtained my BA degree from the University California at Santa Barbara in 2005.
8 I majored in Film Studies.

9 3. Thereafter, I attended the Michigan State University College of Law ("MSU"). At
10 MSU, I was the recipient of jurisprudence awards (highest grade) in Client Counseling and
11 Interviewing and Complex Civil Litigation. At MSU, I focused my studies on complex litigation. I
12 earned my JD and became a member of the California Bar in 2012.

13 4. After becoming a member of the Bar, I practiced law with my father (Kenneth S.
14 Gaines) and brother (Daniel F. Gaines) at Gaines & Gaines, APLC. In January 2024, I started my
15 own law firm, Gaines Law Corporation. My practice specializes in litigation, with an emphasis in
16 employment disputes like this one. Over 95% of my practice is devoted to complex employment
17 litigation similar to the instant action.

18 5. My firm has represented employees in employment matters such as this one, with
19 an emphasis in wage and hour issues. I have participated, and have been certified as Court-approved
20 class counsel, in dozens of class and representative action matters since my admission to the Bar.
21 A true and correct list of some of the cases in which I have been appointed as class counsel is
22 attached hereto as **Exhibit A**.

23 **Background and Procedural History**

24 6. Defendant Express Dry, Inc. specializes in plumbing services and flood cleanup in
25 Riverside County and San Diego, where Plaintiffs worked.

7. Defendant employed Ponce as a non-exempt employee from approximately January 2023 through February 2024, and Raja as a non-exempt from approximately January 2024 through April 19, 2024. The PAGA Settlement Employees are all current and former non-exempt employees who worked for Express Dry, Inc. in the State of California at any time from March 12, 2023 through March 20, 2025.

8. Plaintiffs assert claims that Defendant failed to pay all wages earned by Plaintiffs and PAGA Settlement Employees, failed to provide Plaintiffs and PAGA Settlement Employees with legally compliant meal and rest periods, or compensation in lieu thereof, failed to issue accurately itemized wage statements to Plaintiffs and PAGA Settlement Employees, failure to reimburse all business expenses incurred by Raja and PAGA Settlement Employees, and failed to timely pay Plaintiffs and PAGA Settlement Employees all wages due at the separation of their employment. Ponce asserts these claims individually, and Plaintiffs collectively assert these claims under PAGA, on behalf of themselves, individually, and on behalf of the State of California and other PAGA Settlement Employees, and civil penalties for the alleged Labor Code violations for Plaintiffs and PAGA Settlement Employees.

9. Ponce also seeks damages individually for Defendant's failure to pay all wages due, provide meal and rest periods, pay all wages due upon separation of employment, and issue accurate and complete wage statements.

Compliance with Procedural Requirements of PAGA:

10. On March 12, 2024, pursuant to Labor Code section 2699.3, Ponce gave written notice by online filing with the LWDA and by certified mail, return receipt requested, to Defendant, of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violation. A true and correct copy of the March 12, 2024 notice letter to the LWDA are attached hereto as **Exhibit B**.

11. Thereafter, on May 16, 2024, Ponce filed an Individual and Representative Action complaint in this Court alleging claims individually and pursuant to PAGA on behalf of himself and PAGA Settlement Employees.

12. That same day, on May 16, 2024, Plaintiffs filed a supplemental letter with the LWDA that added Raja as an additional employee-complainant and alleged additional claims for failure to reimburse business expenses. A true and correct copy of the May 16, 2024 notice letter to the LWDA are attached hereto as **Exhibit C**.

13. On September 20, 2024, and after the LWDA declined to take action within the statutorily permissible time with respect to Plaintiffs' May 16, 2024 Supplemental LWDA Letter, Ponce filed a First Amended Individual and Representative Action ("FAC") that added Raja as well as the claims, allegations, and compliance with the May 16, 2024 Supplemental LWDA Letter.

14. Defendant answered the FAC on or about October 24, 2024.

Counsel's Diligence In Advance of, and In Connection With, Settlement Negotiations:

15. I engaged in targeted, informal discovery of Defendant's alleged Labor Code violations, which specifically evaluated the strength and value of the PAGA claims in preparation for a resolution of this Action.

16. I obtained and reviewed (i) relevant policy documents relating to the employment of Plaintiffs and PAGA Settlement Employees; and (ii) excel payroll and time data relating to the number of alleged violations, including the PAGA group size.

17. Based on the information received, as well as through discussions with Defendant's Counsel, I was able to (i) determine the total number of distinct individuals employed by Defendant in non-exempt positions falling within PAGA's statutory period and (ii) construct a damage model that calculated the maximum amount of PAGA penalties that could be levied against Defendant within the PAGA Release Period based on employee pay period data produced by Defendant. At all relevant times, Defendant have disputed Plaintiffs' claims and contested both the existence of, and extent of liability as alleged by Plaintiffs.

18. My experience in litigating similar "representative" wage and hour claims, the degree of investigation that was conducted here, the amount of data that was obtained, and the discussions guided by mediation was sufficient to determine the potential value of the PAGA claim and to evaluate the strength of this claim for purposes of settlement. Defendant, however, disputed

1 Plaintiffs' claims and disputed both the existence of, and extent of liability, as alleged by Plaintiffs.

2 19. On March 20, 2025, the Parties participated in a mediation session with an
3 experienced and reputable retired jurist and wage and hour and PAGA action mediator, Judge Amy
4 Hogue (Ret.). During the mediation, the Parties engaged in arm's-length negotiations and reached
5 a resolution of the PAGA claims asserted in this Action with the assistance of Judge Hogue.

6 **Settlement Terms:**

7 20. The Parties jointly prepared and executed a Private Attorneys General Act (Labor
8 Code § 2698 et seq.) Settlement Agreement (the "Settlement" or "Settlement Agreement"). A true
9 and correct copy of the Settlement is attached hereto as **Exhibit D**.

10 21. Defendant agrees to settle this matter for the payment of \$75,000 (hereinafter the
11 "PAGA Gross Settlement Amount"), payable by Defendant, which shall be all inclusive,
12 encompassing (i) all payments to the LWDA and PAGA Settlement Employees, (ii) any and all
13 costs of third-party administration of the settlement, and (iii) Plaintiffs' Counsel's attorneys' fees
14 and costs of suit.

15 22. By a separate agreement, the Confidential Settlement Agreement and Release of All
16 Claims for Raja, the Parties have resolved all of Raja's respective individual claims through a
17 comprehensive general release in favor of Defendant. The separate individual settlement
18 agreement provides an amount, separate from the PAGA Gross Settlement Amount, to resolve
19 Raja's individual claims against Defendant. It is not an amount that is part of the PAGA Gross
20 Settlement Amount to be approved.

21 23. By a separate agreement, the Confidential Settlement Agreement and Release of All
22 Claims for Ponce, the Parties have resolved all of Ponce's respective individual claims through a
23 comprehensive general release in favor of Defendant. The separate individual settlement
24 agreement provides an amount, separate from the PAGA Gross Settlement Amount, to resolve
25 Ponce's individual claims against Defendant. It is not an amount that is part of the PAGA Gross
26 Settlement Amount to be approved.

24. The total sum available for payment of PAGA penalties shall be calculated by deducting from the \$75,000 PAGA Gross Settlement Amount, the projected \$25,000 for the payment of Plaintiffs' Counsel's fees, \$9,120.77 for the payment of Plaintiffs' Counsel's costs, and the costs of administration not to exceed \$3,500 (but projected to be \$2,950), which yields \$37,379.23, and of which seventy-five percent (75%) or \$28,034.42, shall be distributed to the LWDA, and the remaining twenty-five percent (25%) or \$9,344.81, shall be distributed to the PAGA Settlement Employees.

25. The Settlement Agreement has allocated the settlement administration fees up to \$2,950. Phoenix's not to exceed quote is \$2,950. In my experience, during the disbursement and data gathering processes, situations arise that may require a settlement administrator to increase its fees (for example, if an escalator provision is invoked, and there are additional PAGA Settlement Employees, the administrator may need to increase its fees). Accordingly, Plaintiffs are requesting the Court to approve Phoenix's costs to administer the settlement at \$3,500 in case Phoenix must increase its fees due to the escalator provision being invoked.

