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GABRIEL FERNANDEZ, an individual,

Plaintiffs,

vs.

MORGAN TRUCK BODY, LLC, a limited liability company; and DOES 1 through 100, inclusive,

Defendants.

Case No.: RIC 1308626

*[Assigned For All Purposes to The Hon. Sharon J. Waters, Dept. 10]\_\_\_*

**STIPULATED CLASS ACTION SETTLEMENT AGREEMENT**

**STIPULATED CLASS ACTION SETTLEMENT AGREEMENT**

This Stipulated Class Action Settlement Agreement (hereinafter the “Agreement”) is made by Gabriel Fernandez (“Fernandez”) and Morgan Truck Body, LLC (“Morgan”).

Fernandez and Morgan will, at times, be collectively referred to herein as “the Parties.”

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**I. THE LITIGATION**

1. On July 30, 2013, Fernandez filed a class action complaint (“Complaint”) in the Riverside County Superior Court entitled *Gabriel Fernandez v. Morgan Truck Body, LLC, et al.*, case number RIC 1308626, on behalf of himself and a proposed class consisting of allegedly similarly situated individuals currently or formerly employed by Morgan, in which he asserted claims for: (1) failure to provide required meal periods; (2) failure to provide required rest periods; (3) failure to pay all wages due; (4) failure to provide accurate statements and maintain required records; and, (6) unlawful business practices, in which he alleged, among other things, that he and similarly situated employees were not paid all wages earned and due to them, were not provided with compliant meal and rest periods, were not provided accurate wage statements, and that discharged or quitting employees were not paid all wages due (the “Litigation”).

2. The Parties engaged in substantial investigation and both informal and formal discovery in connection with the Litigation. Morgan provided extensive documents and detailed information to Fernandez’s counsel to review and analyze.

3. The Parties attended a full day of mediation with Steven Rottman, a respected employment and wage and hour mediator, after which the Parties agreed to the settlement described in this Agreement.

4. This Agreement concerning the settlement is made in compromise of disputed claims. The payment by Morgan required by this Agreement shall satisfy all claims alleged in the Complaint, including, but not limited to, claims for wages, penalties, calculation of individual settlement awards, interest, attorneys’ fees, litigation costs, Fernandez’s class representative enhancement payment, and settlement administration costs.

1           5.       Because this is a putative class action, this Agreement must receive preliminary  
2 and final approval by the court. Accordingly, the Parties enter into this Agreement on a  
3 conditional basis. In the event the court does not enter Final Judgment, or in the event such  
4 Final Judgment does not become Final for any reason, or is modified in any material respect, or  
5 in the event the Effective Date, as defined herein, does not occur, this Agreement shall be  
6 deemed null and void *ab initio* and shall be of no force or effect whatsoever, and shall not be  
7 referred to or utilized for any purpose. Morgan denies all of Fernandez’s claims as to liability  
8 and damages as well as Fernandez’s class allegations, and does not waive, but rather expressly  
9 reserves, all rights to challenge all such claims and allegations upon all procedural and factual  
10 grounds, including the assertion of any and all defenses, if the Final Judgment does not become  
11 Final for any reason, or in the event that the Effective Date does not occur.  
12

13 **II.     DEFINITIONS**

14           The following are certain definitions applicable to this Agreement. Definitions  
15 contained elsewhere in the body of this Agreement also shall be effective.  
16

17           1.       “Class” – means all non-exempt hourly individuals who were employed by  
18 Morgan in the State of California at Morgan’s Riverside facility at any time during the  
19 Settlement Period.

20           2.       “Class Representative Enhancement” – means the sum to be paid to Fernandez  
21 as service for his role as Class Representative, which shall be paid from the Gross Settlement  
22 Fund.

23           3.       “Effective Date” – means the date by which both of the following have  
24 occurred: (a) this Settlement is finally approved by the Superior Court for the County of  
25 Riverside; and (b) the court’s Order and Final Judgment Approving Class Settlement (“Final  
26 Judgment”) becomes Final.  
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1           4.       “Final” – means the latest of: (a) if there is an appeal of the trial court’s Final  
2 Judgment in the Litigation, the date of final affirmance on an appeal or the date of dismissal of  
3 such appeal; or (b) if one or more objections are submitted and not withdrawn, the expiration  
4 date of the time for filing or noticing any appeal of the Final Judgment; or (c) if no objections  
5 are made, date the Court enters the Final Judgment.

6           5.       “Final Judgment” – refers to the Final Judgment and Order Approving Class  
7 Settlement.

8           6.       “Final Approval Hearing” – means the hearing to be conducted by the Superior  
9 Court for the County of Riverside to determine whether to enter the Final Judgment finally  
10 approving and implementing the terms of this Agreement.

11           7.       “Gross Settlement Fund” – refers to Five Hundred Thousand Dollars  
12 (\$500,000), which is the amount Morgan shall be required to pay under this Agreement (not  
13 including employer’s payroll taxes). The \$500,000 Gross Settlement Fund shall consist of the  
14 following elements: (a) Plaintiff’s Attorneys’ Fees; (b) Plaintiff’s Litigation Expenses; (c)  
15 Class Representative Enhancement; (d) Settlement Administration Expenses; (e) PAGA  
16 Payment to the LWDA; and (f) Net Settlement Fund, as defined below.

