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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF ALAMEDA  
NORTHERN DIVISION**

ALEJANDRO GUZMAN, individually and  
on behalf of all others similarly situated,

Plaintiffs,

v.

PICK-N-PULL AUTO DISMANTLERS, a  
California corporation and DOES 1-20,  
inclusive.

Defendants.

Case No. RG16816283

**STIPULATION OF SETTLEMENT AND  
PLAINTIFFS' REQUEST TO CERTIFY THE  
CLASS FOR PURPOSES OF SETTLEMENT  
ONLY**

*Attachments:*

- Exhibit 1** – First Amended Class Action Complaint
- Exhibit 2** – (Proposed) Order of Preliminary Approval
- Exhibit 3** – (Proposed) Notice of Pendency of Class  
Action and Proposed Settlement

This Stipulation of Settlement is intended to resolve all class action and individual claims set forth in the above-entitled actions.

**1. DEFINITIONS.**

**1.1** “Agreement,” “Settlement” or “Settlement Agreement” means the instant Stipulation of Settlement to settle the Class Actions.

**1.2** “Claims Administrator” means the firm of CPT Group, Inc. or another mutually agreed upon third-party administrator.

**1.3** “Class Member” means every employee who was employed by PNP in California in a nonexempt position between April 26, 2013 and the date of entry of the Preliminary Approval Order.

1 As of May 8, 2019, the parties estimated there were 3,387 Class Members. As of May 24,  
2 2019, the actual number of Class Members was 3,258. If the number of Class Members increases to  
3 more than 5% above the 3,387 estimate between May 8, 2019, and the date of Preliminary Approval,  
4 the gross Settlement Amount shall be increased by the same number of percentage points above 5%  
5 by which the actual number of Class Members exceeds 3,387. For example, if the actual number of  
6 Class Members is determined to be 7% higher than 3,387, the gross Settlement Amount shall be  
7 increased by 2%

8 **1.4 “Class Period”** means the period from April 26, 2013 through the date of entry of the  
9 Preliminary Approval Order.

10 **1.5 “Class Representative Enhancement”** means the sum to be paid to Alejandro  
11 Guzman as an enhancement for his work associated with his role and participation as the class  
12 representative and for the risks attendant to such role and participation.

13 **1.6 “Court”** means the Superior Court in and for the County of Alameda.

14 **1.7 “Final Approval”** means the date on which the Court’s Judgment becomes final,  
15 which shall be deemed to be the last to occur of the following:

16 (a) if there are no objections to the settlement, then the date of final approval by the  
17 Court;

18 (b) if there are objections to the settlement, the day immediately following the expiration  
19 of the time period for filing an appeal, request for review or writ; or

20 (c) if an appeal, review or writ is sought from the Judgment, the day after the Judgment is  
21 affirmed or the appeal, review or writ is dismissed or denied, and the Judgment is no longer subject  
22 to further judicial review.

23 **1.8 “First Mailing Date”** means the date on which the Claims Administrator sends the  
24 first Notice of Preliminary Approval to any Class Member.

1           **1.9 “Judgment”** means the entry of judgment of final approval for the settlement. The  
2 Court shall retain jurisdiction over the Parties to enforce the terms of the Agreement pursuant to  
3 Code of Civil Procedure § 664.6.

4           **1.10 “Litigation”** means the lawsuit filed in this action.

5           **1.11 “Net Settlement Amount”** means the Settlement Amount minus Plaintiff’s  
6 Counsel’s fees and costs, the charges and expenses of the Claims Administrator, the Class  
7 Representative’s Enhancement, and seventy-five percent (75%) of the total PAGA Penalties paid to  
8 the Labor and Workforce Development Agency as set forth in Section 7 below.

9           **1.12 “Notice of Preliminary Approval”** means the notice sent to Class Members upon  
10 the Court’s Preliminary Approval in the form attached to this Stipulation of Settlement as Exhibit  
11 “3”.

12           **1.13 “PAGA or PAGA Penalties”** refers to California Labor Code section 2698, *et seq.*  
13 and/or any civil penalties provided for by that statutory scheme.

14           **1.14 “Parties”** means Plaintiff and PNP.

15           **1.15 “Plaintiff”** shall mean Alejandro Guzman.

16           **1.16 “Plaintiff’s Counsel”** means Makarem & Associates and Michael H. Kim, APC.

17           **1.17 “PNP”** means Pick-N-Pull Auto Dismantlers, a California General Partnership, its  
18 parent company, partners, subsidiaries and affiliates.

19           **1.18 “Preliminary Approval”** means the Court’s Order preliminarily approving the  
20 settlement in the form attached hereto as Exhibit “2”.

21           **1.19 “Settlement Amount” or “Settlement Payment”** means the total consideration of  
22 Two Million Five Hundred Thousand Dollars (\$2,500,000) from which all Class Member payments,  
23 Plaintiff’s Counsel’s fees and costs, Class Representative’s Enhancement, the payment to the Labor  
24 and Workforce Development Agency, and costs and expenses of administration of the Settlement  
25 shall be paid.



1 in their entirety, would, if proven, authorize the Court to grant relief pursuant to the statutes and  
2 common law cited or relied upon.

3 **4. STATEMENT OF NO ADMISSION.**

4 **4.1 Denial of Liability.** PNP denies any and all liability for Plaintiff's claims and/or  
5 causes of action stated in the Litigation. This Agreement does not constitute, and is not intended to  
6 constitute, and will not be deemed to constitute, an admission by PNP as to the merits, validity, or  
7 accuracy of any of the allegations or claims made against it in the Litigation.

8 **4.2 Use of Evidence.** Nothing in this Agreement, or any action taken to implement it,  
9 nor any statements, discussions or communications, nor any materials exchanged during the course  
10 of the negotiations leading to the Agreement, is intended by the parties to, nor will any of the  
11 foregoing constitute, be introduced, be used or be admissible in any way in this case or any other  
12 judicial, arbitral, administrative, investigative or other forum or proceeding, as evidence of any  
13 violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or  
14 any obligation or duty at law or in equity. Notwithstanding the foregoing, this Agreement may be  
15 used in any proceeding in the Court that has as its purpose the interpretation, implementation, or  
16 enforcement of the Agreement or any orders or judgments of the Court entered into in connection  
17 therewith.

18 **4.3 No Admission of Liability.** No evidence produced or created by Plaintiff or any  
19 Class Member in connection with the prosecution, settlement or administration of such settlement  
20 shall constitute, and will not be deemed to constitute, an admission by PNP of any violation of any  
21 federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or  
22 duty at law or in equity.

23 **4.4 Propriety of Class Certification.** Plaintiff seeks class certification under the terms  
24 of this Agreement for settlement purposes only. Nothing in this Agreement will be construed as a  
25 request, admission or acknowledgment of any kind by PNP that any class should be certified or  
26 given collective treatment in the Litigation or in any other action or proceeding. Further, neither this  
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1 Agreement nor the Court's actions with regard to this Agreement, nor the actions of any Class  
2 Member with respect to this Agreement, will be admissible in any court or other tribunal regarding  
3 the propriety of class certification or collective treatment. In the event that this Agreement is not  
4 approved by the Court or any appellate court, or is terminated, or otherwise fails to be enforceable,  
5 PNP will not be deemed to have waived, limited, or affected in any way, any of its objections or  
6 defenses in the Litigation, including, but not limited to, its opposition to the certification of a class  
7 for the purposes of litigation.

8 **4.5 No Preclusive Effect.** Neither Plaintiff nor PNP concede the merits of the other's  
9 contentions regarding the suitability of the Litigation for class certification under the Code of Civil  
10 Procedure, but have agreed to resolve this action through this Settlement in recognition of the  
11 expense and risk of continuing with the action and in the belief that the settlement is fair, adequate  
12 and reasonable. Therefore, in entering into this Agreement, it is the Parties' mutual intention and  
13 agreement that if the Settlement does not become final as a consequence of any appeal taken from  
14 the Court's grant of Final Approval, the class certification will be vacated, Plaintiff and PNP will  
15 retain all rights to support or oppose certification for the purposes of litigation, and any certification  
16 arising from the Court's Final Approval of this Settlement may not be used by Plaintiff or PNP in  
17 support of any argument for or against certification of any class. Neither the provisional certification  
18 nor, if ultimately approved, the certification of the Class to consummate this Settlement constitutes a  
19 determination by the Court that a plaintiff class should be certified for purposes of trial. Thus, if any  
20 appeal is successful in the Court of Appeal, the Court's certification of the class for settlement  
21 purposes shall be deemed void *nunc pro tunc*. This Agreement is explicitly conditioned on the  
22 Court's confirmation that its approval of class certification for settlement purposes pursuant to this  
23 Agreement shall not be accorded *res judicata*, judicial estoppel, collateral estoppel, or any other  
24 form of preclusive effect concerning the suitability of the Litigation for certification under California  
25 Code of Civil Procedure in the event that the Settlement does not become final as a consequence of  
26 any appeal from the Court's Order of Final Approval. In the event that the Court fails to adopt the  
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1 foregoing acknowledgement in its orders, PNP shall be entitled, in its sole discretion, to withdraw  
2 from this Settlement and the Parties shall return to the *status quo ante* as though they had not entered  
3 into this Agreement.