26. All PAGA Settlement Employees will receive a pro rata share of the \$9,344.81 allocated to them, which shall be distributed based on the number of pay periods each Aggrieved Employee worked for Defendant in California during the PAGA Release Period. Although these calculations will not be made until after approval, a rough estimation of the value to the approximately 50 individuals falling within the definition of “Aggrieved Employee” may be gleaned from the fact that an equal division would provide about \$186.90 to each Aggrieved Employee, net of payments to the LWDA, the Settlement Administrator, and attorney’s fees and costs. The LWDA will be paid a substantial \$28,034.42.

27. Finally, under the terms of the Settlement Agreement, the value of checks uncashed more than 180 days after issuance shall be remitted to the Unclaimed Property Fund of the California State Controller's Office to be held in the name of the Aggrieved Employee. My office regularly receives calls from class members or PAGA Settlement Employees years after a case has settled to inquire about obtaining their settlement share because they did not cash their check in

1 time, lost their check, or never received their check. By remitting the unclaimed checks to the State
2 Controller, the PAGA Settlement Employees have a chance to receive their individual settlement
3 payment after the check cashing deadline.

4 28. This case addresses violations of important employee protections embodied in the
5 California Labor Code – namely, that Defendant (1) failed to pay all wages due to Plaintiffs and
6 PAGA Settlement Employees, in violation of Labor Code §§ 226.7, 246, 510, 512, 1174, 1174.5,
7 1194, and 1194.2; (2) failed to provide Plaintiffs and PAGA Settlement Employees with legally
8 compliant rest periods, or compensation in lieu thereof, in violation of Labor Code § 226.7; (3)
9 failed to provide Plaintiffs and PAGA Settlement Employees with legally compliant meal periods,
10 or compensation in lieu thereof, in violation of Labor Code §§ 226.7 and 512; (4) failed to timely
11 pay Plaintiffs and PAGA Settlement Employees all wages due at the separation of their
12 employment, in violation of Labor Code §§ 201-202; (5) failed to issue accurately itemized wage
13 statements to Plaintiffs and PAGA Settlement Employees, in violation of Labor Code § 226(a); and
14 (6) failure to reimburse business expenses, in violation of Labor Code § 2802 (pursuant to PAGA
15 and on behalf of Raja only). Plaintiffs also alleged violations of Labor Code §§ 226.3 and 558
16 pursuant to PAGA only. As a result of Defendant’s alleged violations of the Labor Code,
17 approximately 50 employees are claimed to have suffered Labor Code violations for up to 1,317
18 aggregate pay periods at the rate of \$100 each based on PAGA’s penalty provisions.

19 29. Defendant’s realistic maximum theoretical exposure in this Action, without stacking
20 penalties, totals approximately \$131,700 computed by multiplying 1,317 aggregate pay periods by
21 \$100 each. There is no California authority that expressly permits the practice of counting multiple
22 violations/penalties that occur within the same pay period, known as “stacking” penalties. I am not
23 aware of any court that has actually stacked such PAGA penalties for multiple violations (meaning
24 the “market” for PAGA settlements is based on no stacking of penalties) and given the
25 circumstances of this case, it is unlikely that this Court would impose a massive penalty by stacking
26 the PAGA penalty claims against Defendants. Based thereon, the non-stacking/one penalty per pay
27 period is an appropriate evaluation for maximum potential exposure in this case.

1 30. Defendants were not notified by the Labor Commissioner or any court that it was
2 subject to the California Labor Code, and have not been previously cited by the Labor
3 Commissioner for Labor Code violations. Therefore, any violations prior to Plaintiffs' March 12,
4 2024 and May 16, 2024 LWDA letters are not subject to heightened penalties.

5 31. Furthermore, Defendant contends it acted within the requirements of California law
6 at all times as to all PAGA Settlement Employees. In particular, Defendant contend that it paid all
7 employees all wages due and all expense reimbursement due. Defendant also contends that it
8 maintains compliant meal and rest break practices. Defendant further contends that not every pay
9 period at issue involved an alleged Labor Code violation subject to civil penalties. Moreover,
10 Defendant maintained that even if the Court did award penalties, the Court could and would
11 *substantially* reduce the penalties awarded based on the discretionary factors contained in Labor
12 Code § 2699(e)(2)

13 32. Based on these disputes, which had the potential to completely eliminate Plaintiffs'
14 recovery, the range of realistic "litigation outcomes" on the Plaintiffs' PAGA claim was defined
15 by a "maximum possible liability" amount of approximately \$131,700, and a net-zero recovery
16 based on the defenses asserted by Defendant. Notwithstanding the existence of such issues, the
17 Settlement achieves a significant benefit – approximately 57% recovery of the maximum possible
18 liability. As such, this factor weighs very heavily in favor of resolution by way of the compromise
19 set forth in the Settlement Agreement.

20 **Attorneys' Fees:**

21 33. My office is submitting an attorney fee request of one-third of the PAGA Gross
22 Settlement Amount (projected to be \$25,000) Based on a projected final lodestar of \$38,570, this
23 yields a "negative multiplier" of approximately .65 under the \$25,000 fee request. The billing rates
24 used to compute the lodestar are reasonable in view of the evidence submitted herewith. A true
25 and correct copy of my firm's time-task chart is attached hereto as **Exhibit E**.

26 34. As detailed in the first few paragraphs of this declaration, I have practiced law in
27 California since 2012 and most of that time has been dedicated exclusively to representing

1 employees in wage and hour matters, many of which have been litigated and resolved in the PAGA
2 and class action contexts. My reasonable hourly rate is \$700; this rate has been approved by judges
3 throughout California over the past year.

4 35. In total, my lodestar is \$38,570.

5 36. This case was taken on a contingency basis with the real risk that my office would
6 receive no compensation whatsoever for our efforts. The potential costs which we can be required
7 to advance in wage and hour representative actions like this one are substantial. Furthermore, as
8 described above, my firm has extensive experience in representative action litigation, particularly
9 in the employment context, and as detailed herein, the PAGA Settlement Employees and the State
10 of California reaped significant benefits. The success achieved by the Settlement supports my
11 firm's fee request.

12 37. This Court can undoubtedly appreciate that litigating a representative action case in
13 dynamic, ever-changing areas of law is not appealing to most lawyers, particularly when the
14 plaintiff's lawyer undertakes the obligation to finance the litigation and effectively bears the risk in
15 the event of an unsuccessful outcome, at trial or otherwise. This case was taken on a contingency
16 basis with the real risk that my office would receive no compensation whatsoever for our efforts.
17 The potential costs which we can be required to advance in wage and hour actions like this one are
18 substantial.

19 38. Notwithstanding the existence of issues having the potential to eliminate recovery
20 on the PAGA claim, the Settlement Agreement not only achieves a recovery that exceeds typical
21 PAGA awards routinely approved by the courts, but it also recovers monies for PAGA Settlement
22 Employees which they otherwise would not receive.

23 39. Representative action work also requires specialized learning and the willingness to
24 take large risks. I have extensive experience in wage and hour representative action litigation,
25 particularly in the employment context, as detailed herein.

40. Furthermore, as described above, the PAGA Settlement Employees and the State of California reaped significant benefits. The success achieved by the Settlement supports my firm's fee request.

41. As a sole practitioner, I can only properly litigate a limited number of cases at one time. The requirements of this case were significant. Had I not reached a settlement with Defendant, the demands of this case would have required a significant portion of my limited resources. I was precluded from taking other employment cases due to the demands of litigating this case.

Counsel's Costs:

42. My firm's total costs are \$9,120.77 and include, among other expenses, filing fees, postage, future costs, and mediation fees. A true and correct copy of an itemized list of costs incurred by my firm in this action is attached hereto as **Exhibit F**. These costs were reasonably incurred in litigating this matter.

I declare, under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed on December 19, 2025, at Westlake Village, California.