17           8.       “Litigation” – means the action herein, entitled *Gabriel Fernandez vs. Morgan*  
18 *Truck Body, et al.*, pending in the Riverside County Superior Court as case number RIC  
19 1308626.  
20

21           9.       “LWDA” – means the California Labor and Workforce Development Agency.  
22

23           10.      “Motion for Preliminary Approval” – refers to the Motion for Preliminary  
24 Approval of the Settlement and its supporting papers.  
25

26           11.      “Net Settlement Fund” – means the Gross Settlement Fund, less all of the  
27 following: (a) Plaintiff’s Attorneys’ Fees; (b) Plaintiff’s Litigation Expenses; (c) Class  
28

1 Representative Enhancement; (d) Settlement Administration Expenses; and (e) PAGA Payment  
2 to the LWDA.

3 12. “Notice” – refers to the Notice of Pendency of Class Action, Proposed  
4 Settlement and Hearing Date for Court Approval, substantially in the form attached hereto as  
5 Exhibit A.

6 13. “Order Granting Preliminary Approval” – refers to the order or statement of  
7 decision preliminarily approving the Settlement.

8 14. “PAGA Payment to the LWDA” – means 75% of the portion of the Gross  
9 Settlement Fund that the Parties have designated as representing the recovery of civil penalties  
10 pursuant to claims brought under the Labor Code Private Attorneys General Act of 2004.

11 15. “Parties” – means Plaintiff Gabriel Fernandez (“Fernandez”) individually and in  
12 his capacity as Class Representative; and Morgan Truck Body, LLC (“Morgan”).

13 16. “Plaintiff” – means Gabriel Fernandez, individually and in his capacity as Class  
14 Representative.  
15

16 17. “Plaintiff’s Attorneys” – means Rastegar Law Group, APC.

17 18. “Plaintiff’s Attorneys’ Fees” – refers to the amount awarded to Plaintiff’s  
18 Attorneys by the Superior Court for the County of Riverside for prosecuting and obtaining a  
19 settlement of the Litigation.  
20

21 19. “Preliminary Approval Hearing” – means the hearing to be conducted by the  
22 Superior Court for the County of Riverside to determine whether to grant the Motion for  
23 Preliminary Approval.  
24

25 20. “Settlement” – means the settlement of the Litigation and related claims  
26 effectuated by this Agreement.

27 21. “Settlement Administration Expenses” – means those expenses of effectuating  
28 and administering the Settlement, i.e., the costs incurred by the Settlement Administrator, the

1 costs of giving notice to the Class, the costs of administering and disbursing the Net Settlement  
2 Fund, and the fees of the Settlement Administrator approved by the court.

3 22. “Settlement Administrator” – means or refers to Phoenix Class Action  
4 Administration Solutions, designated by the Parties to effectuate the Settlement.

5 23. “Settlement Class” – means all those persons who are members of the Class and  
6 who have not properly and timely opted out of the Litigation.

7 24. “Settlement Class Member” – means any person who is included in the  
8 Settlement Class.

9 25. “Settlement Payments” – means the amounts to be paid from the Net Settlement  
10 Fund to individual Settlement Class Members.

11 26. “Settlement Period” – means July 30, 2009 to and including the date the court  
12 grants preliminary approval of the settlement described in this Agreement, or May 15, 2017,  
13 whichever occurs first.  
14

### 15 **III. SETTLEMENT TERMS**

16 Fernandez and Morgan agree as follows:

#### 17 **1. Scope of Settlement:**

18 The Settlement described herein will resolve fully and finally all Settlement Class  
19 Members’ Released Claims as described in Section III, Paragraph 6, and all individual claims  
20 of Fernandez (if any remain, following the prior settlement of individual claims), as described  
21 in Section III, Paragraph 7.  
22

#### 23 **2. Settlement Consideration:**

24 Subject to court approval, and in consideration for the release and settlement described  
25 in this Agreement, Morgan shall pay the Gross Settlement Fund to the Settlement Class  
26 Members, Fernandez, Plaintiff’s Attorneys, the Settlement Administrator, and the LWDA in  
27 the manner specified in this Agreement. Payment of the Gross Settlement Fund under the  
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1 terms described in this Agreement shall be the sole financial obligation of Morgan under this  
2 Agreement (not including employer's payroll taxes). The Gross Settlement Fund shall be used:  
3 (1) to satisfy the claims of all Settlement Class Members, as specified herein; (2) to satisfy the  
4 award of Plaintiff's Attorneys' Fees; (3) to satisfy the award of Plaintiff's Litigation Expenses;  
5 (4) to satisfy the Class Representative Enhancement; (5) to satisfy Settlement Administration  
6 Expenses incurred in this action; and (6) to satisfy the PAGA Payment to the LWDA. The  
7 Gross Settlement Fund does not include the employer's share of payroll taxes on the portion of  
8 payments to Settlement Class Members allocated as wages, which Morgan shall be responsible  
9 for paying. The Gross Settlement Fund plus the employer's share of payroll taxes on the  
10 portion of payments to Settlement Class Members allocated as wages shall constitute the  
11 maximum amount that Morgan shall be required to pay under this Agreement.  
12

13 **3. Approval of Settlement:**

14 (a) Fernandez shall apply for approval of the Settlement as described in Section III,  
15 Paragraph 13 of this Agreement for purposes of effectuating this Settlement. Fernandez agrees  
16 not to request more than \$7,500 as a Class Representative Enhancement and for his general  
17 release of all claims, agrees not to seek more than 35% of the Gross Settlement Fund  
18 (\$175,000) for Plaintiff's Attorneys' Fees, and further agrees not to seek more than \$15,000 for  
19 Plaintiff's Litigation Expenses.  
20

21 (b) Morgan shall not oppose any application by Fernandez or Plaintiff's Attorney  
22 for a Class Representative Enhancement and consideration for his general release equal to or  
23 less than \$7,500, Plaintiff's Attorneys' Fees equal to or less than \$175,000, and Plaintiff's  
24 Litigation Expenses equal to or less than \$15,000.  
25

26 (c) Should the Superior Court for the County of Riverside decline to approve all  
27 material aspects of the Settlement or make rulings substantially altering the fundamental terms  
28 of this class settlement, except for the awards of the Class Representative Enhancement,

1 Plaintiff's Attorneys' Fees, and Plaintiff's Litigation Expenses (which shall be decided by the  
2 court), Morgan shall have no obligation to make any payment, including payment of the Gross  
3 Settlement Fund, and in that event if Morgan has made any payment, such monies shall be  
4 returned promptly to Morgan. However, Morgan will remain obligated to pay any expenses and  
5 fees incurred by the Settlement Administrator.