4 **5. WAIVER AND RELEASE.**

5 **5.1 Release and Waiver of Claims.** Plaintiff, on behalf of himself and all Class  
6 Members (except any Class Members who timely “opt-out” pursuant to Section 6.3 below), hereby  
7 waives, releases and promises never to assert in any forum any and all claims, rights, demands or  
8 causes of action known and unknown, against PNP, that were asserted on a class or PAGA basis in  
9 the Litigation based upon any of the conduct alleged in the Litigation, as follows:

10 (a) Any and all claims for the payment of unpaid wages, including but not limited to  
11 overtime wages, “off-the-clock” wages, and compensation associated with non-compliant meal or  
12 rest periods, penalties (including PAGA Penalties, as well as penalties for alleged violations of  
13 California Labor Code sections 201, 202, 203, 204, and 226), interest, costs, attorneys’ fees,  
14 restitution, conversion, common count, fraud, breach of contract, unjust enrichment, compensatory  
15 damages, liquidated damages, punitive damages, injunctive relief, and any other remedies available  
16 at law or equity for wages allegedly owed to Plaintiff and with respect to the Class Members only to  
17 the extent that such claims were asserted or could have been asserted in the Litigation based upon  
18 any of the conduct alleged in the Litigation and which arose from their employment with PNP in  
19 California during the relevant Class Period. Subject to the foregoing, the claims being waived  
20 include any and all claims, rights, demands or causes of action, that were brought or could have been  
21 brought in the Litigation on behalf of Plaintiff or a Class Member under any federal, state or local  
22 statutory or common law, including, but not limited to, California Labor Code §§ 201-204, 210, 218,  
23 218.5, 218.6, 226, 226.3, 226.7, 512, 558, 1197.1, 1194, 1198, 2698, *et seq.*, 2802 *et seq.*, all related  
24 provisions of the California Industrial Welfare Commission Wage Orders, California Business and  
25 Professions Code §§ 17200 *et seq.*, California Code of Civil Procedure § 1021.5, and the laws of  
26 contract, torts and equity that relate to the claims asserted in the Litigation.

1 Except as to Plaintiff, who releases any and all claims, known or unknown, that he may have against  
2 PNP, this release does not release any claims other than those described above or claims held by  
3 Class Members for unlawful employment discrimination under Title VII of the Civil Rights Act of  
4 1964 (Title VII, as amended), 42 U.S.C. § 2000e, *et seq.*, the Americans with Disabilities Act (the  
5 “ADA”), 42 U.S.C. § 12101 *et seq.*, the Age Discrimination in Employment Act (the “ADEA”), 29  
6 U.S.C. § 621 *et seq.*, or the California Fair Employment and Housing Act (the “FEHA”), California  
7 Government Code § 12940 *et seq.* or any other claims for wrongful termination based on state or  
8 federal law.

9 (b) Subject to the foregoing (*i.e.*, as to the Class Members, only to the extent that such  
10 claims were or could have been asserted in the Litigation) this waiver and release encompasses both  
11 known and unknown claims as described above. Specifically, Plaintiff and the Class Members are  
12 deemed to waive the provisions of Section 1542 of the California Civil Code, which provides as  
13 follows:

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

20 Accordingly, if the facts relating in any manner to this Settlement are found to be other than  
21 or different from the facts now believed to be true, the release of claims contained herein shall  
22 remain effective.

23 (c) Upon Final Approval of the Settlement, this waiver and release of claims shall be  
24 binding on Plaintiff and all Class Members who have not exercised the right to “opt-out” pursuant to  
25 Section 6.3, including each of their respective agents, spouses, registered domestic partners,  
26 executors, representatives, guardians ad litem, heirs, successors, and assigns. Further, this waiver  
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1 and release of claims shall inure to the benefit of PNP and its predecessors and successors, as well as  
2 all of its current, former and future subsidiaries, affiliates, and parent companies, and its and their  
3 fiduciaries, insurers, agents, partners, employees, assigns, subrogees, privies, officers, directors,  
4 managers, members, shareholders, attorneys, benefit plans, administrators, and trustees (collectively,  
5 **“Released Parties”**).

6 (d) Plaintiff and all Class Members (except those who file a Timely Written Request To  
7 Opt Out) agree not to sue or otherwise make any individual claims against PNP or any of the  
8 Released Parties for any claims or causes of action released under Section 5.1(a) of this Agreement.

9 **6. NOTICE, OBJECTIONS, AND OPPORTUNITY TO OPT-OUT.**

10 **6.1 Notice.** Within ten (10) business days after entry of the Preliminary Approval Order,  
11 PNP shall submit to the Claims Administrator, in electronic form, a list which sets forth: 1) each  
12 Class Member’s name; 2) last known address; 3) social security number or employee identification  
13 number, and 4) Workweek data, including inclusive dates of employment. Within thirty (30) days of  
14 Preliminary Approval of this Settlement, the Claims Administrator will send Class Members by first-  
15 class mail, at their last known address, the Court-approved Notice of Pendency of Class Action and  
16 Proposed Settlement in the form attached as Exhibit “3”. This notice includes, among other things, a  
17 summary of the claims, the settlement, a calculation of the Class Member’s estimated share of the  
18 Net Settlement Amount, the right to object, opt-out and/or not participate. Prior to mailing this  
19 notice, the Claims Administrator shall conduct a “national change of address search.” The Claims  
20 Administrator will use reasonable efforts, including tracing, to identify the correct address and re-  
21 mail all returned, undelivered mail within five (5) days of receiving notice that a Notice of  
22 Preliminary Approval was undeliverable. The parties agree to cooperate with the Claims  
23 Administrator to locate Class Members, if necessary.

24 **6.2 Objections.** All objections to the Settlement must be submitted to the Claims  
25 Administrator no later than 45 days after the Claims Administrator’s First Mailing Date of the  
26 Notice of Preliminary Approval. If the Claims Administrator performs the duties that it is required  
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1 to perform pursuant to the terms of this Settlement, the deadline to file objections shall be enforced  
2 notwithstanding any assertion that the Notice of Preliminary Approval was not received. Any and  
3 all objections received by the Claims Administrator shall be forwarded to the Parties' counsel within  
4 two (2) business days of the Claims Administrator's receipt of the objection. Submitting an objection  
5 is not the equivalent of opting out.

6 **6.3 Opportunity to Opt-Out.** To opt-out of the Settlement Class, a Class Member must  
7 provide the Claims Administrator with a Timely Written Request To Opt Out (*i.e.*, must be  
8 postmarked no later than 45 days after the First Mailing Date). Within 10 days following the last  
9 day to opt out, the Claims Administrator shall provide by facsimile to counsel for the Parties the  
10 names and addresses of those Class Members who have submitted opt-out requests. In order to be  
11 valid, a request to opt-out must state the Class Member name, contain the last four digits of his/her  
12 social security number, be dated and signed by the Class Member and be timely received by the  
13 Claims Administrator. All Class Members shall be bound by all of the terms of the Settlement  
14 Agreement and Final Judgment unless a timely request for exclusion is received by the Claims  
15 Administrator.

16 **6.4 Opportunity to Withdraw From the Settlement.** If the number of individuals  
17 opting out of the Settlement Class exceeds five percent (5%) of the Class Members combined, then  
18 PNP will have the right and option to unilaterally withdraw from and rescind the Settlement. To  
19 withdraw from the Settlement, PNP must first provide written notice to Plaintiff's Counsel within  
20 ten (10) calendar days after receipt of the above-described facsimile notice from the Claims  
21 Administrator that identifies the Class Members who have requested to be excluded from the  
22 Settlement Class.

23 **6.5 Timeliness.** Opt-outs and/or objections postmarked after the time periods set forth in  
24 Sections 6.2 and 6.3 are conclusively untimely and invalid.

25 **6.6 Solicitations.** At no time shall any of the Parties or their counsel seek to solicit or  
26 otherwise encourage Settlement Class Members to submit objections to the settlement, requests for  
27 exclusion from the settlement, or appeal from the Order and Final Judgment.

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**7. PAGA PENALTIES.**

**7.1 PAGA Penalties.** The Labor & Workforce Development Agency (“LWDA”) was duly notified of the alleged Labor Code violations as required by PAGA. The LWDA did not respond to that notice with an expressed intention to investigate within the time mandated by law. Subject to review and approval by this Court as required by Labor Code section 2699(1), the parties have agreed that PNP shall pay from the Settlement Amount the sum of Ten Thousand Dollars (\$10,000.00) in satisfaction of any and all claims pursuant to PAGA, including PAGA Penalties, and that 75% of such amount shall be paid to the LWDA as required by Labor Code section 2699(i).

**8. ADMINISTRATION.**

Class Members are not required to file claims to be paid the payments provided by this Settlement Agreement. All Class Members shall be paid the amount calculated pursuant to Section 9 below from the Net Settlement Amount unless they timely submit a request for exclusion in accordance with Section 6.3 above.

**8.1 Claims Administrator.** The Claims Administrator will mail the Notice of Preliminary Approval to the Class Members. The Claims Administrator will date stamp all incoming written communications from the Class Members, including but not limited to objections and opt-outs. The Claims Administrator will also disburse and calculate claims to be paid from the Net Settlement Amount. All charges assessed by the Claims Administrator for the administration of this case shall be paid from the Settlement Amount, and shall not exceed \$30,000.

**8.2 Determination of Settlement Class Awards.** Payments from the Net Settlement Amount to Class Members shall be determined from PNP’s records (*e.g.*, identification of Class Members and number of Workweeks during the Class Period for each Class Member) and calculated pursuant to Section 9 below. The information that PNP is required to provide shall be provided to the Claims Administrator in electronic form. The Claims Administrator shall perform the required calculations pursuant to Section 9 below and shall provide Plaintiffs’ Counsel and PNP, in electronic form, the proposed payments that were calculated pursuant to Section 9 below.



1 “x” equals the total number of Workweeks for each Settlement Class Member, and “y”  
2 equals the total number of Workweeks in which all Eligible Class Members were actively  
3 employed by Defendants. The Parties agree that this formula is reasonable and that the  
4 payments provided for herein are designed to provide a fair settlement to all Settlement Class  
5 Members, in light of the uncertainties concerning the compensation claimed to be owed to  
6 Settlement Class Members and the calculation of such amounts. All Settlement awards shall  
7 be deemed 1/3 back wages, subject to normal payroll withholding, 1/3 interest and 1/3  
8 penalties, the latter two categories to be reported via Form 1099.