EVAN S. GAINES

EXHIBIT A

Adams v. Sam's West, Inc., San Bernardino County Superior Court, Case No. CIVDS1403987

Amenhotep v. Google, Inc., Santa Clara County Superior Court, Case No. 17CV311528

Anaya v. Progressive Logistics Services, LLC, Riverside County Superior Court, Case No. RIC1308270

Aranda, et al. v. Universal Lumpers of California, Inc., San Joaquin County Superior Court, Case No. STK-UOE-2017-7826

Armendariz v. Integrated Pain Management Medical Group, Inc., Kern County Superior Court, Case No. BCV-19-100267-SDS

Barrow, et al. v. Desmond Foods, L.P., Sacramento County Superior Court, Case No. 34-2015-00187227

Bosser v. Hooked on Solar, Yolo County Superior Court, Case No. CVCV-2016-876

Bourland v. Horizon Personnel Services, Inc., Sacramento County Superior Court, Case No. 34-2014-00161365-CU-OE-GDS

Bowen v. IMI Material Handling Logistics, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-0000192

Branson v. Mladen Buntich Construction, San Bernardino County Superior Court, Case No. CIVDS1609129

Calhoun v. Celadon Trucking Services, Inc., USDC – Central District of California (Los Angeles), Case No. 5:16-cv-01351-PSG-FFM

Carlisle, et al. v. Professional Technical Security Services, Inc., Case No. CGC18569791

Carrillo v. Bimbo Bakeries, Inc., San Bernardino County Superior Court, Case No. CIVDS1606813

Cheifer, et al. v. WHGM, Inc., Los Angeles County Superior Court, Case No. LC104900

Contreras v. Osmose Utilities Services, Inc., San Bernardino County Superior Court, Case No. CIVDS1513998

Contreras v. West American Service Corporation, Kings County Superior Court, Case No. 14C0280

Cowen, et al. v. Evergreen Alliance Golf Limited, L.P., d/b/a Arcis Golf, San Bernardino County Superior Court, Case No. CIVDS1719283

Cunningham v. Performance Contracting, Inc., Contra Costa County Superior Court, Case No. C16-02157

Dabney v. Coneybeare, LLC, et al., Orange County Superior Court, Case No. 30-2018-00999989-CU-OE-CXC

Dabney, et al. v. Panera, LLC., San Bernardino County Superior Court, Case No. CIVDS1516030

Esakhani v. Central Valley Gaming, Stanislaus County Superior Court, Case No. 2020667

Espinosa v. Taltech Construction, et al., Los Angeles County Superior Court, Case No. BC590176

Espinosa v. Bodycote Thermal Processing, Inc., Los Angeles County Superior Court, Case No. BC501617

Espinoza v. Pabco Building Products, LLC, Los Angeles County Superior Court, Case No. VC065660

Friel v. Midwest Construction Services, Inc., San Joaquin County Superior Court, Case No. 39-2015-00329204-CU-OE-STK

Gagnon v. Banc of California, Contra Costa County Superior Court, Case No. C 15-00196

Geer v. Applied Aerospace Structures Corp., San Joaquin County Superior Court, Case No. 39-2014-00313702-CU-OE-STK

Getz v. California Cinema Investments, Inc., Ventura County Superior Court, Case No. 56-2013-00437706-CU-MC-VTA

Guerrero v. Main Electric Supply Company LLC, Ventura County Superior Court, Case No. 56-2019-00525427-CU-OE-VTA

Gutierrez v. Asset Management Specialists, Inc., Fresno County Superior Court, Case No. 12CECG03577

Hurtado v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC427672

Ibrihim v. Imperfect Foods, Inc., San Joaquin County Superior Court, Case No. STK-VI-UOE-2019-0000846

Jenkins v. Sedgwick Claims Management Services, Inc., Los Angeles Superior Court, Case No. LC101648

Job v. California Security Services, Yuba County Superior Court, Case No. 14-0000820

Kunsman v. Punch Bowl Sacramento, LLC, et al., Sacramento County Superior Court, Case No. 34-2018-00243175

LaFear v. Encore Education Corporation, San Bernardino County Superior Court, Case No. CIVDS1802251

Lanzarin v. AWI Management Corporation, Solano County Superior Court, Case No. FCS041809

Lewis v. American Casino & Entertainment Properties LLC, San Bernardino County Superior Court, Case No. CIVDS1719094

Leon v. Piercey West Inc., Los Angeles County Superior Court, Case No. BC656874

Lingad v. Top Quality Manufacturing, LLC, Los Angeles County Superior Court, Case No. 24STCV03079

Lopez v. Go Green Auto Spa Franchise, Inc., et al., Los Angeles County Superior Court, Case No. BC 562212

Macias v. American Tire Distributors, Inc., Kern County Superior Court, Case No. BCV-18-101586

Mayne v. John Muir Behavioral Health, Contra Costa County Superior Court, Case No. C17-00998

Molina v. Berkshire Hathaway Energy Company, et al., Imperial County Superior Court, Case No. ECU000522

Myles v. Central Transport LLC, San Bernardino County Superior Court, Case No. CIVDS1401434

Ochoa v Agusa, Kings County Superior Court, Case No. 24CU0042

Rambeau v. C.C.M. Corporation, et al., Sacramento County Court, Case No. 34-2018-00244842

Rankins v. Roman Empire Living Skills, Inc., Los Angeles County Superior Court, Case No. BC713399

Richard v. A-Para Transit Corp., Alameda County Superior Court, Case No. HG17870373

Roden v. Service Champions, San Bernardino County Superior Court, Case No. CIVDS1613183

Sebrell v. Pomeroy IT Solutions, San Bernardino County Superior Court, Case No. CIVDS1721560

Seymour v. Quest Service Group, LLC, Sacramento County Superior Court, Case No. 34-2017-00206917

Smith v. Steelcase, Inc., San Bernardino County Superior Court, Case No. CIVDS1725850

Sohal v. Foster Poultry Farms, Stanislaus County Superior Court, Case No. 2026605

Solorzano v. FDS Manufacturing Corporation, Los Angeles County Superior Court, Case No. BC542532

Spitzer, et al. v. FRHI Hotels & Resorts (Canada) Inc., San Bernardino County Superior Court, Case No. CIVDS1712220

Thompson v. Sidhu Truck Line, Inc., Kern County Superior Court, Case No. BCV-15-101308-DRL

Tripp v. California Guest Services, Inc., Plumas County Superior Court, Case No. CV16-00036

Valdez v. Diamond Landscaping, Inc., Los Angeles County Superior Court, Case No. BC497097

Valencia v. American Team Managers, Inc., Orange County Superior Court, Case No. 30-2016-00857365-CU-CR-CXC

Warner v. Waterdrops Express Car Wash, LLC, Tulare County Superior Court, Case No. 265708

White v. Sally Beauty Supply, LLC, Imperial County Superior Court, Case No. ECU08177

Winningham v. Storer Transportation Service, San Joaquin County Superior Court, Case No. 39-2015-00324708-CU-STK

Woods, et al. v. F&B Innovations, LLC, San Bernardino County Superior Court, Case No. CIVDS1717765

Wright v. Social Vocational Services, Inc., Kern County Superior Court, Case No. BCV-15-101264

EXHIBIT B

March 12, 2024

Via Certified Mail

Labor & Workforce Development Agency
By electronic submission

Express Dry, Inc.
310 Twin Oaks Valley Road, #107-314
San Marcos, CA 92078

Defendant mailed certified # 9589071052700506686095

Agent for Service of Express Dry, Inc.
Richard L Boyer
1037 Cerro Verde Dr
Solana Beach, CA 92075

Agent mailed certified # 9589071052700506686101

Re: ***Labor Code Violations of Express Dry, Inc. – Compliance Letter of California Labor Code § 2698, the Private Attorneys General Act of 2004***

Dear LWDA:

This office represents Arthur Ponce, a former non-exempt California employee of Express Dry, Inc. (“Defendant”). We write this letter in compliance with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.*

Our client was employed by Defendant in Southern California. Herein we set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to our client and its other non-exempt California employees (“Aggrieved Employees”).

Defendant required our client and other Aggrieved Employees to be on-call, under Defendant’s control, with substantial restrictions, and without pay. Defendant did not compensate them for time spent on-call, notwithstanding the fact they were subject to Defendant’s control during this on-call time. An employer is obligated to pay the wages of an hourly employee for all time that the employee is under the control of his employer, and this includes all the time the employee is suffered or permitted to work, whether or not required to do so. When our client and other Aggrieved Employees were on-call from 8:00 a.m. to 10:00 p.m. for specific days of the week and expected to respond to calls immediately (within 2 minutes), they were under the control of Defendant and required to be compensated for all hours worked. Defendant, however, failed to do so. These instances deprived our client and other Aggrieved Employees of significant hours worked and minimum and overtime wages due. Defendant also failed to retain accurate records in accordance with Labor Code §§ 1174 and 1174.5, including for employees’ start and end times for every shift, including, but not limited to, standby/on-call shifts. These constitute violations of Labor Code §§ 510, 558, 1174, 1174.5, 1194, and 1194.2 and IWC Wage Order 4-2001.