6 **4. Allocation of Net Settlement Fund Among Settlement Class Members:**

7 Each Settlement Class Member shall be entitled to a portion of the Net Settlement Fund  
8 based upon a weighted point system which will, in turn, be based upon the number of  
9 workweeks the Settlement Class Member met the criteria for inclusion in the Settlement Class.  
10 Class Members shall be awarded five points for each work week from July 30, 2009 to  
11 December 31, 2013, and one point for each work week from January 1, 2014 to the end of the  
12 class period. Class Members who no longer are employed by Morgan as of the end of the Class  
13 Period shall be awarded an additional five points as compensation for Labor Code § 203  
14 penalties. **Each Class Member shall receive payment of a pro rata portion of the total**  
15 **combined points of all the Settlement Class Members.** By way of example, if the Net  
16 Settlement Fund is \$300,000, and there are a total of 1,000,000 points between all Settlement  
17 Class Members, and Class Member "A" is awarded 1,000 points, Class Member A's portion of  
18 the Net Settlement Fund would be \$300 [ $\$300,000 \div 1,000,000 \text{ points} \times 1,000 \text{ points} = \$300$ ].

19 **5. Tax Treatment of Payments to Settlement Class Members:**

20 The Settlement Payments are payments for all claims asserted in the Complaint or that  
21 reasonably could have been asserted based on the claims and allegations contained in the  
22 Complaint. Of the payments to individual Settlement Class Members, 25% shall be designated  
23 as wages subject to payroll withholding to be reported on IRS Form W2s where required by  
24 law, and 75% shall be designated as interest and penalties to be reported on IRS Form 1099s  
25 where required by law. Morgan shall be responsible for paying the employer's share of payroll  
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1 taxes on any amounts allocated as wages. Each Settlement Class Member shall be responsible  
2 for remitting to state and/or federal taxing authorities any applicable taxes which may be owed  
3 on the portion of his or her Settlement Payment or Class Representative Enhancement. The  
4 Settlement Administrator shall report all required information to the appropriate taxing  
5 authorities regarding all payments made pursuant to this Agreement.

6 **6. Release of Claims by Settlement Class Members:**

7  
8 Upon the court's final approval of the class settlement and entry of final judgment, each  
9 class member shall be deemed to have released Morgan and its parent, J.B. Poindexter & Co.  
10 Inc. (Houston, TX), as well as its affiliated plant facilities: Morgan Truck Body, LLC  
11 (Ehrenberg, AZ); Morgan Truck Body, LLC (Lakeland, FL); Morgan Truck Body, LLC  
12 (Rydal, GA); Morgan Truck Body, LLC (Portland, OR); Morgan Truck Body, LLC (Denver,  
13 PA); Morgan Truck Body, LLC (Ephrata, PA); Morgan Truck Body, LLC (Morgantown, PA);  
14 Morgan Truck Body, LLC (Corsicana, TX); and Morgan Truck Body, LLC (Janesville, WI),  
15 and its and their respective shareholders, officers, directors, employees, administrators,  
16 fiduciaries, trustees, agents, and benefit plans (collectively the "Releasees"), from any and all  
17 "Settlement Class Members' Released Claims." For the purposes of this Agreement, the  
18 Settlement Class Members' Released Claims are defined as:  
19

20 Any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses,  
21 attorneys' fees, damages, actions or causes of action which are alleged, or reasonably  
22 could have been alleged based on the facts and claims asserted in the operative  
23 complaint filed in this action, including without limitation to, claims for restitution and  
24 other equitable relief, claims for unpaid wages (including claims for unpaid wages due  
25 to time rounding), unpaid overtime wages, meal period penalties, rest period penalties,  
26 waiting time penalties, unfair business practices, failure to provide accurate wage  
27 statements, failure to maintain required records, declaratory relief, accounting,  
28

1 injunctive relief, civil penalties brought under the Labor Code Private Attorneys  
2 General Act of 2004 (Labor Code Section 2698 *et seq.*), claims for penalties of any  
3 nature whatsoever arising out of the Released Claims, or any other benefit claimed on  
4 account of allegations and claims which are reasonably related to the allegations and  
5 claims asserted in the operative Complaint filed in this Litigation. This release shall  
6 apply to claims arising at any point up to the entry of preliminary approval of the class  
7 settlement. However, claims under the Fair Labor Standards Act (“FLSA”) shall be  
8 released only by those Class Members who negotiate their settlement checks. Class  
9 Members who do not negotiate their settlement Checks will not be deemed to have  
10 released claims under the FLSA.  
11

12 **7. Release of Claims by Fernandez:**

13 In addition to the Settlement Class Members’ Released Claims described above, in  
14 exchange for the consideration recited in this Agreement, to the extent that such claims have  
15 not previously been released, Fernandez releases, acquits, and discharges and covenants not to  
16 sue any of the Releasees for any claim, whether known or unknown, which Fernandez has ever  
17 had, or hereafter may claim to have, arising on or before the date that he signs this Agreement,  
18 including without limitation to, any claims relating to or arising out of any aspect of his  
19 employment, or the termination of his employment, with Morgan, any claims for unpaid  
20 compensation, wages, reimbursement for business expenses, penalties, or waiting time  
21 penalties under the California Labor Code, the California Business and Professions Code, the  
22 federal Fair Labor Standards Act, 29 U.S.C. section 201, *et seq.*, or any state, county or city law  
23 or ordinance regarding wages or compensation; any claims for employee benefits, including  
24 without limitation, any claims under the Employee Retirement Income Security Act of 1974;  
25 any claims of employment discrimination on any basis, including without limitation, any claims  
26 under Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1866, 42 U.S.C. section  
27  
28