9 **9.1.2 PAGA Penalties.** The 25% of PAGA Award set forth in paragraph 7.1 that is  
10 not sent to the LWDA shall be divided *pro rata* among all Settlement Class Members, based  
11 on the number of Workweeks the Settlement Class Member worked during the time period  
12 set forth in Paragraph 1.3.

13 **9.2** Twenty-one (21) days prior to the hearing set for final approval of the settlement, the  
14 Claims administrator shall file with the Court a declaration stating the number of notices mailed,  
15 undeliverable notices, notices forwarded, address traces performed, notices re-mailed, opt-out  
16 requests and/or objections. Within fifteen (15) business days after the Final Approval, PNP shall  
17 fund the settlement by wiring the Settlement Amount into an account established by the Claims  
18 Administrator. Within fifteen (15) business days after the wiring of the funds, the Claims  
19 Administrator will distribute the settlement (minus the cost of administration) to the Settlement  
20 Class Members, Plaintiff, Plaintiff’s Counsel, and the LWDA. Ten percent (10%) of the Court  
21 approved attorneys’ fees and costs will be held in escrow by the Claims Administrator until after the  
22 Court has conducted a post-distribution hearing and approved of the distribution, at which point the  
23 remaining amount will be released to Plaintiff’s Counsel.

24 **9.3 Maintenance of Records.** The Claims Administrator shall maintain complete,  
25 accurate, and detailed records regarding the administration of the Settlement Amount, including but  
26 not limited to, any and all receipts by and disbursements from the Settlement Amount. The Claims  
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1 Administrator shall make such records available to Counsel for the Parties or to their designee upon  
2 reasonable request and at reasonable times. The documentation maintained by the Claims  
3 Administrator shall be sufficient to audit the administration of the settlement including, without  
4 limitation, the addresses to which claims packages and/or checks were sent and a list of checks  
5 which were sent to Settlement Class Members, but not cashed. Upon request, the Claims  
6 Administrator shall provide such records to Counsel for the Parties in electronic form. The Claims  
7 Administrator shall also provide counsel for the Parties with periodic reports of the number of  
8 requests for exclusion received from Settlement Class Members. The Claims Administrator shall  
9 maintain all records for a period of not less than four years after the date of Final Approval.

10 **10. CLASS REPRESENTATIVE ENHANCEMENT**

11 **10.1 Amount of Payments.** Plaintiff will receive an enhanced award (*i.e.*, Class  
12 Representative Enhancement) of Five Thousand Dollars (\$5,000.00) to be deducted from the  
13 Settlement Amount for his time and effort in prosecuting the Litigation on behalf of the Class  
14 Members and for assuming the risk of paying PNP's costs in the event of an unsuccessful outcome,  
15 as well as in consideration for his execution of a separate full and complete waiver and release of all  
16 known and unknown claims against PNP.

17 **10.2 Tax Treatment.** An IRS 1099 Form will be issued to Plaintiff for his Class  
18 Representative Enhancement. The Plaintiff hereby agrees that he is solely responsible for the  
19 payment of all taxes and other related contributions, if any, due as a result of the Class  
20 Representative Enhancement paid pursuant to this Agreement, and agrees to defend, indemnify and  
21 hold PNP harmless against any and all claims which may be asserted by any taxing or other  
22 government authority against PNP for taxes, withholding taxes, penalties, and any other assessment  
23 that may be asserted or levied by any tax or other government authority arising from or relating to  
24 the payment of the Class Representative Enhancement due to the failure of the Plaintiff to pay any  
25 taxes which he is responsible for paying.

26 **11. ATTORNEYS' FEES AND COSTS.**

1 The Claims Administrator shall pay from the Settlement Amount the following attorneys'  
2 fees and costs:

3 **11.1 Attorneys' Fees.** In connection with the motion for final approval, Plaintiff's  
4 Counsel shall file a motion with the Court seeking approval of an award of attorneys' fees for all  
5 past and future work necessary to prosecute, settle and administer the Litigation in an amount not  
6 greater than Eight Hundred Thirty-Three Thousand Three Hundred Thirty-Three Dollars and Thirty-  
7 Three Cents (\$833,333.33). The "future" aspect of this amount includes, without limitation, all time  
8 expended by Plaintiff's Counsel in defending the Settlement and securing Final Approval (including  
9 any appeals thereof) and assisting in the administration of this Settlement as necessary. Any and all  
10 such future work shall be performed at no additional charge to either the Class Members or PNP.  
11 PNP agrees not to oppose such motion. Any attorneys' fees awarded by the Court to Plaintiff's  
12 Counsel shall be paid to Plaintiff's Counsel and such payment may be wired or mailed. Any  
13 attorney's fees awarded to Plaintiff's Counsel shall be based on their fee splitting agreement which  
14 states that 55% of attorney's fees shall be allocated to Makarem & Associates and 45% of attorney's  
15 fees shall be allocated to Michael H. Kim, P.C. PNP shall not be responsible for, or liable in  
16 connection with any dispute over, the apportionment of attorney's fees between the Plaintiff's  
17 Counsel firms.

18 **11.2 Costs.** In connection with the motion for final approval, Plaintiff's Counsel shall file  
19 a motion with the Court seeking approval of an award of actual and reasonable costs in an aggregate  
20 amount that does not exceed the sum of \$30,000. PNP agrees not to oppose such motion and,  
21 subject to Court approval, such sums shall be paid from the Settlement Amount as approved by the  
22 Court. Any costs awarded by the Court to Plaintiffs' Counsel shall be paid to Plaintiff's Counsel  
23 and may be wired or mailed.

## 24 **12. TAXATION.**

25 **12.1** The Parties agree that appropriate withholding of federal, state, and local income  
26 taxes, and each Class Member's share of FICA and Medicare taxes will be made from payments to  
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1 the Class Members, including Plaintiff, except for the Class Representative Enhancement and the  
2 settlement amounts attributed to penalties and interest, and that said withholdings will be deducted  
3 from the Settlement Amount. The amounts paid as the Class Representative Enhancement,  
4 penalties, and interest shall be reported via 1099 Forms.

5 **12.2** The amount of federal income tax withholdings will be based upon a flat withholding  
6 rate for supplemental wage payments of 28 percent (pursuant to Treas. Reg. §31.3402(g)-I(a)(2)).  
7 Income tax withholdings will also be made pursuant to applicable state and/or local withholding  
8 codes or regulations.

9 **12.3** W-2 Forms and/or 1099 Forms will be distributed at times and in the manner required  
10 by the Internal Revenue Code of 1986, as amended (the “Code”) and consistent with this Agreement  
11 with respect to payments made to the Class Members.

12 **12.4** If the Code, the regulations promulgated thereunder, or other applicable tax law  
13 changes after the date of this Agreement, the processes set forth in this section may be modified with  
14 the approval of the Court in a manner to bring PNP into compliance with any such changes.

15 **12.5** The Parties warrant, represent and agree that no one has provided tax advice to the  
16 other and that any responsibility or liability for any tax matters relating to any payments made under  
17 this Agreement including, but not limited to, the withholding of, or reporting of taxes, belongs to the  
18 individual Class Member. Each Class Member is advised to consult with his or her own tax advisor  
19 concerning the tax consequences of the Settlement to him or her.

20 **13. COURT APPROVAL.**

21 **13.1** This Agreement is contingent upon Preliminary and Final Approval of this  
22 Stipulation of Settlement (including any appeals thereof) and the non-withdrawal of PNP from the  
23 Settlement in accordance with Section 6.4 above.

24 **13.2** The Parties agree to take all steps as may be reasonably necessary to secure approval  
25 of the Agreement, to the extent not inconsistent with the terms of this Agreement and any other  
26 agreement by and between Plaintiff and Plaintiff’s counsel, and will not take any action adverse to  
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1 each other in obtaining Court approval, and, if necessary, appellate approval, of the Agreement in all  
2 respects. Plaintiff and Plaintiff's Counsel expressly agree that they will not file any objection (as  
3 opposed to request for correction) to the terms of this Stipulation of Settlement or assist or encourage  
4 any person or entity to file any such objection or to opt-out of the Settlement Class.

5 **14. FINAL ACCOUNTING.**

6 **14.1 Final Accounting.** No later than 30 calendar days after the occurrence of both the  
7 Final Approval and the distribution of all payments to be paid pursuant to the terms of this  
8 Agreement, the Claims Administrator shall submit to the Parties and file with the Court a final  
9 accounting of all monies paid from the Settlement Amount.

10 **14.2 No Further Obligations.** Upon receipt of the final accounting referenced in Section  
11 14.1 and the payment of the monies required to be paid from the Settlement Amount, PNP shall have  
12 no obligation to provide further funding pursuant to this Agreement.

13 **15. NOTICES.**

14 **15.1 Designated Recipients.** Unless otherwise specified in this Agreement or agreed to in  
15 writing by the Party receiving such communication, all notices, requests, or other required  
16 communications hereunder shall be in writing and shall be sent by one of the following methods: (a)  
17 first class mail, postage prepaid; (b) by facsimile, with the original by first class mail, postage  
18 prepaid; or (c) by personal delivery (including by Federal Express or other courier service). All such  
19 communications shall be sent to the undersigned persons at their respective addresses as set forth  
20 herein.

21 **Plaintiff's Counsel**

22 **Gene Williams, Esq.**  
23 **Makarem & Associates**  
24 **11601 Wilshire Blvd., Suite 2440**  
25 **Los Angeles, CA 90025**  
26 **Telephone: 310-312-0299**  
27 **Facsimile: 310-312-0296**

**Michael H. Kim, Esq.**  
**475 El Camino Real, Ste. 309**  
**Millbrae, CA 94030**  
**Telephone: 650-697-8899**  
**Facsimile: 650-697-8896**

1                    **PNP's Counsel**

2                    **Bonnie Glatzer, Esq.**  
3                    **Nixon Peabody LLP**  
4                    **One Embarcadero Center, 18<sup>th</sup> Floor**  
5                    **San Francisco, CA 94111**  
6                    **Telephone: (415) 984-8333**  
7                    **Facsimile: (866) 216-2516**

8                    **15.2 Changes in Designated Recipients.** Any Party may re-designate the Person to  
9 receive notices, requests, demands, or other communications required or permitted by this  
10 Agreement by providing written notice to the other Parties and the Claims Administrator.