Our client alleges that Defendant failed to properly compute bonuses, commissions, and/or other non-base hourly wages earned by him and other Aggrieved Employees into their regular rate of pay for purposes of paying them meal and rest period premiums, overtime wages, vacation wages, and sick pay wages at the correct rates, in violation of Labor Code §§ 226.7, 246, 510, 512, 558, and 1194. Defendant paid our client and other Aggrieved Employees bonuses, commissions, and/or other non-base hourly wages; however, Defendant failed to properly blend these forms of pay, and instead pay our client and other Aggrieved Employees meal and rest period premiums, overtime wages, vacation wages, and sick pay wages based *only* on the base hourly rate of pay, thus depriving our client and other Aggrieved Employees of all meal and rest period premiums, overtime wages, vacation wages, and sick pay wages earned. This violates Labor Code §§ 226.7, 246, 510, 512, 558, and 1194.

Our client alleges that Defendant failed to pay correct premium wages to him and other Aggrieved Employees who were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order No. 4-2001. Our client and other Aggrieved Employees were routinely unable to take a 10-minute rest period for every four (4) hours of work or major fraction thereof, but were not paid premium wages of one hour's pay for each missed rest period. Our client and other Aggrieved Employees were frequently too busy to take a rest period. When they were able to take a rest period, they were oftentimes late, cut short, or on-duty. This violates Labor Code § 226.7 and IWC Wage Order No. 4-2001.

Defendant failed to pay correct premium wages to our client and other Aggrieved Employees who were denied proper meal periods, in violation of Labor Code §§ 226.7, 512, and 558 and IWC Wage Order 4-2001. Our client and other Aggrieved Employees were routinely denied, and not authorized to take, a proper, timely, uninterrupted, 30-minute meal period for every shift worked that exceeded ten hours, but were not paid premium wages of one hour's pay for each missed first or second meal period. When they were able to take a meal period, they are oftentimes late, cut short, or on-duty. Defendant also improperly deducted 30-minutes from our client and Aggrieved Employees' wages for a meal period even if they do not take them, resulting in uncompensated time (and a failure to pay all minimum and overtime wages due). Defendant also failed to retain accurate records in accordance with Labor Code §§ 1174 and 1174.5, including for employees' start and end times for meal periods. This violates Labor Code §§ 226.7, 510, 512, 558, 1174, 1174.5, 1194, and 1194.2 and IWC Wage Order 4-2001.

Our client further alleges that Defendant failed to provide him and all other California employees with wage statements that fully and accurately itemized the requirements set forth in Labor Code § 226(a). Our client and other Aggrieved Employees were not paid all wages due, as stated above. As such, the wage statements provided by Defendant failed to accurately state all gross wages earned, in violation of Labor Code §§ 226(a)(1) and 226.3, total hours worked, in violation of Labor Code §§ 226(a)(2) and 226.3, net wages earned, in violation of Labor Code §§ 226(a)(5) and 226.3, and all applicable hourly rates in effect during the pay period and the corresponding numbers of hours worked at each rate, in violation of Labor Code §§ 226(a)(9) and 226.3. Moreover, and independent of the above allegations, the wage statements issued to our client and all other California employees fail to set forth the name of the legal entity that is the employer, in

Express Dry, Inc.
Richard L Boyer
March 12, 2024
Page 3

violation of Labor Code §§ 226(a)(9) and 226.3. They wage statements set forth the employing entity as Express Dry Restoration Inc., an entity which does not exist (it is neither registered with the California Secretary of State nor does it maintain a fictitious business filing for this entity name), instead of the correct entity name, Express Dry, Inc.

Our client further alleges that Defendant failed to pay him and other Aggrieved Employees all wages due, including all accrued, but unused vacation wages, at the separation of their employment based on the time frames required by Labor Code §§ 201-202 and 227.3. As stated above, our client and other Aggrieved Employees were not paid all wages due during the course of their employment and, as a result of this failure, they were not timely paid all wages due at the separation of their employment. This violates Labor Code §§ 201-202 and 227.3 and is alleged on behalf of our client and certain Aggrieved Employees no longer employed by Defendant.

The \$75 PAGA filing fee has been submitted to the LWDA concurrently with the transmission of this letter.

We invite Defendant or its attorneys to contact our office to discuss this matter, including whether an early resolution of the claims can be reached.

Very truly yours,

GAINES LAW CORPORATION

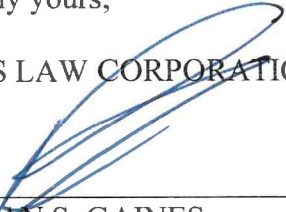
By : 
EVAN S. GAINES

EXHIBIT C

May 16, 2024

Via Certified Mail

Labor & Workforce Development Agency
By electronic submission

Express Dry, Inc.

310 Twin Oaks Valley Road, #107-314

San Marcos, CA 92078

Defendant mailed certified # 9589071052700763984774

Agent for Service of Express Dry, Inc.

Richard L Boyer

1037 Cerro Verde Dr

Solana Beach, CA 92075

Agent mailed certified # 9589071052700763984781

Re: ***Labor Code Violations of Express Dry, Inc. – Compliance Letter of California
Labor Code § 2698, the Private Attorneys General Act of 2004
LWDA-CM-1016191-24***

Dear LWDA:

This letter supplements our previous correspondence sent on March 12, 2024 and adds an additional Plaintiff, adds additional claims, and clarifies the claims alleged.

This office represents Arthur Ponce (“Ponce”) and Shahlaa Raja (“Raja”), former non-exempt California employees of Express Dry, Inc. (“Defendant”). We write this letter in compliance with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.*

Our clients were employed by Defendant in Southern California. Herein we set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to our clients and its other non-exempt California employees (“Aggrieved Employees”).

Defendant required Ponce and other Aggrieved Employees to be on-call, under Defendant’s control, with substantial restrictions, and without pay. Defendant did not compensate them for time spent on-call, notwithstanding the fact they were subject to Defendant’s control during this on-call time. An employer is obligated to pay the wages of an hourly employee for all time that the employee is under the control of his employer, and this includes all the time the employee is suffered or permitted to work, whether or not required to do so. When Ponce and other Aggrieved Employees were on-call from 8:00 a.m. to 10:00 p.m. for specific days of the week and expected to respond to calls immediately (within 2 minutes), they were under the control of Defendant and required to be compensated for all hours worked. Defendant, however, failed to do so. These instances deprived Ponce and other Aggrieved Employees of significant hours worked and minimum and overtime wages due. Defendant also failed to retain accurate records in accordance

with Labor Code §§ 1174 and 1174.5, including for employees' start and end times for every shift, including, but not limited to, standby/on-call shifts. These constitute violations of Labor Code §§ 510, 558, 1174, 1174.5, 1194, and 1194.2 and IWC Wage Order 4-2001.

Our clients allege that Defendant failed to properly compute bonuses, commissions, and/or other non-base hourly wages earned by them and other Aggrieved Employees into their regular rate of pay for purposes of paying them meal and rest period premiums, overtime wages, vacation wages, and sick pay wages at the correct rates, in violation of Labor Code §§ 226.7, 246, 510, 512, 558, and 1194. Defendant paid our clients and other Aggrieved Employees bonuses, commissions, and/or other non-base hourly wages; however, Defendant failed to properly blend these forms of pay, and instead pay our clients and other Aggrieved Employees meal and rest period premiums, overtime wages, vacation wages, and sick pay wages based *only* on the base hourly rate of pay, thus depriving our clients and other Aggrieved Employees of all meal and rest period premiums, overtime wages, vacation wages, and sick pay wages earned. This violates Labor Code §§ 226.7, 246, 510, 512, 558, and 1194.

Defendants failed to reimburse Raja and other Aggrieved Employees for necessary business expenses incurred in direct consequence of the discharge of their duties while working from home, in violation of Labor Code § 2802, including, but not limited to, cellular phone, internet, computer expenses, and printer expenses. Labor Code § 2802 states that an employer must indemnify its employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of their duties. These instances violate Labor Code § 2802.