1 1981, the Civil Rights Act of 1991, the Americans with Disabilities Act of 1991, the Family  
2 and Medical Leave Act of 1993, the California Government Code, or any other state, county or  
3 city law or ordinance regarding employment discrimination. Fernandez acknowledges and  
4 agrees that the foregoing general release is given in exchange for the consideration provided to  
5 him under this Agreement by Morgan. However, this release shall not apply to claims for  
6 workers' compensation benefits, unemployment insurance benefits, pension or retirement  
7 benefits, or any other claim or right that as a matter of law cannot be waived or released.  
8

9 Fernandez expressly waives any rights or benefits available to him under the provisions  
10 of Section 1542 of the California Civil Code, which provides as follows:

11 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
12 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT  
13 TO EXIST IN HIS OR HER FAVOR AT THE TIME OF  
14 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM  
OR HER MUST HAVE MATERIALLY AFFECTED HIS OR  
HER SETTLEMENT WITH THE DEBTOR.

15 Fernandez understands fully the statutory language of Civil Code section 1542, and,  
16 with this understanding, nevertheless elects to, and does, assume all risks for claims that have  
17 arisen, whether known or unknown, which he ever had, or hereafter may claim to have, arising  
18 on or before the date of his signature to this Agreement, and specifically waives all rights he  
19 may have under California Civil Code section 1542.  
20

21 **8. Opt-Outs:**

22 Individuals who fall within the definition of the Class may choose to opt out of the  
23 Class under such procedures specified in Section III, Paragraph 13(c)(v) of this Agreement.  
24 Any such persons who opt out of the Class ("Opt-Outs") will receive no part of the Net  
25 Settlement Fund or the Gross Settlement Fund. Every individual who falls within the definition  
26 of the Class who does not validly and timely opt out shall be deemed a Settlement Class  
27 Member. The Settlement Administrator shall provide copies of all written requests for  
28

1 exclusion from the Class to the Parties' counsel within ten calendar days of the final date to opt  
2 out. If more than five percent (5%) of the persons who fall within the definition of the Class  
3 become Opt-Outs as specified in this Agreement, then Morgan shall have the option to declare  
4 this Agreement null and void, if, within thirty calendar days following the expiration of the last  
5 time period in which to opt-out, Morgan serves written notice of Morgan's exercise of this  
6 option on Plaintiff's Attorney. All signatories and their counsel agree not to encourage opt-  
7 outs.  
8

9 **9. Denial of Liability:**

10 MORGAN DENIES THAT IT OR ANY OF ITS PARENTS, SUBSIDIARIES,  
11 AFFILIATES OR SUCCESSORS OR ANY OTHER RELEASEE HAS ENGAGED IN ANY  
12 UNLAWFUL ACTIVITY, HAS FAILED TO COMPLY WITH THE LAW IN ANY  
13 RESPECT, OR HAS ANY LIABILITY TO ANYONE UNDER THE CLAIMS ASSERTED  
14 IN THE LITIGATION. The Parties expressly acknowledge that this Agreement is entered into  
15 for the purpose of compromising highly disputed claims and that nothing herein is an admission  
16 of liability or wrongdoing by Morgan or any of the Releasees. Neither the Agreement nor any  
17 document prepared in connection with the Settlement may be admitted in any proceeding as an  
18 admission by Morgan or any of the Releasees, Fernandez, or any person within the definition of  
19 the Class. However, this paragraph and all other provisions of this Agreement notwithstanding,  
20 any and all provisions of this Agreement may be admitted in evidence and otherwise used in  
21 any and all proceedings to enforce any or all terms of this Agreement, or in defense of any  
22 claims released or barred by this Agreement.  
23  
24

25 **10. PAGA Allocation:** Ten Thousand Dollars (\$10,000) of the Gross Settlement  
26 Fund shall be designated as the recovery of civil penalties under the Labor Code Private  
27 Attorneys General Act of 2004 (PAGA). Of that amount, 75% (\$7,500) shall be distributed to  
28 the California Labor and Workforce Development Agency (LWDA). The remaining 25%

1 (\$2,500) shall become part of the Net Settlement Fund available for distribution to Settlement  
2 Class Members.

3 **11. Distribution of Net Settlement Fund:**

4 The Net Settlement Fund shall be distributed by the Settlement Administrator in  
5 accordance with the following eligibility requirements:

6 (a) Those persons who timely submit written requests for exclusion from the class  
7 pursuant to the Notice (“Opt-Outs”) are not entitled to any Settlement Payments.  
8

9 (b) Morgan, through the Settlement Administrator, shall make payments to  
10 Settlement Class Members as set forth in Section III, Paragraphs 4-5, above.

11 (c) Morgan will provide to the Settlement Administrator the best information  
12 available to it with respect to the full names, last known addresses, telephone numbers, Social  
13 Security numbers, and workweeks of the persons identified from its records as being Settlement  
14 Class Members.