11                    **16.    MISCELLANEOUS PROVISIONS.**

12                    **16.1 Stay of Litigation.** The Parties agree to a stay of the Litigation, except as to obtain  
13 Preliminary Approval and Final Approval of the Settlement from the Court, to complete the class  
14 notice and settlement administration, and to obtain all things necessary to complete this Settlement,  
15 pending Final Approval of the Settlement.

16                    **16.2 Interpretation of the Agreement/Continuing Jurisdiction.** The Agreement will be  
17 interpreted and enforced under the laws of the State of California. The Court shall retain jurisdiction  
18 with respect to the interpretation, implementation and enforcement of the terms of this Agreement  
19 and all orders and judgments entered in connection therewith, and the Parties and their counsel  
20 submit to the exclusive jurisdiction of the Court and consent to the personal jurisdiction of this Court  
21 over each of them for the purpose of interpreting, implementing and enforcing the settlement  
22 embodied in this Agreement and all orders and judgments entered in connection therewith.

23                    **16.3 Final Agreement.** The terms and conditions of this Agreement constitute the  
24 exclusive and final understanding and expression of all agreements between the Parties with respect  
25 to the resolution of the Litigation. Plaintiff, on his own behalf and on behalf of the classes he  
26 represents, and PNP, have agreed to enter into this Agreement based solely upon its terms and not in  
27 reliance upon any representations or promises other than those contained in this Agreement.  
28 Notwithstanding the foregoing, this Agreement may be amended or modified by a written instrument  
signed by counsel for all Parties or their successors-in-interest, subject to approval by the Court.



1 paid from the Settlement Amount and any previously paid monies, except costs of administration,  
2 shall be returned to PNP.

3 **16.10 Injunctive Relief.** As part of this Agreement, PNP shall not be required to enter into  
4 any consent decree, nor shall PNP be required to agree to any provision for injunctive or prospective  
5 relief.

6 **16.11 Effect of Payments to Class Members.** Neither the payments paid to Class  
7 Members or Plaintiff pursuant to this Agreement nor any other term of this Agreement shall have  
8 any effect on the eligibility or calculation of any employee benefits. The Parties agree that any  
9 payments paid to Class Members under the terms of this Agreement do not represent any  
10 modification of any Class Member's previously credited hours of service or other eligibility criteria  
11 under any employee pension benefit plan, employee welfare benefit plan or other program or policy  
12 sponsored by PNP. Further, such payments shall not be considered compensation or annual earnings  
13 for benefits in any year for purposes of determining eligibility for, or benefit accrual within, an  
14 employee pension benefit plan, employee welfare benefit plan or other program or policy sponsored  
15 by PNP.

16 **16.12 Confidentiality.** Plaintiff and Plaintiff's Counsel may not disclose the specific terms  
17 of this Agreement except that they may, if required by law or if necessary to effectuate the terms of  
18 this Agreement, comment regarding the specific terms of this Agreement. In all other cases, whether  
19 oral, written or electronic (including the world wide web), Plaintiff and Plaintiff's Counsel agree to  
20 limit their statements regarding the terms of this Settlement Agreement to say that the Litigation has  
21 been settled and that the Plaintiff and Plaintiff's Counsel are satisfied with the settlement terms.  
22 Neither Plaintiff nor Plaintiff's Counsel shall issue any press release or hold any press conference  
23 disclosing the terms of the Agreement.

24 **16.13 Exhibits.** The terms of this Agreement include the terms set forth in any of the  
25 attached Exhibits "1" through "3", which are incorporated by this reference as though fully set forth  
26

1 herein. The Exhibits to this Agreement are an integral part of the Agreement. In the event of any  
2 conflict between the Agreement and the Exhibits, the terms of the Agreement shall control.

3 **16.14 Further Acts.** The Parties and their respective counsel will cooperate with each  
4 other and use their best efforts to effect the implementation of the Agreement. In the event the  
5 Parties are unable to reach agreement on the form or content of any document needed to implement  
6 the Agreement, or on any supplemental provisions that may become necessary to effectuate the  
7 terms of this Agreement, the Parties may seek the assistance of the Court to resolve such  
8 disagreement.

9 **16.15 Construction.** Both Parties cooperated in the drafting and preparation of this  
10 Agreement. Hence, any construction of this Agreement shall not be construed against any of the  
11 Parties and before declaring any provision of this Agreement invalid, the Court shall first attempt to  
12 construe the provisions valid to the fullest extent possible consistent with applicable precedents so as  
13 to render all provisions of this Agreement valid and enforceable.

14 **16.16 PNP's Costs.** All of PNP's attorney's fees and costs incurred in this Action shall be  
15 borne by PNP from PNP's separate funds and not paid from the Settlement Amount.

16 **16.17 Plaintiff's Duties.** Plaintiff agrees to sign this Agreement and by signing this  
17 Agreement is bound by its terms.

18  
19 Dated:

By: \_\_\_\_\_  
ALEJANDRO GUZMAN

20  
21  
22 Dated:

PICK-N-PULL AUTO DISMANTLERS,  
a California General Partnership

23  
24 By: \_\_\_\_\_

25 Title: \_\_\_\_\_

26 **Approved as to form:**

1 Dated:

NIXON PEABODY LLP

2

By: \_\_\_\_\_

3

BONNIE GLATZER

4

Attorneys for Defendant

5

Pick-N-Pull Auto Dismantlers,

6

a California General Partnership

7

8 Dated:

MAKAREM & ASSOCIATES

9

By: \_\_\_\_\_

10

GENE WILLIAMS

11

Attorneys for Plaintiff

12

Alejandro Guzman

13

14

15

16

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28

**EXHIBIT 1**

1 MAKAREM & ASSOCIATES, APLC  
2 Ronald W. Makarem, Esq. (State Bar No. 180442)  
3 Vanessa E. Coe, Esq. (State Bar No. 305835)  
4 11601 Wilshire Boulevard, Suite 2440  
5 Los Angeles, California 90025-1760  
6 Phone: (310) 312-0299; Fax: (310) 312-0296

7 MICHAEL H. KIM, P.C.  
8 Michael H. Kim, Esq. (State Bar No. 200793)  
9 3699 Wilshire Boulevard, Suite 860  
10 Los Angeles, California 90010  
11 Phone: (213) 639-2900; Fax: (213) 639-2909

ENDORSED  
FILED  
ALAMEDA COUNTY

FEB 21 2018

CLERK OF THE SUPERIOR COURT  
By MICHELLE BANKS  
Deputy

12 Attorneys for Plaintiff, ALEJANDRO GUZMAN, individually  
13 and on behalf of all others similarly situated

14 THE SUPERIOR COURT OF CALIFORNIA  
15 FOR THE COUNTY OF ALAMEDA

16 ALEJANDRO GUZMAN, individually  
17 and on behalf of all others similarly  
18 situated,

19 Plaintiffs,

20 vs.

21 PICK-N-PULL AUTO, a California  
22 Corporation; SCHNITZER STEEL  
23 INDUSTRIES, INC., an Oregon  
24 Corporation; and DOES 1 through 20,  
25 inclusive.

26 Defendants.

Case No. RG16816283  
[Assigned to Hon. Winifred Y. Smith, Dept. 21]

FIRST AMENDED COMPLAINT FOR  
DAMAGES FOR:

1. FAILURE TO PAY MINIMUM WAGE;
2. FAILURE TO PAY OVERTIME WAGES;
3. FAILURE TO PROVIDE REST PERIODS;
4. FAILURE TO PROVIDE MEAL PERIODS;
5. FAILURE TO PAY ALL WAGES EARNED;
6. FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS;
7. FAILURE TO PAY WAGES TIMELY UPON TERMINATION;
8. FAILURE TO MAINTAIN RECORDS;
9. FAILURE TO INDEMNIFY FOR EXPENSES;
10. UNFAIR COMPETITION IN VIOLATION OF BUSINESS & PROFESSIONS CODE SECTION 17200;
11. PENALTIES PURSUANT TO LABOR CODE § 2699, ET. SEQ.

1 MAKAREM & ASSOCIATES, APLC  
2 Ronald W. Makarem, Esq. (State Bar No. 180442)  
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10 Los Angeles, California 90010  
11 Phone: (213) 639-2900; Fax: (213) 639-2909

**COPY DELIVERED**  
Date 2/23 Int: Dr

12 Attorneys for Plaintiff, ALEJANDRO GUZMAN, individually  
13 and on behalf of all others similarly situated

14 THE SUPERIOR COURT OF CALIFORNIA  
15 FOR THE COUNTY OF ALAMEDA

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27 //

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11 Phone: (213) 639-2900; Fax: (213) 639-2909

12 Attorneys for Plaintiff, ALEJANDRO GUZMAN, individually  
13 and on behalf of all others similarly situated

14 **THE SUPERIOR COURT OF CALIFORNIA**  
15 **FOR THE COUNTY OF ALAMEDA**

16 ALEJANDRO GUZMAN, individually  
17 and on behalf of all others similarly  
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19 Plaintiffs.