Our clients allege that Defendant failed to pay correct premium wages to them and other Aggrieved Employees who were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order No. 4-2001. Our clients and other Aggrieved Employees were routinely unable to take a 10-minute rest period for every four (4) hours of work or major fraction thereof, but were not paid premium wages of one hour's pay for each missed rest period. Our clients and other Aggrieved Employees were frequently too busy to take a rest period. When they were able to take a rest period, they were oftentimes late, cut short, or on-duty. This violates Labor Code § 226.7 and IWC Wage Order No. 4-2001.

Defendant failed to pay correct premium wages to our clients and other Aggrieved Employees who were denied proper meal periods, in violation of Labor Code §§ 226.7, 512, and 558 and IWC Wage Order 4-2001. Our clients and other Aggrieved Employees were routinely denied, and not authorized to take, a proper, timely, uninterrupted, 30-minute meal period for every shift worked that exceeded ten hours, but were not paid premium wages of one hour's pay for each missed first or second meal period. When they were able to take a meal period, they are oftentimes late, cut short, or on-duty. Defendant also improperly deducted 30-minutes from our clients and Aggrieved Employees' wages for a meal period even if they do not take them, resulting in uncompensated time (and a failure to pay all minimum and overtime wages due). Defendant also failed to retain accurate records in accordance with Labor Code §§ 1174 and 1174.5, including for employees' start and end times for meal periods. This violates Labor Code §§ 226.7, 510, 512, 558, 1174, 1174.5, 1194, and 1194.2 and IWC Wage Order 4-2001.

Express Dry, Inc.
Richard L Boyer
May 16, 2024
Page 3

Our clients further allege that Defendant failed to provide them and all other California employees with wage statements that fully and accurately itemized the requirements set forth in Labor Code § 226(a). Our clients and other Aggrieved Employees were not paid all wages due, as stated above. As such, the wage statements provided by Defendant failed to accurately state all gross wages earned, in violation of Labor Code §§ 226(a)(1) and 226.3, total hours worked, in violation of Labor Code §§ 226(a)(2) and 226.3, net wages earned, in violation of Labor Code §§ 226(a)(5) and 226.3, and all applicable hourly rates in effect during the pay period and the corresponding numbers of hours worked at each rate, in violation of Labor Code §§ 226(a)(9) and 226.3. Moreover, and independent of the above allegations, the wage statements issued to our clients and all other California employees fail to set forth the name of the legal entity that is the employer, in violation of Labor Code §§ 226(a)(8) and 226.3. They wage statements set forth the employing entity as Express Dry Restoration Inc., an entity which does not exist (it is neither registered with the California Secretary of State nor does it maintain a fictitious business filing for this entity name), instead of the correct entity name, Express Dry, Inc.

Our clients further allege that Defendant failed to pay them and other Aggrieved Employees all wages due, including all accrued, but unused vacation wages, at the separation of their employment based on the time frames required by Labor Code §§ 201-202 and 227.3. As stated above, our clients and other Aggrieved Employees were not paid all wages due during the course of their employment and, as a result of this failure, they were not timely paid all wages due at the separation of their employment. This violates Labor Code §§ 201-202 and 227.3 and is alleged on behalf of our clients and certain Aggrieved Employees no longer employed by Defendant.

Very truly yours,

GAINES LAW CORPORATION

By :



EVAN S. GAINES

EXHIBIT D

PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698 ET SEQ.)
SETTLEMENT AGREEMENT

Subject to the approval of the Court, this Settlement Agreement (“Settlement Agreement” or “Settlement”) is made and entered into between Plaintiffs **Arthur Ponce** and **Shahlaa Raja** (collectively, Plaintiffs), acting in a private attorney general capacity, on behalf of the State of California and on behalf of themselves and all PAGA Settlement Employees, and Defendant **Express Dry, Inc.** (collectively, the “Parties”).

I. DEFINITIONS

The following terms, when used in this Settlement Agreement, shall have the following meanings:

1. “Action” means the matter entitled *Arthur Ponce, et al. v. Express Dry, Inc.*, pending in the San Diego County Superior Court of the State of California, Case No. 37-2024-00022921-CU-OE-CTL.

2. “Complaint” means the First Amended Complaint in the Action.

3. “Defendant” means Express Dry, Inc.

4. “Effective Date” of the Settlement means the date upon which the Court enters the Final Order.

5. “Final Order” refers to the order of the Court granting approval of this PAGA Settlement Agreement on substantially the terms provided herein or as may be modified by subsequent agreement of the Parties and entry of judgment.

6. “PAGA Gross Settlement Amount” is the sum of Seventy-Five Thousand Dollars and Zero Cents (\$75,000.00), which represents the total amount payable by Defendant Express Dry, Inc. under this Settlement Agreement for the release of the Released Claims and includes payments to all PAGA Settlement Employees, payment to the LWDA, payment of Plaintiffs’ attorneys’ fees and costs, and payment to the Settlement Administrator.

7. “Individual PAGA Payment” means the pro rata amount to be paid to each PAGA Settlement Employee from the twenty-five percent (25%) portion of the PAGA Payment allocated to employees; such individual share to be based on the number of pay periods during which a PAGA Settlement Employee worked for Express Dry, Inc. during the PAGA Period.

8. “LWDA” means the California Labor and Workforce Development Agency.

9. “LWDA Letters” means the letters Plaintiffs submitted to the LWDA on March 12, 2024 and May 16, 2024.

10. “Net Settlement Amount” or “PAGA Payment” is the amount remaining to distribute to the LWDA and PAGA Settlement Employees after the following amounts, if approved by the Court, are subtracted from the PAGA Gross Settlement Amount: (a) Plaintiffs’ Attorneys’ Fees of up to 33 1/3% (one-third) of the PAGA Gross Settlement Amount (projected to be Twenty-Five Thousand Dollars and Zero Cents (\$25,000)); (b) Plaintiffs’ Costs up to Fifteen Thousand Dollars and Zero Cents (\$15,000.00); and (c) PAGA Settlement Administration costs not to exceed Two Thousand Nine Hundred Fifty Dollars and Zero Cents (\$2,950.00).

11. “Parties” means Plaintiffs and Defendant.
12. “PAGA” means the California Labor Code Private Attorneys General Act, California Labor Code section 2698, *et seq.*
13. “PAGA Period” means the time period from March 12, 2023 through March 20, 2025. As of March 20, 2025, Express Dry, Inc. estimated there were approximately 1,317 pay periods worked during the PAGA Period by approximately 50 PAGA Settlement Employees. Final updated figures will be provided to the Settlement Administrator following the approval of the settlement.
14. “PAGA Representative Counsel” means Gaines Law Corporation, located at 4550 East Thousand Oaks Boulevard, Suite 100, Westlake Village, California 91362.
15. “PAGA Settlement Employee” or “PAGA Settlement Employees” means and includes all current and former non-exempt employees who worked for Express Dry, Inc. in the State of California during the PAGA Period.
16. “Plaintiffs” means Arthur Ponce and Shahlaa Raja.
17. “QSF” means qualified settlement fund.
18. “Released Claims” means all claims, rights, demands, liabilities, and causes of action for civil penalties recoverable under PAGA, that were asserted or could have been asserted, assessed upon or collected from the Released Parties by or on behalf of Plaintiffs, the PAGA Settlement Employees, the LWDA, the State of California, or any of its agencies, based on any of the facts or violations alleged in the Complaint or LWDA Letters, including claims for PAGA civil penalties under or based on any alleged violations of Labor Code sections: 201, 202, 203, 226(a), 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174, 1174.5, 1194, and 2802, and 2699, *et seq.*, the violation of any Industrial Welfare Commission Order, and any other claims asserted in the Action and operative Complaint.
19. “Released Parties” means Defendant Express Dry, Inc., its past and present officers, directors, shareholders, unit holders, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and its respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys.
20. “Settlement Administrator” means Phoenix Settlement Administrators.
21. “PAGA Settlement Administration Costs” means the cost, not to exceed Two Thousand Nine Hundred Fifty Dollars and Zero Cents (\$2,950.00), to be paid to the Settlement Administrator for administering the Settlement, including sending checks and Settlement Notices to the PAGA Settlement Employees.
22. “Settlement Notice” means an explanatory letter to be sent by the Settlement Administrator to PAGA Settlement Employees, substantially in the form attached hereto as **Exhibit A**.