15 **12. Settlement Administration:**

16 Settlement Administration Expenses, upon order of the court, shall be paid from the  
17 Gross Settlement Fund. All disputes relating to the Settlement Administrator’s ability and need  
18 to perform its duties shall be referred to the court if they cannot be resolved by the Parties. The  
19 Settlement Administrator shall regularly and accurately report to the Parties, in written form  
20 when requested, the substance of the work performed, including the amounts payable to  
21 individual Settlement Class Members and the total amount to be paid to all Settlement Class  
22 Members.  
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1           13.     **Preliminary Approval of Settlement:**

2           The Parties agree to the following procedures for obtaining preliminary approval of the  
3 Settlement, certifying a conditional Settlement Class, notifying Settlement Class Members, and  
4 obtaining final court approval of the Settlement:

5           (a)     **Class Certification for Settlement Purposes Only:** The Parties stipulate to  
6 certification of the Class for purposes of settlement only. If the court does not grant either  
7 preliminary approval or final approval of this Settlement, or if Morgan elects to exercise its  
8 option to declare the Agreement void as set forth in Section III, Paragraph 8, the Parties'  
9 stipulation on class certification will be void and of no further force or effect.  
10

11           (b)     **Motion for Preliminary Approval:** Fernandez shall file the Motion for  
12 Preliminary Approval of the Settlement and Proposed Order Granting Preliminary Approval of  
13 the Settlement with the supporting papers.

14           (c)     **Notice of Class Settlement:** Following entry of the Order Granting Preliminary  
15 Approval of the Settlement, the **Notice**, substantially in the form attached hereto as **Exhibit A**,  
16 shall be mailed to Class Members. Included with the Notice shall be the **Settlement Allocation**  
17 **Form**, substantially in the form attached hereto as **Exhibit B**, and the **Request for Exclusion**  
18 **Form**, substantially in the form attached hereto as **Exhibit C**.

19           (i)     Within 10 business days of preliminary approval, Morgan shall provide  
20 the Settlement Administrator with the following data for each Settlement Class Member: name,  
21 last known mailing address, home telephone number, and Social Security number, dates of  
22 employment, and workweeks during the Settlement Period when the Settlement Class Member  
23 met the criteria for inclusion in the Settlement Class.  
24

25           (ii)    Within 20 calendar days of preliminary approval, the Settlement  
26 Administrator shall mail the Notice, Settlement Allocation Form, and Request for Exclusion  
27 Form to all identified Settlement Class Members via U.S. Mail using the most current mailing  
28

1 address information available for Settlement Class Members from Morgan’s records or from a  
2 National Change of Address Search (NCOA). The deadline for requesting exclusion from the  
3 Settlement Class shall be 45 calendar days from mailing by the Settlement Administrator.  
4 (This deadline is referred to as the “Exclusion/Objection Deadline Date”). The U.S. Mail  
5 postmark shall be the sole means of determination of timeliness of submission of Requests for  
6 Exclusion, Objections, and/or Notices of Intent to Appear.

7 (iii) If Notice forms are returned because of incorrect addresses, the  
8 Settlement Administrator shall conduct a skip trace for more current addresses for Settlement  
9 Class Members and re-mail the Notice forms to any new addresses obtained. If new address  
10 information is obtained by return mail, the Settlement Administrator shall promptly forward the  
11 Notice to the addressee via first-class regular U.S. Mail indicating on the Notice the date it was  
12 re-mailed. The “Final Exclusion/Objection Deadline Date” for Class Members whose notices  
13 are re-mailed shall be 45 days from the date of mailing of re-mailed Notices, or 90 days from  
14 the date of the original mailing, whichever occurs first.

15 (iv) The Notice shall provide that the Class Members who wish to object to  
16 the Settlement must submit to the Settlement Administrator a written statement objecting to the  
17 Settlement. If a Class Member intends to appear at the Final Approval Hearing, the Class  
18 Member must submit to the Settlement Administrator a written Notice of Intent to Appear at  
19 the Final Settlement Hearing and object. Objections must be submitted to the Settlement  
20 Administrator by the Exclusion/Objection Deadline Date, or with regard to re-mailed notices,  
21 by the Final Exclusion/Objection Deadline Date. Notices of Intent to Appear must be  
22 submitted to the Settlement Administrator by the Exclusion/Objection Deadline Date, or with  
23 regard to re-mailed notices, by the Final Exclusion/Objection Deadline Date. Class Members  
24 who do not submit timely written objections in the manner specified above shall be deemed to  
25 have waived any objections and shall be foreclosed from making any objection (whether by  
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1 appeal or otherwise) to the Settlement. No individual who excludes himself or herself from the  
2 Settlement Class shall be entitled to object to the Settlement.

3 (v) The Notice shall include the option for Class Members to opt-out of the  
4 Settlement. Any Class Member wishing to opt out of the Settlement must comply with the  
5 deadline and procedures specified in the Notice for doing so. Class Members who fail to  
6 submit a written Request for Exclusion Form on or before the Exclusion/Objection Deadline  
7 Date (or Final Exclusion/Objection Deadline Date for re-mailed Notices) shall be bound by all  
8 terms of the Settlement and the Final Judgment entered in the Litigation if the Settlement is  
9 approved by the court, regardless of whether they have objected to the Settlement. Within 10  
10 calendar days after the Exclusion/Objection Deadline Date, or the Final Exclusion/Objection  
11 Deadline Date if Notices have been re-mailed, the Settlement Administrator shall provide the  
12 Parties with a complete and accurate list of all Settlement Class Members who have validly and  
13 timely requested exclusion from the Class.  
14

15 (vi) The Settlement Allocation Form shall state the Class Member's dates of  
16 employment within the Class Period according to the records of Morgan, and shall state the  
17 approximate amount of the Class Member's share of the proposed Settlement. The Settlement  
18 Allocation Form shall request corrected and/or updated name, address, and telephone  
19 information, and shall permit the Class Member to challenge the dates of employment stated on  
20 the form by submitting the Class Member's contentions regarding his or her dates of  
21 employment, and by submitting appropriate documentation of the same. Any such challenges  
22 must be mailed to the Settlement Administrator by the Exclusion/Objection Deadline, or the  
23 Final Exclusion/Objection Deadline for re-mailed Notices. Any such challenges shall be  
24 resolved by the Settlement Administrator, whose decision shall be final, binding, and non-  
25 appealable.  
26  
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1 (d) **Non-Solicitation of Opt-Outs / Objections:** The Parties agree that neither they  
2 nor their counsel will solicit or otherwise encourage directly or indirectly Class Members to  
3 request exclusion from the Class, object to the Settlement, or appeal the Final Judgment.