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10. UNFAIR COMPETITION IN VIOLATION OF BUSINESS & PROFESSIONS CODE SECTION 17200;
11. PENALTIES PURSUANT TO LABOR CODE § 2699, *ET. SEQ.*

27 //

1 COMES NOW Plaintiff ALEJANDRO GUZMAN ("Plaintiff) individually and on behalf of all  
2 similarly situated individuals hereby respectfully alleges, avers, and complains as follows:

3 **INTRODUCTION**

4 1. This case arises out of Defendant SCHNITZER STEEL INDUSTRIES, INC.  
5 ("Schnitzer") and Defendant PICK-N-PULL AUTO's (Pick-N-Pull") (collectively referred to as  
6 "Defendants") failure to pay all wages owed to non-exempt employees, failure to pay all overtime  
7 hours earned, failure to provide rest breaks, failure to provide accurate wage statements, failure to  
8 indemnify for expenses, and failure to pay all wages owed at the time of termination.

9 2. Plaintiff is a member of and the named representative for the Class. The term Class  
10 includes all hourly employees who were employed by Defendants in California within four years of  
11 the filing of this action to the present.

12 3. Plaintiff and Class Members seek: (1) penalties for failure to pay minimum wage (2)  
13 overtime wages under Labor Code section 1194 and 510; (3) unpaid wages pursuant to Labor Code  
14 section 204; (4) penalties associated with missed meal and rest breaks under Labor Code section  
15 226.7; (5) penalties for inaccurate wage under Labor Code section 226(c); (6) penalties for failure  
16 to pay all wages due at the time of termination under Labor Code sections 201 or 202; (7) penalties  
17 for failure to maintain records pursuant to Labor Code sections 226 and 1174; (8) penalties for failure  
18 to indemnify for expenses; (9) damages for unfair competition under Business & Professions Code  
19 section 17200; and (10) penalties pursuant to Labor Code § 2699.

20 4. Plaintiff and Class Members, pursuant to Business & Professions Code §§ 17200-  
21 17208, also seek injunctive relief, restitution, and disgorgement of all benefits Defendants enjoyed  
22 from their failure to pay proper compensation.

23 **JURISDICTION AND VENUE**

24 5. This Court has jurisdiction over this action pursuant to Code of Civil Procedure §  
25 410.10. The action is brought pursuant to Code of Civil Procedure § 382, Civil Code §§ 1781 et seq.  
26 Plaintiff brings this action on her own behalf, and on behalf of all persons within the Class as  
27 hereinafter defined.

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f. Plaintiff and Class Members were not reimbursed for work-related expenses.

17. As a result of the aforementioned violations, Defendants were required to pay Plaintiff and Class Members pay under Labor Code Section 512. But Defendants failed to compensate Plaintiff and Class Members for the overtime wages and rest period violations, which constitute unpaid wages. For Plaintiff and other Class Members, who were discharged or terminated, these unpaid wages were due and payable in accordance with Labor Code Section 201 and 202. When Defendants failed to pay Plaintiff and other terminated Class Members upon discharge or termination of their employment. Defendants further violated Labor Code Section 201 or 202.

18. Plaintiff and Class Members also seek attorneys' fees pursuant to California Labor Code section 218.5 and any other applicable sections.

19. Plaintiff and Class Members also seek restitution and disgorgement of all sums wrongfully obtained by Defendants through unfair business practices in violation of California Business & Professions Code section 17200, et seq., to prevent Defendants from benefiting from their unlawful, fraudulent and unfair acts. Such sums recovered under the Unfair Competition Act and Unfair Businesses Act are equitable in nature and are not to be considered damages. Plaintiff and Class Members are also entitled to costs, attorneys' fees, interest and penalties as provided for by the Labor Code, the Business & Professions Code and Code of Civil Procedure § 1021.5.

**CLASS ACTION ALLEGATIONS**

20. Plaintiff brings this action on behalf of himself and all other similarly situated persons as a class action pursuant to Code of Civil Procedure Section 382. Plaintiff seeks to represent the following Class composed of and defined as follows:

**All former and currently hourly employees who are/were employed by Defendant Schnitzer and Defendant Pick-N-Pull in California at any time during the four-year period preceding the filing of this action.**

21. Plaintiff reserves the right under Rule 1855(b), California Rules of Court, to amend or modify the class description with greater specificity or further division into subclasses or limitation to particular issues.

1           22.       This action has been brought and may be maintained as a class action pursuant to  
2 Code of Civil Procedure Section 382 because there is a well-defined community of interest among  
3 many persons who comprise a readily ascertainable class.

4           23.       **Numerosity and Ascertainability (C.C.P. § 382):** The potential number of Class  
5 Members as defined is so numerous that joinder of all Members would be unfeasible and impractical.  
6 The disposition of their claims through this class action will benefit both the parties and this Court.  
7 The number of Class Members is unknown at this time, however, it is estimated that the Class will  
8 number greater than 100. The identity of such membership can readily be ascertained from  
9 Defendants' employees' payroll and personnel records.

10          24.       **Superiority (C.C.P. §382):** The nature of this action and the nature of laws available  
11 to Plaintiff make use of the class action format particularly efficient and appropriate. By establishing  
12 a technique whereby the claims of many individuals can be resolved at the same time, the class suit  
13 both eliminates the possibility of repetitious litigation and provides small claimants with a method  
14 of obtaining redress for claims, which would otherwise be too small to warrant individual litigation.  
15 Class action treatment will allow a large number of similarly situated persons to prosecute their  
16 common claims in a single forum, simultaneously, efficiently, and without the unnecessary  
17 duplication of effort and expense that numerous individual actions would require. The actual  
18 monetary recovery due to most of the individual Class Members is likely to be small, and the burden  
19 and expense of individual litigation would make it prohibitive for individual Class Members to seek  
20 relief. A class action will serve an important public interest by permitting such individuals to  
21 effectively pursue recovery of the sums owed to them. Further, class litigation prevents the potential  
22 for inconsistent or contradictory judgments if individual Class Members were to litigate separately.

23          25.       **Well-defined Community of Interest:** Plaintiff also meets the established standard  
24 for class certification (See, e.g. *Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal. 4th 1096),  
25 as follows:

26          26.       **Typicality:** The claims of Plaintiff are typical of the claims of all members of the  
27 Class she seeks to represent because all members of the Class sustained injuries and damages arising  
28 out of Defendants' common policies, practices and course of conduct in violation of law and the

1 injuries and damages of all members of the Class were caused by Defendants' wrongful conduct in  
2 said violation of law, as alleged herein.

3           **27. Adequacy: Plaintiff ALEJANDRO GUZMAN:**

- 4           a. Is an adequate representative of the Class;  
5           b. Will fairly protect the interests of all members of the Class;  
6           c. Has no interests antagonistic to any members of the Class; and  
7           d. Will vigorously pursue this suit via attorneys who are competent, skilled and  
8           experienced in litigating matters of this type.

9           **28. Predominant Common Questions of Law or Fact:** There are common questions of law  
10 and/or fact as to the members of the Class which predominate over questions affecting only  
11 individual members of the Class, including, without limitation:

- 12           a. Whether Defendants violated Labor Code section 510 and 1194 by not properly  
13           paying overtime wages to Class Members for all hours worked in excess of eight  
14           hours in one day or in excess of forty hours a week and by failing to pay Class  
15           Members their overtime wages at the required double-time rate for hours worked in  
16           excess of 12 hours a day;  
17           b. Whether Defendants failed to authorize and permit Class Members to take rest  
18           periods at the rate of 10 minutes rest for shifts from three and one-half to six hours  
19           in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for  
20           shifts of more than 10 hours up to 14 hours;  
21           c. Whether Defendants violated Labor Code Sections 226.7 and 512 and the applicable  
22           Industrial Wage Order by not providing Class Members with a full, uninterrupted thirty-  
23           minute meal period within their first five hours of work, or a second full, uninterrupted  
24           thirty-minute meal period within the first ten hours of work on shifts in excess of 10.0  
25           hours;  
26           d. Whether Defendants violated Labor Code Section 204 by not paying Class  
27           Members for all wages earned during each pay period;  
28           Members for all wages earned during each pay period;

- 1 e. Whether Defendants violated Labor Code Section 226(a) by not providing Class  
2 Members with accurate wage statements;
- 3 f. Whether Defendants are liable for penalties for failure to maintain the records  
4 required under Labor Code sections 226 and 1174;
- 5 g. Whether Defendants violated Labor Code Section 201 or 202 by not paying Class  
6 Members all earned wages due upon termination in a timely manner;
- 7 h. Whether Defendants failed to pay all wages due and owing at the time Class  
8 Members' employment ended;
- 9 i. Whether Defendants failed to indemnify Class Members for work-related expenses;
- 10 j. Whether Class Members who are no longer employed by Defendants are entitled to  
11 waiting time penalties under Labor Code Section 203;
- 12 k. Whether injunctive relief is appropriate to ensure Defendants' compliance with the  
13 Labor Code with respect to Members of the Class currently employed by  
14 Defendants;
- 15 l. Whether Defendants committed unfair competition pursuant to Business &  
16 Professions Code section 17200;
- 17 m. Whether Class Members are entitled to attorney's fees;
- 18 n. Whether Class Members are entitled to prejudgment interest;
- 19 o. Whether Class Members are entitled to restitution;
- 20 p. Whether each Class Member might be required to ultimately justify an individual  
21 claim does not preclude maintenance of a class action. *Collins v. Rocha* (1972) 7  
22 Cal. 2d 232.

23 **FIRST CAUSE OF ACTION**  
24 **For Failure to Pay Minimum Wage**  
25 **(Against All Defendants)**

26 29. Plaintiff hereby incorporates by reference all the allegations contained in the  
27 preceding paragraphs of this complaint as through fully set forth herein.

28 30. At all relevant times, Plaintiff and other Class Members were employees covered by

1 Labor Code section 1194 and the applicable Industrial Wage Order.

2 31. Pursuant to Labor Code section 1194 and the applicable Industrial Wage Order, Plaintiff  
3 and Class Members were entitled to minimum wage for all hours worked.