II. RECITALS

1. Express Dry, Inc. employed Plaintiffs at some point during the PAGA Period.
2. On March 12, 2024 and May 16, 2024, Plaintiffs provided written notice to the LWDA and Defendant pursuant to Labor Code section 2699.3 of *inter alia* alleged violations of the California Labor Code and Industrial Welfare Commission Orders.
3. On May 16, 2024, Plaintiff Ponce filed the Action, pursuant to PAGA, on behalf of the State of California and other aggrieved employees alleging multiple violations of the California Labor Code and Industrial Welfare Commission Wage Orders by Defendant. The complaint in the Action was subsequently amended on October 15, 2024.
4. Defendant generally denies all of Plaintiffs' allegations in the Action, including all PAGA claims, and further specifically denies that Defendant or any of the Released Parties committed or engaged in any misconduct, statutory or regulatory violations, wrongdoing, or other actionable conduct of any kind.
5. The Parties have independently analyzed and investigated the facts and law relevant to this case through informal discovery and substantial pre-mediation disclosures, including, but not limited to, the employment policies, procedures, and practices implicated by the Complaint and/or the LWDA Letters; timekeeping and payroll records for employees on whose behalf the Complaint and/or the LWDA Letters are asserted by Plaintiffs; and summaries of data pertaining to the number of employees allegedly affected by the policies, procedures, and practices implicated by the Complaint and/or the LWDA Letters.
6. After evaluating the strengths and weaknesses of their respective positions, after considering the time, expense, and risk associated with litigating this case to judgment, and after engaging in arm's-length settlement negotiations through informed counsel and mediation, before a highly experienced PAGA mediator, Hon. Amy Hogue (Ret.), the Parties agreed to fully and finally, and exclusively, resolve the Released Claims as to Plaintiffs and the PAGA Settlement Employees, subject to Court approval.
7. This Settlement contemplates the entry of an Order by the Court approving the payment allocated for settlement of PAGA penalties to the LWDA, Plaintiffs and PAGA Settlement Employees, and the dismissal with prejudice of the Action.

III. OPERATIVE TERMS OF SETTLEMENT AGREEMENT

The Parties agree as follows:

1. **Non-Admission.** Nothing in this Settlement Agreement or the judgment to be entered in this Action pursuant to the terms of this Settlement Agreement shall be construed to be an admission: (1) by Plaintiffs that their claims do not have merit or (2) by Defendant of any liability or wrongdoing as to Plaintiffs, the PAGA Settlement Employees or any other person, and Defendant generally denies any such liability or wrongdoing. Defendant specifically denies any liability to Plaintiffs or any other allegedly aggrieved employee or PAGA Settlement Employee for any alleged violation of their rights, or for any alleged violation of any order, law, statute, duty or contract. The Parties have entered into this Settlement Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and risks. This

Settlement Agreement and any related court documents or orders are not and may not be cited or admitted as evidence of liability.

2. **PAGA Gross Settlement Amount.** Express Dry, Inc. shall pay Seventy-Five Thousand Dollars and Zero Cents (\$75,000.00) as the PAGA Gross Settlement Amount. Express Dry, Inc. will not pay more than the PAGA Gross Settlement Amount to resolve the claims covered by this Agreement, except as otherwise stated in this Agreement. Defendant shall deposit the PAGA Gross Settlement Amount with the Settlement Administrator within 30 days of the Effective Date.

3. **Net Settlement Amount.** The Parties agree that the following amounts should be subtracted from the PAGA Gross Settlement Amount, if approved by the Court, resulting in a Net Settlement Amount to be distributed to the LWDA and PAGA Settlement Employees:

- a. **Plaintiffs' Attorneys' Fees and Costs.** Defendant will not oppose Plaintiffs' request for Plaintiffs' Attorneys' Fees of up to 33 1/3% of the PAGA Gross Settlement Amount (projected to be Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00)) and Plaintiffs' Costs up to Fifteen Thousand Dollars (\$15,000.00) incurred in prosecuting this Action. In the event the Court approves a payment of less than the amount of fees and costs requested by Plaintiffs, the difference will be added to the PAGA Payment.
- b. **Administration Cost.** Defendant will not oppose the Settlement Administrator's costs, not to exceed Two Thousand Nine Hundred Fifty Dollars and Zero Cents (\$2,950.00), for administering the Settlement. In the event the Court approves a payment of less than this amount, the difference will be added to the PAGA Payment.

4. **PAGA Payment.** A portion of the PAGA Payment will be allocated to the LWDA and the remainder will be allocated to PAGA Settlement Employees in settlement of the Released Claims. The PAGA Payment will be subject to Court approval consistent with California Labor Code section 2699.3(b)(4). Upon approval, the PAGA Payment shall be allocated as follows:

- a. Seventy-five percent (75%) will be paid to the LWDA, as required by California Labor Code section 2699(i).
- b. Twenty-five percent (25%) will be paid to the PAGA Settlement Employees, divided on a pro rata basis among them and distributed by the Settlement Administrator as Individual PAGA Payments, as required by California Labor Code section 2699(i).
- c. The payments will be reported as penalties on IRS Forms 1099 issued to the LWDA and each PAGA Settlement Employee. The Settlement Administrator will be responsible for issuing to PAGA Settlement Employees and PAGA Representative Counsel any 1099 or other tax forms as may be required by law for all amounts paid pursuant to this Settlement.

5. **Representative PAGA Release.** Upon the Effective Date, Plaintiffs, as individuals, and as the representative of the PAGA Settlement Employees, the LWDA and the State of California, hereby forever and completely release and discharge the Released Parties of and from all of the Released Claims, and thus, Plaintiffs, the PAGA Settlement Employees, LWDA and the State of California will be forever barred from pursuing any of the Released Claims defined herein against Released Parties which arose during periods of employment in a non-exempt position in California during the PAGA Period. The Parties understand and agree that this release is limited to the Released Claims and does not otherwise impact the individual rights or claims of the PAGA Settlement Employees. In accordance with *Arias v. Superior Court* (2009) 46 Cal.4th 969, 985, a judgment in “a representative action brought by an aggrieved employee under the Labor Code Private Attorneys General Act of 2004 . . . is binding not only on the named employee Plaintiffs but also on government agencies and any aggrieved employee not a party to the proceeding,” which the Final Order shall so reflect. Pursuant to *Arias* and *Cardenas v. McLane Foodservice, Inc.*, 796 F.Supp.2d 1246 (2011), the Final Order and judgment in this Action shall be binding on the PAGA Settlement Employees, LWDA, State of California and its agencies as to the Released Claims which arose during the PAGA Period, regardless of whether their settlement checks are cashed or not. The Parties further understand and agree that the continued effectiveness of this PAGA Release is contingent upon Defendant’s payment of the PAGA Gross Settlement Amount. If Defendant defaults on any of its payment obligations under this Agreement, the PAGA Release set forth in this paragraph shall become ineffective until such default is cured in full.

6. **Separate Release and Individual Settlement by Plaintiffs.** In addition to this Agreement, Plaintiffs have entered into separate Confidential Settlement Agreement And General Release Of All Claims (the “Individual Settlement Agreements”) with Defendant for all of their separate individual (non-PAGA) claims arising out of their employment with Defendant, in exchange for a full release of those claims. The Parties acknowledge and agree that the Individual Settlement Agreements and the covenants, promises and released claims contained therein shall not serve to modify or limit Plaintiffs’ right to continue with this Action and seek the Court’s approval of this PAGA Settlement; however, Plaintiffs shall have no right to be the representative of a class action lawsuit against Defendant. The Parties further agree that if for any reason the Effective Date does not occur with regard to this Settlement and/or the Final Order is not entered, then the Individual Settlement Agreements shall also be null and void.

7. **Filing of Request for Approval of PAGA Settlement by Plaintiffs’ Counsel**

Plaintiffs’ counsel shall be responsible for filing a motion or joint stipulation for approval of the Settlement. Plaintiffs shall provide the requisite notice of this Settlement Agreement to the LWDA on or before the date Plaintiffs request approval of this Settlement Agreement from the Court. If the Court approves this Settlement, the Parties shall request that the Court enter a Final Order approving the settlement.

As part of the request to approve the Settlement, Plaintiffs shall submit a proposed Order granting approval of this Settlement. The Court shall retain jurisdiction to enforce the terms of this Agreement. This Settlement is expressly conditioned upon the Court entering such a Final Order, approving this Settlement as set forth herein, and entry of judgment, disposing of the Action in its entirety and ensuring that this Settlement has a *res judicata* effect.