4 (e) **Final Approval Hearing:** A Final Approval Hearing to determine final  
5 approval of the Settlement shall be conducted subject to the calendar of the court. No later than  
6 30 calendar days prior to the Final Approval Hearing, the Settlement Administrator shall  
7 provide counsel for the Parties with a Declaration of Compliance to be filed with the Court by  
8 Class Counsel. No later than 14 calendar days before the Final Approval Hearing, or upon such  
9 other schedule as may be directed by the Court, Fernandez shall file a Motion for Final  
10 Approval, Memoranda of Points and Authorities in Support of the Settlement, and Request for  
11 Attorneys' Fees and Costs and Class Representative Enhancement. Prior to the Final Approval  
12 Hearing, Class Counsel shall present the proposed Final Judgment and Order Approving Class  
13 Settlement ("Final Judgment") to the court for its approval and entry. After entry of the Final  
14 Judgment, the court shall retain continuing jurisdiction over the Litigation under California  
15 Rule of Court 3.769(h) for purposes of (i) enforcing this Settlement Agreement, (ii) addressing  
16 settlement administration matters, and (iii) addressing such post-Final Judgment matters as may  
17 be appropriate under court rules or applicable law.  
18  
19

20 **14. Funding and Distribution of Gross Settlement Fund:**

21 (a) **Funding and Distribution Timelines:** Morgan shall pay the Settlement  
22 Administrator the Gross Settlement Fund within ten (10) calendar days after the Final  
23 Judgment becomes Final. The Settlement Administrator shall distribute the entire Gross  
24 Settlement Fund within fifteen (15) calendar days after receipt of the settlement payment from  
25 Morgan.  
26

27 (b) **Payment of Plaintiff's Attorneys' Fees:** Plaintiff's Attorneys shall submit an  
28 application to the court for approval of Plaintiff's Attorneys' Fees. Plaintiff's Attorneys

1 anticipate requesting that the court approve \$175,000 as Plaintiff's Attorneys' Fees. As set  
2 forth above, Plaintiff's Attorneys' Fees shall come from the Gross Settlement Fund. The  
3 amount of court-awarded Plaintiff's Attorneys' Fees shall be paid by the Settlement  
4 Administrator to Plaintiff's Attorneys. The Settlement Administrator shall issue a Form 1099  
5 to Plaintiff's Attorneys for the payment. Morgan agrees not to oppose the request for Attorneys  
6 fees so long as it does not exceed \$175,000.00.

7  
8 (c) **Payment of Plaintiff's Litigation Expenses:** Plaintiff's Attorneys shall submit  
9 an application to the court for approval of Plaintiff's Litigation Expenses. Plaintiff's Attorneys  
10 anticipate requesting that the court approve no more than \$15,000 as Plaintiff's Litigation  
11 Expenses. As set forth above, Plaintiff's Litigation Expenses shall come from the Gross  
12 Settlement Fund. The amount of court-awarded Plaintiff's Litigation Expenses shall be paid by  
13 the Settlement Administrator to Plaintiff's Attorneys. The Settlement Administrator shall issue  
14 a Form 1099 to Plaintiff's Attorneys for the payment. Morgan agrees not to oppose the request  
15 for Litigation Expenses so long as it does not exceed \$15,000.

16  
17 (d) **Payment of Class Representative Enhancement and Compensation for**  
18 **General Release:** Upon court approval, Fernandez shall be paid a Class Representative  
19 Enhancement and compensation for his general release, which will be paid from the Gross  
20 Settlement Fund. Fernandez intends to request that the court approve a payment in the amount  
21 of \$7,500 as Class Representative Enhancement and Morgan agrees not to object to a Class  
22 Representative Enhancement of \$7,500 for Fernandez. The Settlement Administrator shall  
23 make payment of the Class Representative Enhancement to Fernandez. The Settlement  
24 Administrator shall issue a form 1099 to Fernandez for the payment.

25  
26 (e) **Payment of Settlement Expenses:** The Settlement Administrator shall receive  
27 such amount approved by the Parties and by the Court, from the Gross Settlement Fund.  
28

1 (f) **Approval of Plaintiff's Attorneys' Fees, Plaintiff's Litigation Expenses and**  
2 **Class Representative Enhancement:** Recovery of Plaintiff's Attorneys' Fees, Plaintiff's  
3 Litigation Expenses and the award of a Class Representative Enhancement are not conditions to  
4 this Agreement, and are to be considered by the court separately from the fairness,  
5 reasonableness, adequacy and good faith of the Settlement. Any order or proceeding relating to  
6 the application by Plaintiff's Attorneys of an award of attorneys' fees, costs or Class  
7 Representative Enhancement, or any appeal from any order relating thereto or reversal or  
8 modification thereof, shall not operate to terminate or cancel this Agreement, or affect or delay  
9 the finality of the Final Judgment. To the extent the court does not approve the full amount of  
10 Plaintiff's Attorneys' Fees, Plaintiff's Litigation Costs, Settlement Administration Expenses, or  
11 the Class Representative Enhancement described above, the non-approved amounts will be  
12 allocated to the Net Settlement Fund for distribution to the Settlement Class Members  
13 according to the allocation formula set forth above.