4 32. Plaintiff is informed and believes and thereon alleges that at all relevant times within  
5 the applicable Class Period, Defendants failed to pay Plaintiff and Class Members their earned wages  
6 for all hours worked in accordance with Labor Code Section 1194 and the applicable Industrial Wage  
7 Order. For example, Defendants frequently told Plaintiff and Class Members to work off the  
8 clock. Accordingly, Plaintiff and Class Members were not paid for all hours worked.

9 33. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have suffered  
10 damages in an amount, subject to proof, to the extent that they were not paid for all hours worked.

11 34. Pursuant to Labor Code section 1194, Plaintiff and Class Members are entitled to recover  
12 the full amount of their unpaid wages, prejudgment interest, reasonable attorneys' fees and and costs  
13 of suit

14 35. Pursuant to Labor Code section 1194.2, Plaintiff and Class Members are entitled to recover  
15 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

16 **SECOND CAUSE OF ACTION**

17 **For Failure to Pay Overtime Wages**

18 **(Against All Defendants)**

19 36. Plaintiff hereby incorporates by reference all the allegations contained in the preceding  
20 paragraphs of this complaint as through fully set forth herein.

21 37. At all relevant times, Plaintiff and the other Class Members were employees covered  
22 by Labor Code Section 510, 1194, and the applicable Industrial Wage Order.

23 38. Pursuant to Labor Code Section 510, 1194, and the applicable Industrial Wage Order,  
24 Plaintiff and the other Class Members were entitled to overtime wages payable at the rate of at least  
25 one and one-half times their regular rate of pay for all work in excess of eight hours in one workday  
26 or in excess of forty hours in one workweek and payable at the rate of at least twice the regular rate  
27 of pay for all work in excess of twelve hours in one workday.  
28



1 pay the employee one (1) hour of pay at the employee's regular rate of compensation for each  
2 workday that the rest period is not authorized and permitted.

3 46. During the Class Period, Defendant routinely failed to provide the Class Members,  
4 including Plaintiff, with rest periods during their work shifts, and has failed to compensate Class  
5 Members, including Plaintiff, for those rest periods, as required by California Labor Code §226.7  
6 and other applicable sections of the Employment Laws and Regulations.

7 47. Plaintiff and Class Members were not exempt from the rest period requirements of  
8 the Employment Laws and Regulations.

9 48. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have  
10 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay for  
11 rest period violations.

#### 12 **FOURTH CAUSE OF ACTION**

#### 13 **For Failure to Provide Meal Periods**

#### 14 **(Against All Defendants)**

15 49. Plaintiff incorporates by reference and realleges as if fully stated herein the  
16 material allegations set out above in the preceding paragraphs.

17 50. At all relevant times, Plaintiff and Class Members were employees covered by Labor  
18 Code Sections 226.7 and 512, and the applicable Industrial Wage Order.

19 51. Labor Code §§ 226.7 and 512 and the applicable Industrial Wage Order provide that  
20 no employer shall employ any person for a work period of more than five (5) hours without a meal  
21 period of not less than 30 minutes. This means that a first meal period must be provided no later  
22 than the end of an employee's fifth hour of work, and a second meal period no later than the end of  
23 an employee's 10th hour of work.

24 52. Labor Code § 226.7 and the applicable Industrial Wage Order provide that if an  
25 employer fails to provide an employee a meal period in accordance with this section, the employer  
26 shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each  
27 five (5) hours of work that the meal period is not provided.

28



1 **SIXTH CAUSE OF ACTION**

2 **For Failure to Furnish Accurate Wage Statements**

3 **(Against All Defendants)**

4 62. Plaintiff hereby incorporates by reference all the allegations contained in the preceding  
5 paragraphs of this complaint as through fully set forth herein,

6 63. At all relevant times, Plaintiff the other members of the Class were employees of  
7 Defendants covered by Labor Code Section 226.

8 57. California Labor Code § 226(a) provides that:

9 "Every employer shall, semimonthly or at the time of each payment of wages,  
10 furnish each of his or her employees, either as a detachable part of the check, draft,  
11 or voucher paying the employee's wages, or separately when wages are paid by  
12 personal check or cash, an accurate itemized statement in writing showing (1) gross  
13 wages earned, (2) total hours worked by the employee, except for any employee  
14 whose compensation is solely based on a salary and who is exempt from payment of  
15 overtime under subdivision (a) of Section 515 or any applicable order of the  
16 Industrial Welfare Commission, (3) the number of piece-rate units earned and any  
17 applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions,  
18 provided that all deductions made on written order~ of the employee may be  
19 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of  
20 the period for which the employee is paid, (7) the name of the employee and his or  
21 her social security number, except that by January 1, 2008, only the last four digits  
22 of his or her social security number or an employee identification number other than  
23 a social security number may be shown on the itemized statement, (8) the name and  
24 address of the legal entity that is the employer, and (9) all applicable hourly rates in  
25 effect during the pay period and the corresponding number of hours worked at each  
26 hourly rate by the employee."

27 64. Further, the relevant wage orders of the Industrial Welfare Commission applicable to  
28 Plaintiff's and Class Members' employment with Defendants state in pertinent part

"(A) Every employer shall keep accurate information with respect to each employee  
including the following:

(3) Time records showing when the employee begins and ends each work  
period. Meal periods, split shift intervals and total daily hours worked shall  
also be recorded. Meal periods during which operations cease and authorized  
rest periods need not be recorded.

(4) Total wages paid each payroll period, including value of board, lodging, or  
other compensation actually furnished to the employee.

(5) Total hours worked in the payroll period and applicable rates of pay. This  
information shall be made readily available to the employee upon reasonable  
request.







1           84. Plaintiff incorporates by reference and re-alleges as if fully stated herein the material  
2 allegations set out above in the preceding paragraphs.

3           85. Defendant Schnitzer and Defendant Pick-N-Pull are each a "person" as that term is  
4 defined under Business & Professions Code section 17021, Business & Professions Code section  
5 17200 defines unfair competition as any unlawful, unfair, or fraudulent business act or practice.

6           86. Defendants' violations of the Employment Laws and Regulations as alleged in this  
7 Complaint, including Defendants' (a) failure to provide Plaintiff and Class Members with rest breaks;  
8 (b) failure to pay all earned wages upon termination; and (c) wrongful conversion of wages,  
9 compensation and reimbursements due to Plaintiffs, all constitute unfair business practices in  
10 violation of Business & Professions Code section 17200, et seq.

11           87. As a result of Defendants' unfair business practices. Defendants have reaped unfair  
12 benefits and illegal profits at the expense of Plaintiff and other Class Members, and to the detriment  
13 members of the public. Defendants should be made to disgorge its ill-gotten gains and to restore  
14 them to Plaintiff and other Class Members. Pursuant to Business & Professions Code section 17203,  
15 Plaintiff and other Class Members are entitled to restitution of the wages and other monies withheld,  
16 deducted and/or retained by Defendants during a period that commences four years prior to the filing  
17 of this action.

18           88. Pursuant to Business & Professions Code section 17203, Defendants' unfair business  
19 practices entitle Plaintiff and Class Members to seek preliminary and permanent injunctive relief  
20 including, but not limited to, orders that Defendants account for, disgorge and restore to Plaintiff and  
21 Class Members all compensation unlawfully withheld from them.

22           89. Plaintiff and other Class Members are entitled to recover reasonable attorney's fees  
23 in connection with their unfair competition claims pursuant to Code of Civil Procedure section  
24 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

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1 **ELEVENTH CAUSE OF ACTION**

2 **For Penalties Under Labor Code Sections 2698 and 2699**

3 **(Against All Defendants)**

4 90. Plaintiff incorporates by reference and re-alleges as if fully stated herein the material  
5 allegations set out above in the preceding paragraphs.

6 91. As a result of the acts alleged above, Plaintiff and Class Members seek penalties  
7 under Labor Code sections 2698 and 2699 because of Defendants' violations of Labor Code sections  
8 201, 202, 204, 226, 226.7, 510, 512, 1174, 1194 and 2802.

9 92. Plaintiff was employed with Defendants within one year of the filing of this  
10 California Private Attorney General Act ("PAGA") claim and within one year of the written notice  
11 served on or about February 29, 2016.

12 93. For each such violation, Plaintiff, on behalf of himself and other current and former  
13 employees of Defendants, seek penalties in an amount according to proof at the time of trial based  
14 on the following formula: (1) \$100 for the initial violation per employee per pay period; (2) \$200 for  
15 each subsequent violation per employee per pay period.

16 94. Plaintiff additionally seeks reasonable attorney's fees and costs pursuant to California  
17 Labor Code section 2699(g)(a).

18 95. Plaintiff has complied with all requirements set forth in Labor Code section 2699.3  
19 to bring this civil action against the named Defendants. On or about February 29, 2016, Plaintiff gave  
20 written notice by certified mail to the specific violations of the Labor Code to the California Labor  
21 and Workforce Development Agency and Defendant Pick-N-Pull. The Agency has not provided any  
22 written notice of its intention to investigate the claimed violations within 33 calendar days of the  
23 postmark date of the notice.

24 **PRAYER FOR RELIEF**

25 **WHEREFORE**, Plaintiff, individually and on behalf of all Class Members, prays for  
26 judgment in their favor against Defendants as follows:

27 **a) CLASS CERTIFICATION**

28 i. An order that the action be certified as a class action;

- 1           ii. An order that the Plaintiff be certified as representative of the Class;
- 2           iii. An order that counsel for Plaintiff be confirmed as Class Counsel

3           **b) ON THE FIRST CAUSE OF ACTION**

- 4           i. Damages for unpaid minimum wages according to proof;
- 5           ii. Liquidated damages
- 6           iii. Prejudgment interest;
- 7           iv. Reasonable attorney's fees;
- 8           v. Costs of suit; and
- 9           vi. Such other relief as the Court deems just and proper.

10          **c) ON THE SECOND CAUSE OF ACTION**

- 11          i. Damages for unpaid overtime wages according to proof;
- 12          ii. Prejudgment interest;
- 13          ii. Reasonable attorney's fees;
- 14          iv. Costs of suit; and
- 15          v. Such other relief as the Court deems just and proper.