IV. ADMINISTRATION OF SETTLEMENT

1. **Settlement Administrator.** The Settlement Administrator will be responsible for establishing a QSF and issuing payments and appropriate tax forms to PAGA Settlement Employees, the LWDA, and Plaintiffs' counsel.

2. **Provision of Information for PAGA Settlement Employees.** Within twenty (20) calendar days after the Effective Date, Express Dry, Inc. will provide the information regarding the PAGA Settlement Employees to the Settlement Administrator. This information will include the name, most recently known address, social security number, and total pay periods worked by each of the PAGA Settlement Employees in a non-exempt position in California during the PAGA Period. The Settlement Administrator will maintain the list in confidence, and access shall be limited to those with a need to use the list as part of the administration of the Settlement.

The Settlement Administrator will calculate the amount to be received by each PAGA Settlement Employee. Within ten (10) calendar days of the Effective Date, the Settlement Administrator will circulate to counsel for both Parties an anonymized spreadsheet containing the estimated individual settlement payments to each PAGA Settlement Employee, and the data used to calculate said payments. The Settlement Administrator shall obtain approval from all counsel of the calculations before mailing Individual PAGA Payments.

3. **Explanatory Letter and Individual PAGA Payments.** Upon receipt of the information for PAGA Settlement Employees, the Settlement Administrator will perform a search on the National Change of Address database to update the PAGA Settlement Employees' addresses.

Within ten (10) calendar days of receiving the PAGA Gross Settlement Amount, the Settlement Administrator will issue payments to: (a) PAGA Settlement Employees along with an explanatory letter accompanying the payment ("Settlement Notice"); (b) the LWDA; (c) Plaintiffs' counsel; and (d) itself. The Settlement Notice shall be mailed to each PAGA Settlement Employee with their disbursement.

4. **Undeliverable Notices.** Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip trace, or other search using the name, address or social security number of the PAGA Settlement Employees involved, and will then perform a single re-mailing. Individual PAGA Payment checks will remain negotiable for one hundred eighty (180) calendar days from issuance, and PAGA Settlement Employees will have one hundred eighty (180) calendar days from the date of issuance to cash their Individual PAGA Payment checks. If a PAGA Settlement Employee's check is returned to the Settlement Administrator with a forwarding address provided by the United States Postal Service, the Settlement Administrator will promptly resend the check to that PAGA Settlement Employee to that address, but this re-mailing will not extend the 180-day period to cash a check. Funds represented by Individual PAGA Payment checks returned as undeliverable and those Individual PAGA Payment checks remaining un-cashed for more than one hundred eighty (180) calendar days after issuance will be paid to the California State Controller in the name of the PAGA Settlement Employee who did not cash the check, from which the PAGA Settlement Employee

may claim the funds. Neither Defendant, Defense Counsel, Plaintiffs' Counsel nor Plaintiffs will have any liability for lost or stolen settlement checks, forged signatures on settlement checks, unauthorized negotiation of settlement checks or failure to timely cash a settlement check within the 180-day period.

Defendant fully discharges its obligations to those PAGA Settlement Employees who are entitled to an Individual PAGA Payment by funding the Settlement Amount, regardless of whether individual checks are actually received and/or negotiated by PAGA Settlement Employees.

5. **Tax Consequences.** Individual PAGA Payments made under this Settlement will be attributed one hundred percent (100%) as penalties and paid via IRS Form 1099 issued to each PAGA Settlement Employee. The Parties and their counsel make no representations or warranties with respect to tax consequences of any payment under this Settlement Agreement.

V. **MISCELLANEOUS PROVISIONS**

1. **Escalator Clause.** Express Dry, Inc. estimates there have been approximately 1,317 pay periods worked during the PAGA Period to date by approximately 50 PAGA Settlement Employees. Should the number of pay periods increase by more than 10%, this will increase the PAGA Gross Settlement Amount proportionally over the 10% increase. For example, if the number of pay periods increase by 11% through the PAGA Period, the PAGA Gross Settlement Amount shall increase by 1%. In the alternative, Defendant may elect to end the PAGA Period on the day on which the number of pay periods reaches the 10% escalator trigger, i.e., 1,449 pay periods to avoid triggering the escalator clause.

2. **Mutual Preparation and Drafting.** The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement. The Parties agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties through informed counsel and that neither Party shall be considered the "drafter" of this Settlement Agreement for purposes of having terms construed against that Party.

3. **Successors.** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, and successors and assigns.

4. **Costs and Fees.** The Parties shall each bear their own costs, attorneys' fees, and other fees incurred in connection with this Settlement Agreement, the Action, and Plaintiffs' claims, except as otherwise set forth specifically herein.

5. **Authority.** Defendant represents and warrants that the undersigned have the authority to act on behalf of Defendant and to bind Defendant to the terms of this Settlement Agreement.

6. **Governing Law.** This Settlement Agreement shall be construed under and governed by the laws of the State of California.

7. **Complete Agreement.** The Parties each acknowledge and represent that no promise or representation not contained in this Settlement Agreement has been made to them, and acknowledge and represent that this Settlement Agreement contains the entire understanding between them and contains all terms and conditions pertaining to the compromise and settlement

of the PAGA Claims. Excluded from this Section are the Individual Settlement Agreements related to Plaintiffs' individual claims. This Settlement Agreement cannot be amended or modified except by a writing signed by the Parties hereto.

8. **Nullification of Settlement Agreement.** In the event that: (i) the Court does not approve the Settlement as provided herein; or (ii) the Settlement does not become final for any other reason, then this Settlement Agreement and any documents generated to bring it into effect, will be null and void, and the Parties will be returned to their original respective positions, without prejudice. Neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect.

9. **Continuing Jurisdiction.** After approval of this Settlement and entry of the judgment in the Action, the Court will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement and judgment, (ii) Settlement administration matters, and (iii) such matters as may be appropriate under court rules or as set forth in this Settlement Agreement. The Parties further agree that this Agreement shall be enforceable by the Court pursuant to California Code of Civil Procedure Section 664.6 and the Court shall retain exclusive and continuing equity jurisdiction of this Action over all Parties and PAGA Settlement Employees to interpret and enforce the terms, conditions and obligation of the Agreement.

10. **Amendment or Modification.** This Settlement Agreement may be amended or modified only by a written instrument, signed by either the Parties or their successors-in-interest.

11. **Binding on Successors and Assigns.** This Settlement Agreement will be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

12. **Execution and Counterparts.** This Settlement Agreement is subject only to the execution of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, including facsimile, DocuSign, and scanned copies of the signature page, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange among themselves original signed counterparts.

13. **Acknowledgement that the Settlement is Fair and Reasonable.** The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action, and have arrived at this settlement after arm's-length negotiations by experienced counsel. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this settlement.

14. **Invalidity of Any Provision.** Before declaring any provision of this Settlement Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Settlement Agreement valid and enforceable. Invalidation of any material portion of this Agreement shall invalidate this Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

15. **Severability.** If any term or provision of this Settlement Agreement is held to be invalid or unenforceable, the remaining portions of this Settlement Agreement will continue to be valid and will be performed, construed and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the Parties, as determined from the face of the Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

16. **Waiver.** No waiver of any condition or covenant contained in this Settlement Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such Party of the same or any other condition, covenant, right or remedy.

17. **Enforcement Action.** In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement Agreement or to declare rights and/or obligations under this settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

18. **Dispute(s).** Should any dispute(s) arise among the Parties or their respective counsel regarding the implementation or interpretation of this Agreement, the Parties agree to submit any such dispute(s) to the Court. To the extent any Party seeks to enforce any of the terms of this Agreement in or before the Court, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

19. **Non-Evidentiary Use.** Neither this Agreement nor any of its terms shall be offered or used as evidence by any of the Parties, or their respective counsel in the Action or in any other action or proceeding except for purposes of establishing the Released Claims have been settled; provided, however, this shall not prevent this Agreement from being used, offered, or received in evidence in any proceeding to enforce, construe, or finalize this Agreement.

20. **Representation by Counsel.** The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed in full.

21. **No Public Comment.** Neither the Parties nor their counsel shall make or issue any public statements to the press or any other third party, nor post any information on websites or other public forums, concerning the Action in any way.