14  
15 (g) **Payments to Settlement Class Members:** After deducting Plaintiff's  
16 Attorneys' Fees, Plaintiff's Litigation Expenses, the Class representative Enhancement,  
17 Settlement Administration Expenses, and the PAGA Payment to the LWDA from the Gross  
18 Settlement Fund, the Settlement Administrator shall distribute the entire Net Settlement Fund  
19 to the Settlement Class Members according to the allocation formula described in Section III,  
20 paragraph 4. The Settlement Administrator shall mail a check to each Settlement Class  
21 Member via U.S. Mail using the most current mailing address information available, including  
22 any address updates obtained through NCOA searches, Social Security Number searches,  
23 address changes self-reported by class members, or any other source. However, if any Notice  
24 package is returned to the Settlement Administrator, and the Settlement Administrator is unable  
25 to obtain updated address information, the Settlement Administrator shall not mail a check to  
26 the Class Member, but shall instead treat the payment as an uncashed check. If any Settlement  
27  
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1 Class Member has not cashed his or her Settlement Payment check within ninety (90) days of  
2 issuance, the Settlement Administrator shall mail that Settlement Class Member a postcard  
3 reminding him/her of the deadline to cash such check and providing information as to how to  
4 obtain a reissued check in the event the check was lost, stolen or misplaced. (Reminder  
5 Postcards will not be mailed for payments not made on account of lack of updated address  
6 information.) Any checks issued to Settlement Class Members shall remain valid and  
7 negotiable for one hundred eighty (180) days from the date of issuance. Any payments  
8 represented by checks not cashed within that period of time, and any payments not made on  
9 account of lack of updated address information, shall be delivered to the State of California's  
10 unclaimed property fund in the name of the respective Class Members to whom the payments  
11 are due.  
12

13 **15. Waiver of Rights:**

14 (a) The Settlement Class Members waive any right they may have to unpaid wages,  
15 overtime pay, damages or penalties for any claims alleged in the Complaint, or any other matter  
16 alleged in or reasonably related to the allegations in the Complaint, except as provided for in  
17 this Agreement.  
18

19 (b) The Parties stipulate and agree that the consideration paid to the Settlement  
20 Class Members pursuant to this Agreement compensates the Class for any and all claims  
21 alleged in the Complaint.  
22

23 (c) The Parties stipulate and agree that, upon fulfillment of the obligations  
24 contained in this Agreement, the Class will be adequately compensated for all violations  
25 alleged in the Complaint and to which they otherwise may be entitled.  
26

27 **16. Notices:**  
28

1 Unless otherwise specifically provided herein, all notices, demands or other  
2 communications given hereunder shall be in writing and shall be deemed to have been duly  
3 given as of the fifth day after mailing by United States mail, addressed as follows:

4 To Plaintiff's Attorneys:

5 Farzad Rastegar, Esq.  
6 Douglas W. Perlman, Esq.  
7 RASTEGAR LAW GROUP, APC  
8 22760 Hawthorne Boulevard, Suite 200  
9 Torrance, CA 90505  
10 Tel: (310) 961-9600 / Fax: (310) 961-9094

9 To Counsel for Defendant:

10 Peter C. Flanderka (SBN 144538)  
11 pflanderka@fisherphillips.com  
12 Andrew J. Hoag (SBN 283130)  
13 ahoag@fisherphillips.com  
14 FISHER & PHILLIPS LLP  
15 444 S. Flower Street, Suite 1590  
16 Los Angeles, California 90071  
17 Tel: (213) 330-4500 / Fax: (213) 330-4501

18 **17. Class Size:**

19 Morgan represents that the Class size as of July 30, 2013, is 350 Class Members.

20 Notwithstanding any other provision in this Agreement, if the Class size, excluding new hires  
21 after July 30, 2013, is more than 10% larger than 350 Class Members (i.e., if there are more  
22 than 385 Class Members), the amount of the Gross Settlement Fund shall be increased in an  
23 amount which is proportional to the increase over 350 Class Members. By way of example, if  
24 the Class size as of July 30, 2013 ultimately includes 420 Class Members (20% increase over  
25 350), then the Gross Settlement Fund shall be increased by 20% (\$100,000.00).  
26  
27  
28

1           **18. No Publicity:**

2           The Parties and their respective counsel shall not issue any press release or media  
3 release or have any communication with the press or media regarding this settlement.  
4 Plaintiff's Attorneys may, however, respond to any inquiries from Settlement Class Members  
5 regarding the Settlement.

6           **19. Entire Agreement:**

7           After this Agreement is fully executed by all Parties and their attorneys of record, this  
8 Agreement shall constitute the entire agreement relating to settlement of this Litigation and the  
9 causes of action and defenses asserted therein, and it shall then be deemed that no oral  
10 representations, warranties or inducements have been made to any party concerning this  
11 Agreement other than the representations, warranties and covenants expressly stated in this  
12 Agreement.  
13

14           **20. Authorization:**

15           Plaintiff's Attorneys warrant and represent that they are authorized by Fernandez, for  
16 whom they are the attorneys of record, and the attorneys of record for Morgan warrant and  
17 represent that they are authorized by Morgan, to take all appropriate action required or  
18 permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to  
19 execute any other documents required to effectuate the terms of this Agreement. The Parties  
20 and their counsel will cooperate with each other and use their best efforts to effect the  
21 implementation of the Settlement. In the event the Parties are unable to reach agreement on the  
22 form or content of any document needed to implement the Agreement, or on any supplemental  
23 provisions that may become necessary to effectuate the terms of this Agreement, the Parties  
24 agree to seek the assistance of the court, and in all cases all such documents, supplemental  
25 provisions and assistance of the court shall be consistent with this Agreement.  
26  
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1           21.     **Jurisdiction:**

2           The court shall have continuing jurisdiction to resolve any dispute which may arise with  
3 regard to the terms and conditions of this Agreement, subject to approval by the court. Except  
4 where the context indicates otherwise, references to the court shall also include any other courts  
5 that take jurisdiction of the Litigation, or any to whom the court has referred the matter.