16          **d) ON THE THIRD CAUSE OF ACTION**

- 17          i. Damages for unpaid additional pay owed for missed rest periods in an amount
- 18             according to proof;
- 19          ii. Prejudgment interest;
- 20          iii. Costs of suit; and
- 21          iv. Such other relief as the Court deems just and proper.

22          **e) ON THE FOURTH CAUSE OF ACTION**

- 23          i. Damages for unpaid additional pay owed for missed meal periods in an amount
- 24             according to proof;
- 25          ii. Prejudgment interest;
- 26          iii. Reasonable attorney's fees;
- 27          iv. Costs of suit; and
- 28          v. Such other relief as the Court deems just and proper.

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**f) ON THE FIFTH CAUSE OF ACTION**

- j. Damages for unpaid wages earned but not paid each pay period in an amount according to proof;
- ii. Prejudgment interest;
- iii. Reasonable attorney's fees;
- iv. Costs of suit; and
- v. Such other relief as the Court deems just and proper.

**g) ON THE SIXTH CAUSE OF ACTION**

- i. Damages or penalties for not providing accurate wage statements in an amount according to proof;
- ii. An order requiring Defendant to comply to Labor Code section 226(a);
- iii. Reasonable attorney's fees;
- iv. Costs of suit; and
- v. Such other relief as the Court deems just and proper.

**h) ON THE SEVENTH CAUSE OF ACTION**

- i. Damages for unpaid wages earned prior to termination of employment in an amount according to proof;
- ii. Waiting time penalties for failure to pay all earned wages timely upon termination of employment in an amount according to proof;
- iii. Prejudgment interest;
- iv. Reasonable attorney's fees;
- v. Costs of suit; and
- vi. Such other relief as the Court deems just and proper.

**i) ON THE EIGHTH CAUSE OF ACTION**

- i. Damages or penalties for not maintaining required records in an amount according to proof;
- ii. Reasonable attorney's fees;
- iii. Costs of suit; and

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iv. Such other relief as the Court deems just and proper.

**j) ON THE NINTH CAUSE OF ACTION**

- i. Damages for unreimbursed expenses incurred in the performance of their duties according to proof;
- ii. Prejudgment interest;
- iii. Reasonable attorney's fees;
- iv. Costs of suit; and
- v. Such other relief as the Court deems just and proper.

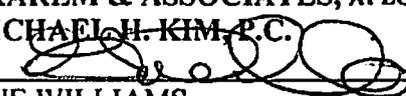
**k) ON THE TENTH CAUSE OF ACTION**

- i. Restitution of all unpaid wages and other monies owed and belonging to Class Members that Defendant unlawfully withheld from them and retained for themselves in an amount according to proof;
- ii. Prejudgment interest;
- iii. Costs of suit;
- iv. Reasonable attorney's fees;
- v. Such other relief as the Court deems just and proper.

**l) ON THE ELEVENTH CAUSE OF ACTION**

- i. Penalties pursuant to Labor Code sections 2698 and 2699;
- ii. Costs of suit;
- iii. Reasonable attorney's fees; and
- iv. Such other relief as the Court deems just and proper.

Dated: February 21, 2018

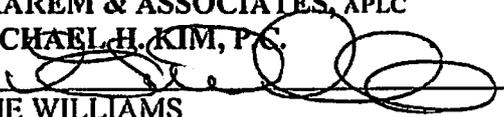
**MAKAREM & ASSOCIATES, APLC**  
**MICHAEL H. KIM, P.C.**  
 By:   
**GENE WILLIAMS**  
 Attorneys for Plaintiff  
**ALEJANDRO GUZMAN**, individually and on  
 behalf of all others similarly situated  
 Attorneys for Plaintiffs

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**DEMAND FOR TRIAL BY JURY**

Plaintiff hereby demand trial by jury in all causes of action.

Dated: February 21, 2018

**MAKAREM & ASSOCIATES, APLC**  
**MICHAEL H. KIM, P.C.**  
By:   
**GENE WILLIAMS**  
Attorneys for Plaintiff  
**ALEJANDRO GUZMAN**, individually and on  
behalf of all others similarly situated  
Attorneys for Plaintiffs

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PROOF OF SERVICE  
(Code of Civil Procedure §1013A(d))

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 11601 Wilshire Boulevard, Suite 2440 Los Angeles, CA 90025. On February 21, 2018, I caused the foregoing document described as:

**First Amended Complaint for Damages**

Said document was served on the interested parties in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

Bonnie Glatzer, Esq.  
Seth L. Neulight, Esq.  
Nixon Peabody LLP  
One Embarcadero Center, 18th Floor  
San Francisco, CA 94111-3600

XX BY MAIL: I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid. I am readily familiar with this business' practice for collection and processing of mail and that on the same day, and in the ordinary course of business, said mail is deposited in the United States Mail with postage thereon fully prepaid at Los Angeles, California. I am aware that on motion of a party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in the affidavit/proof of service.

\_\_\_ BY EMAIL: I caused a true copy of the foregoing document to be served by e-mail at the e-mail addresses set forth above. Each email was complete and no reports of error were received.

\_\_\_ VIA OVERNIGHT DELIVERY: I placed such envelope for regularly scheduled pickup at our offices on the date of this declaration by our usual overnight delivery service.

I declare under penalty of perjury under the laws of the State of California and the United States of American that the foregoing is true and correct. Executed on February 21, 2018, at Los Angeles, California.

  
Harkiran Chauhan

**EXHIBIT 2**

**EXHIBIT 3**

## NOTICE OF PENDENCY OF CLASS ACTION SETTLEMENT

If you are or were employed by Pick-N-Pull Auto Dismantlers in a non-exempt, hourly-paid position in California at any time between April 26, 2013 and **[DATE OF PRELIMINARY APPROVAL]**, a class action settlement may affect your rights.

*A court authorized this Notice in the matter of Guzman v. Pick-N-Pull Auto Dismantlers  
Alameda County Superior Court, Case No. RG16816283*

*Your legal rights may be affected by this Settlement. Please read this Notice carefully.*

Plaintiff Alejandro Guzman (“Plaintiff”), on behalf of himself and other similarly situated employees, sued Pick-N-Pull Auto Dismantlers (“PNP”) in Alameda County Superior Court (“Court”) for allegedly failing to: pay minimum wages; pay overtime wages; pay all wages earned; provide meal and rest periods; timely pay wages upon termination; failure to maintain records and provide accurate wage statements; and failure to indemnify for business expenses (the “Litigation”). Plaintiff also alleged claims in the Litigation under the California Private Attorneys General Act (“PAGA”) and Business & Professions Code. PNP denies all claims alleged in the Litigation and denies any wrongdoing. PNP also denies that Plaintiff’s claims in the Litigation are suitable to be adjudicated on a class-wide basis. The proposed Settlement is not a concession or admission by PNP that the Litigation has any merit whatsoever. The Court has not ruled on the merits of Plaintiff’s claims.

The Court has preliminarily approved the Settlement in this Litigation and has determined that the proposed Settlement is fair, adequate, and reasonable. If you qualify as a Settlement Class Member, you may receive money from the Settlement. A final determination will be made by the Court at a Final Approval/Settlement Fairness Hearing.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
<b>DO NOTHING</b>	You will be paid your Individual Settlement Payment in exchange for releasing the Released Claims against PNP and the Released Parties (see Section 11).
<b>EXCLUDE YOURSELF</b>	You will not be paid your Individual Settlement Payment, and you will retain any rights to assert the Released Claims against PNP. You will not be able to object to the Settlement.
<b>DISPUTE THE NUMBER OF TOTAL SHIFTS WORKED</b>	If you dispute the listed number of Workweeks that you worked for PNP in a non-exempt, hourly-paid position in California at any time between April 26, 2013 and <b>[DATE OF PRELIMINARY APPROVAL]</b> (“Class Period”), you may contact the Settlement Administrator to provide additional information and resolve the dispute. You will be paid your Individual Settlement Payment, or an adjusted amount.
<b>OBJECT</b>	You will tell the Court why you don’t agree with the Settlement, following the procedures described more fully below in Section 13. The Court may or may not agree with your objection. However, if the Court does not agree with your objection, you may still be paid your Individual Settlement Payment.
<b>HOW MUCH CAN I GET?</b>	The number of Workweeks during which you worked for PNP in a non-exempt, hourly-paid position in California during the Class Period (“Total Workweeks”) is _____. Your estimated Individual Settlement Payment is \$_____.

### 1. Why Did I Get This Notice?

**You are not being sued.** Plaintiff sued PNP in a class and representative action on behalf of current and former non-exempt employees of PNP in California. Records show that you worked for PNP in California in a non-exempt, hourly-paid position during the Class Period.

You received this Notice because you have a right to know about a proposed Settlement and your options before the Court decides whether to approve the Settlement. If the Court approves the Settlement, and after any objections and appeals are resolved, the Settlement Administrator appointed by the Court will make all payments approved by the Court. This Notice explains the Litigation, the Settlement, your legal rights, what benefits are available, who is eligible to receive them, and how to receive payment.

## 2. What Is This Litigation About?

Plaintiff was an employee of PNP who worked in California in a non-exempt, hourly-paid position during the Class Period. Plaintiff filed a putative class and representative action against PNP for alleged wage and hour violations, including: (1) failure of pay minimum wages, (2) failure to pay overtime wages; (3) failure to provide meal periods, (4) failure to provide rest periods, (5) failure to pay all wages earned; (6) failure to provide accurate wage statements; (7) failure to timely pay wages upon termination, (8) failure to maintain records; (9) failure to indemnify for business expenses; (10) violation of the California Business & Professions Code, and (11) for PAGA penalties. PNP denies that it is liable on any of Plaintiff's claims, and denies any wrongdoing. The parties reached an agreement to resolve Plaintiff's claims without further litigation. The Court has preliminarily approved Plaintiff to represent the Settlement Class. However, the Court has not made any findings on the merits of Plaintiff's claims.