22. **Cooperation and Execution of Necessary Documents.** All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.

23. **Binding Agreement.** The Parties warrant that they understand and have full authority to enter into this settlement, and further intend that this Settlement Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

24. **Denial of Liability.** The Parties expressly recognize that the making of this Settlement Agreement does not in any way constitute an admission or concession of wrongdoing on the part of Defendant. Nothing in this settlement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of this Action, is intended by the Parties to, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in any other judicial, arbitral, administrative, investigative or other forum or proceeding, as evidence of any violation of any federal, state or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, this Settlement Agreement may be used in any court proceeding that has as its purpose the interpretation, implementation or enforcement of the settlement or any orders or judgments of the Court entered into in connection therewith.

25. **Time is of the Essence.** Time is of the essence with respect to all provisions of this Agreement.

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

Dated: 05 / 08 / 2025 _____

By: Arthur Ponce
Plaintiff Arthur Ponce

Dated: _____

By: _____
Plaintiff Shahlaa Raja

Dated: 12/4/2025 _____

By: 
Defendant Express Dry, Inc.

24. **Denial of Liability.** The Parties expressly recognize that the making of this Settlement Agreement does not in any way constitute an admission or concession of wrongdoing on the part of Defendant. Nothing in this settlement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of this Action, is intended by the Parties to, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in any other judicial, arbitral, administrative, investigative or other forum or proceeding, as evidence of any violation of any federal, state or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, this Settlement Agreement may be used in any court proceeding that has as its purpose the interpretation, implementation or enforcement of the settlement or any orders or judgments of the Court entered into in connection therewith.

25. **Time is of the Essence.** Time is of the essence with respect to all provisions of this Agreement.

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

Dated: _____

By: _____
Plaintiff Arthur Ponce

Dated: 05 / 07 / 2025

By:  _____
Plaintiff Shahlaa Raja

Dated: _____

By: _____
Defendant Express Dry, Inc.

EXHIBIT A

«DATE»

«FIRST_NAME» «LAST_NAME»

«ADDRESS 1»

«ADDRESS 2»

NOTICE OF SETTLEMENT OF PRIVATE ATTORNEYS GENERAL ACT CLAIMS

Dear «FIRST_NAME» «LAST_NAME»:

You are receiving this letter because you have been identified as a non-exempt employee of Express Dry, Inc. that worked between March 12, 2023 and March 20, 2025 (a “Covered Employee”). Plaintiffs Arthur Ponce and Shahlaa Raja (“Plaintiffs”) brought a lawsuit under the Private Attorneys General Act of 2004, Cal. Labor Code §§ 2698, *et seq.* (abbreviated “PAGA”) for alleged violations of the California Labor Code against Defendant Express Dry, Inc. (“Defendant”). The lawsuit is entitled *Ponce, et al. v Express Dry, Inc.*, San Diego County Superior Court Case No. 37-2024-00022921-CU-OE-CTL (the “Lawsuit”). The parties to the lawsuit chose to settle this matter rather than undertake the expense and risk of continued litigation. The San Diego County Superior Court has approved that settlement resulting in the enclosed payment to you as a Covered Employee for your share of the settlement monies.

Plaintiffs filed the lawsuit under PAGA, which allows employees to step into the shoes of the California Labor and Workforce Development Agency (“LWDA”) to bring litigation on behalf of the State of California and other employees for alleged violations of the California Labor Code.

In the Lawsuit, Plaintiffs claimed Defendant was liable for civil penalties under PAGA for alleged violations of the California Labor Code, including allegations that Defendant: (1) failed to pay all minimum and overtime wages earned and all meal and rest period premiums, overtime wages, vacation wages, and sick pay wages at the correct rates of pay; (2) failed to provide rest periods; (3) failed to provide meal periods; (4) failed to pay wages timely upon separation of employment; and (5) failed to provide complete and accurate itemized wage statements; and (6) failed to reimburse business expenses incurred. Defendant vigorously denies that it violated any provisions of the California Labor Code and contends that its policies and practices regarding the payment of wages, overtime, meal periods, rest breaks, reimbursements, and wage statements were fully compliant. The settlement reached by the Parties released all claims under PAGA that were alleged in the Lawsuit, Plaintiffs’ notice to the LWDA, or that could have been alleged based on the allegations therein.

The San Diego County Superior Court has not ruled on the merits of the Lawsuit. It has only approved the settlement.. Pursuant to California law, a portion of the settlement amount, seventy-five percent (75%) of the net settlement after subtracting attorneys’ fees, litigation costs, and payment of the settlement administrator, goes to the LWDA. Another portion of the net settlement amount (25%) goes to Covered Employees. The settlement of this Lawsuit and Final Approval Order and Judgment releases only claims for civil penalties alleged under PAGA and does not release claims you may have that do not arise under PAGA.

The check enclosed herewith represents your pro rata share of the 25% of the net settlement amount to be paid to Covered Employees, which is based on your proportional share of total pay periods worked during the identified time period as compared to other Covered Employees. You have 180 days to cash the settlement check. If you do not cash your check by this date, the money will be transferred to the State of California Unclaimed Property Fund, from which you may recover the money at a future time. You will receive an IRS Form 1099

form for the amount of your settlement check, if required by law. If you have lost or misplaced your settlement check, you should contact the Administrator at the toll-free number shown on this letter. It is strongly recommended that all checks be cashed immediately upon receipt. Defendant does not receive any benefit from, and will not take any action against, any individual who cashes their settlement check.

You are not a party to the Lawsuit, but you and the State of California will be bound by the order in this matter approving the settlement and entering judgment in the Lawsuit, as well as to the release of PAGA claims in this Lawsuit.

If you have any questions, you can contact the Administrator at the toll free number included with this letter or visit the following website: **INSERT WEBSITE**.

**PLEASE DO NOT CONTACT THE COURT OR THE JUDGE WITH ANY
QUESTIONS ABOUT THE LAWSUIT OR THE SETTLEMENT**

EXHIBIT E

Ponce, et al. v Express Dry, Inc.
Attorney Time/Task

Task	Evan S. Gaines, Esq. \$700/hr
Pre-Lawsuit interviewing, investigation and research re Defendant and claims; Research re: defenses to action; Review employee file	7.0
Draft LWDA compliance Letter; Review, revise, mail, and upload LWDA Letter; Communications with Client Ponce re same	2.4
Draft and file PAGA Complaint and related research; Communications with Client Ponce re same; service of Defendant and related filing of proof of service.	3.1
Draft, upload, and mail supplemental LWDA letter; related communications with Defense and Clients	1.5
Draft and file case management statement; Attend CMC; Communications with Defense re same	1.2
Prepare mediation informal discovery letter and related communications with Defense Counsel and Clients. Review and preparation for mediation; Review Defendants' informal document production, Prepare mediation brief and related exhibits; Communications with Clients re same	10.2
Attend mediation via Zoom with Amy Hogue, Esq.; Communications with Clients re mediation and mediator's proposal; Communications with mediator re acceptance of mediator's proposal; Attend post-mediation CMC	9.0
Research, review and preparation of PAGA settlement agreement, PAGA notice, and individual settlements; Further communications and discussions with Defense Counsel and Clients re same	7.2
Drafting of Motion for PAGA approval and related exhibits and documents and related communications with Defense Counsel and Clients; Prepare CMS and attend CMC	9.5

Ponce, et al. v Express Dry, Inc.
Attorney Time/Task

Task	Evan S. Gaines, Esq. \$700/hr
Estimated time required for related administration work and uploading of documents to LWDA; Prepare for and attend PAGA Approval hearing and related communications with Defense and Clients	4.0
Total Hours:	55.1
Total Lodestar Per Attorney:	\$38,570.00

EXHIBIT F

**Ponce v Express Dry, Inc.
Gaines Law Corporation Counsel's Costs**

<u>EXPENSE CATEGORY</u>	<u>EXPENSE</u>
Filing fees	\$ 716.66
Service Fees	\$ 154.43
Postage	\$ 34.76
Mediation Fees	\$ 8,114.92
Future estimated expenses -	\$ 100.00
• <i>Filing fees and One Legal Service fees for Filing the Motion for PAGA Approval and Notice of Entry of Order (\$70 + \$30)</i>	
TOTAL EXPENSES	\$ 9,120.77