6           22.     **Modification:**

7           This Agreement, and any and all parts of it, may be amended, modified, changed, or  
8 waived only by an express written instrument signed by all Parties or their successors-in-  
9 interest or their counsel. The Parties acknowledge that modifications to this Agreement may be  
10 necessary prior to Preliminary and/or Final Approval. The parties hereby authorize and direct  
11 their attorneys of record to make such modifications on their behalf, and the signature of an  
12 attorney of record shall be sufficient to bind the respective party with regard to any  
13 amendments to this Agreement.  
14

15           23.     **Successors:**

16           This Agreement shall be binding upon, and inure to the benefit of, the successors of  
17 each of the Parties.  
18

19           24.     **California Law:**

20           All terms of this Agreement and its Exhibits shall be governed by and interpreted  
21 according to the laws of the State of California, without giving effect to any conflict of law  
22 principles or choice of law principles.  
23

24           25.     **Representation by Counsel:**

25           The Parties have each been represented by counsel and have cooperated in the drafting  
26 and preparation of this Agreement. This Agreement shall not be construed against any party on  
27 the basis that the party was the drafter or participated in the drafting.  
28

1           26.     **Counterparts:**

2           This Agreement may be executed in one or more counterparts. All executed  
3 counterparts and each of them shall be deemed to be one and the same instrument. Any  
4 executed counterpart shall be admissible in evidence to prove the existence and contents of this  
5 Agreement.

6           27.     **Incorporation of Exhibits:**

7           All exhibits attached hereto are incorporated by reference and are a material part of this  
8 Agreement. Any notice, order, judgment or other exhibit that requires approval of the court  
9 must be approved without material alteration from its current form in order for this Agreement  
10 to become effective.

11           28.     **Reasonableness of Settlement:**

12           The Parties believe that this is a fair, reasonable and adequate Settlement and have  
13 arrived at this Settlement through arms-length negotiations, taking into account all relevant  
14 factors, present and potential.

15           29.     **Return of Documents and Data:**

16           If Counsel for Morgan requests in writing that they do so, within thirty days after the  
17 filing of the Final Judgment pursuant to this Agreement, Plaintiff's Attorneys shall return all  
18 documents and data received from Morgan or confirm destruction of any such documents  
19 and/or data.

20           30.     **Headings:**

21           The headings contained in this Agreement are for reference only and are not to be  
22 construed as a part of the Agreement.

23           31.     **Waiver of Right to Object:**

24           By signing this Agreement, Fernandez agrees to be bound by its terms and agrees not to  
25 request to be excluded from the Class and agrees not to object to any of the terms of the  
26  
27  
28



1 Agreement. Any such request for exclusion or objection by Fernandez shall be void and of no  
2 force or effect.

3 **32. No Re-employment:**

4 Plaintiff Gabriel Fernandez agrees not to seek or accept employment from Morgan  
5 Truck Body in the future. Should Plaintiff inadvertently become employed by Morgan in the  
6 future, Plaintiff agrees that Morgan may terminate such employment at any time, with or  
7 without cause.

8 **33. Final Order and Judgment:**

9 Upon final approval of the settlement, a Final Order and Judgment shall be entered by  
10 the court which shall, among other things:

11 (a) Grant final approval to the settlement as fair, reasonable, adequate, in good faith  
12 and in the best interests of the Class, as a whole, and order the parties to carry out the  
13 provisions of this Agreement.

14 (b) Award amounts for Plaintiff's Attorneys' Fees, Plaintiff's Litigation Expenses,  
15 the Class Representative Enhancement, Settlement Administration Expenses, and the PAGA  
16 payment.

17 (c) Adjudge that the Settlement Class Members are conclusively deemed to have  
18 released Morgan and the Releasees of and from any and all rights, claims, demands, liabilities,  
19 causes of action, liens and judgments arising out of or in any way related to the matters set  
20 forth in the Complaint (with the exception of FLSA claims, which will be released by  
21 individual Class Members only upon negotiation of their individual settlement checks).

22 (d) Bar and permanently enjoin each Settlement Class Member from prosecuting  
23 against the Releasees any and all of the Released Claims which the Settlement Class Members  
24 have arising out of, based upon, or otherwise related to the allegations in the Complaint.

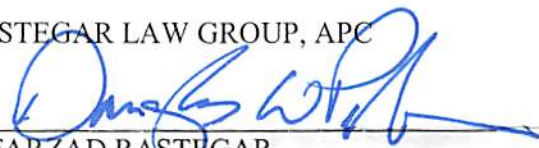
25 (e) Reserve continuing jurisdiction as provided herein.

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Dated: 07-31, 2017

  
GABRIEL FERNANDEZ

Dated: 8/2, 2017

RASTEGAR LAW GROUP, APC  
By   
FARZAD RASTEGAR  
DOUGLAS W. PERLMAN  
Attorneys for Plaintiff GABRIEL FERNANDEZ

Dated: \_\_\_\_\_, 2017

MORGAN TRUCK BODY, LLC  
By \_\_\_\_\_  
NORB MARKERT

Dated: \_\_\_\_\_, 2015

FISHER & PHILLIPS LLP  
By \_\_\_\_\_  
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Attorneys for Defendant MORGAN TRUCK BODY, LLC