## 3. Do I Need to Hire an Attorney?

You do not need to hire your own attorney. The Court has already preliminarily appointed counsel to represent the Settlement Class ("Class Counsel") (see Section 15). However, you may hire your own attorney at your own expense if you choose to do so.

## 4. What Is PNP's Position?

PNP denies any wrongdoing or liability on Plaintiff's claims in the Litigation. PNP further denies that it owes Plaintiff or any Class Member any unpaid wages, damages, restitution, penalties, or other monetary amounts. PNP denies that it has acted contrary to applicable California law. PNP believes that it has valid defenses to Plaintiff's claims in the Litigation. By agreeing to the Settlement, PNP is not admitting liability on any of the factual or legal allegations in the Litigation, or that the Litigation can proceed as a class or representative action. PNP has agreed to settle the Litigation as a compromise with Plaintiff and Class Counsel merely to avoid the time, expense and burden of further litigation.

## 5. Why Is There a Settlement?

The Court did not decide in favor of Plaintiff or PNP on any claims or defenses asserted in the Litigation. After a thorough investigation into the facts of this Litigation, the parties agreed to the Settlement following a mediation session with a neutral third-party mediator. The Litigation settled because Class Counsel and Plaintiff believe that the amount of the Settlement is fair, adequate, and reasonable in light of the strengths and weaknesses of the claims and other factors present and potential in this Litigation.

## 6. What Does the Settlement Provide?

Settlement Class Members who do not timely send a valid request for exclusion to the Settlement Administrator will receive Individual Settlement Payments from the Net Settlement Amount (“NSA”). The NSA is the portion of the Settlement Amount available for distribution to Settlement Class Members, after deductions ordered by the Court in its final approval order, as discussed below.

The Settlement Amount is \$2,500,000. From the Settlement Amount, Class Counsel will ask the Court to award attorneys’ fees in the amount of \$833,333.33, which represents one-third of the Settlement Amount, and actual litigation costs of up to \$30,000. Class Counsel will also ask the Court to authorize a Class Representative Enhancement Award to be paid to Plaintiff from the Settlement Amount in the amount of \$5,000, to compensate him for the risks, time, and expense of his involvement in the Litigation. This payment is in addition to any Individual Settlement Payment that Plaintiff is otherwise entitled to as a Settlement Class Member. The Settlement Administrator will also be paid for the expense of notifying the Settlement Class Members of the Settlement, processing forms and requests for exclusions, distributing all payments, and completing all tasks related to the administration of this Settlement. Settlement Administration Costs shall not exceed \$30,000, to be paid from the Settlement Amount. Finally, Class Counsel will ask the Court to approve an allocation in the amount of \$10,000, for claims released under the PAGA statute, with 75% of the allocation (\$7,500), to be awarded to the California Labor and Workforce Development Agency, and 25% of the allocation (\$2,500), to be awarded to Settlement Class Members by including that amount in the NSA.

## 7. What Can I Get From the Settlement?

Settlement Class Members (who do not request to be excluded) will be paid from the Net Settlement Amount. Each Individual Settlement Payment will be designated as follows: one-third as alleged unpaid wages, for which an IRS Form W-2 shall be issued; one third as alleged penalties, for which an IRS Form 1099 shall be issued; and one third as alleged interest due, for which an IRS Form 1099 shall be issued, as appropriate. Individual Settlement Payments from the Net Settlement Amount are subject to applicable tax withholdings. The amount of tax withholding from your Individual Settlement Payment may or may not be sufficient to cover your applicable tax obligations to the Internal Revenue Service. Please consult your tax adviser, as needed. Neither the named parties nor any counsel in this Litigation make any representations as to the tax treatment of Individual Settlement Payments provided by the Settlement.

## 8. How Was My Individual Payment Amount Calculated?

Based on PNP’s records, the Settlement Administrator calculated each Settlement Class Member’s Individual Settlement Payment by: (1) dividing the Total Workweeks each Settlement Class Member worked during the Class Period by the total Workweeks that all Settlement Class Members worked in the aggregate during the Class Period; and (2) multiplying the resulting figure in clause 1 above by the NSA. Each Individual Settlement Payment will be reduced by any legally mandated deductions (e.g., payroll taxes, etc.), for each Settlement Class Member.

Settlement Class Members who submit valid and timely requests for exclusion to the Settlement Administrator will not be entitled to receive Individual Settlement Payments. The estimated Individual Settlement Payments allocated to those individuals will be redistributed to the Settlement Class Members who do not request exclusion such that the aggregate settlement payout to Settlement Class Members equals 100% of the NSA.

## 9. How Can I Get Payment?

You do not need to take any action to qualify for payment. However, if you dispute the number of your Total Workweeks worked during the Class Period, as stated above, you may contact the Settlement Administrator with the details of your dispute, including any supporting information or documentation, no later than [date]. If you do

nothing, you will receive your Individual Settlement Payment calculated based on the Total Workweeks worked as identified in this Notice, and you will be bound by the terms of the Settlement (including the Released Claims described in Section 11).

#### 10. When Would I Get My Payment?

The Court will hold the Final Approval/Settlement Fairness Hearing on [DATE], at [TIME], in Department 21 of the California Superior Court for the County of Alameda, located at 1221 Oak Street, Oakland, California 94612, to decide whether to grant final approval of the Settlement and enter final judgment. This hearing date is subject to continuance without further notice. If the Court grants final approval of the Settlement, your Individual Settlement Payment will be mailed approximately 30 days after entry of Final judgment, unless there are objections, appeals, or other challenges to the Settlement, the Final Judgment or otherwise.

#### 11. What Rights Do I Give Up If I Participate or Do Nothing?

Unless you submit a timely and valid request for exclusion from the Settlement, you will remain a Settlement Class Member, and you will be bound by the terms of the Settlement, including releasing the Released Claims against PNP and Released Parties. It also means that all of the Court's orders will apply to you and legally bind you.

Unless you submit a valid and timely request for exclusion, you shall be deemed to fully and finally release and discharge PNP and its predecessors and successors, as well as all of its current, former and future subsidiaries, affiliates, and parent companies, and its and their fiduciaries, insurers, agents, partners, employees, assigns, subrogees, privies, officers, directors, managers, members, shareholders, attorneys, benefit plans, administrators, and trustees ("Released Parties") from any and all claims for the payment of unpaid wages, including but not limited to overtime wages, "off-the-clock" wages, and compensation associated with non-compliant meal or rest periods, penalties (including PAGA Penalties, as well as penalties for alleged violations of California Labor Code sections 201, 202, 203, 204, and 226), interest, costs, attorneys' fees, restitution, conversion, common count, fraud, breach of contract, unjust enrichment, compensatory damages, liquidated damages, punitive damages, injunctive relief, and any other remedies available at law or equity for wages allegedly owed to Plaintiff, and with respect to the Settlement Class Members, only to the extent that such claims were asserted or could have been asserted in the Litigation based upon any of the conduct alleged in the Litigation and which arose from their employment with PNP in California during the Class Period. Subject to the foregoing, the claims being waived include any and all claims, rights, demands or causes of action, that were brought or could have been brought in the Litigation on behalf of Plaintiff or a Class Member under any federal, state or local statutory or common law, including, but not limited to, California Labor Code §§ 201-204, 210, 218, 218.5, 218.6, 226, 226.3, 226.7, 512, 558, 1197.1, 1194, 1198, 2698, *et seq.*, 2802 *et seq.*, all related provisions of the California Industrial Welfare Commission Wage Orders, California Business and Professions Code §§ 17200 *et seq.*, California Code of Civil Procedure § 1021.5, and the laws of contract, torts and equity that relate to the claims asserted in the Litigation ("Released Claims"). Except as to Plaintiff, who releases any and all claims, known or unknown, that he may have against PNP, the Released Claims do not include any claims other than those described above.

#### 12. How Do I Exclude Myself from the Settlement?

If you do not wish to participate in the Settlement, you may exclude yourself by submitting a written request for exclusion no later than [date]. The written request for exclusion: (1) must contain the name, address, telephone number and the last four digits of the Social Security number and/or the Employee ID number of the person requesting exclusion, (2) must be signed by the Settlement Class Member; (3) must be postmarked no later than [date] and returned to the Settlement Administrator at the address listed below; and (4) must describe the Settlement Class Member's intent to request exclusion, opt out, or words to that effect.

Settlement Administrator  
Address  
Phone: (\*\*\*) \*\*\*-\*\*\*\*

If you submit a valid and timely request for exclusion, you shall be barred from participating in the Settlement. You may not object and will not receive an Individual Settlement Payment. You will retain all rights you may have against PNP.

### 13. How Do I Object to the Settlement and Appear at the Final Approval and Fairness Hearing?

To object, you may submit a valid and timely written objection to the Settlement Administrator listed in Section 12, no later than [date]. The written objection must be signed by the Settlement Class Member and state: (1) the full name of the Settlement Class Member; (2) the last four digits of the Settlement Class Member's Social Security number and/or the Employee ID number; and (3) the basis for the objection. If you do not submit a written objection, you are still entitled to appear at the Final Approval Hearing to state your objection with the Court. If the Court rejects your objection, you will be bound by the terms of the Settlement. You do not have to attend the Final Approval Hearing, but you may do so at your own expense. If you send an Objection, you do not have to come to Court to talk about it.

### 14. When Is the Final Approval and Fairness Hearing?

The Court will hold a Final Approval/Settlement Fairness Hearing in Department 21 of the California Superior Court for the County of Alameda, located at 1221 Oak Street, Oakland, California 94612, on [date] at [time], to determine whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will also be asked to approve Class Counsel's request for attorneys' fees and litigation costs, Plaintiff's Class Representative Enhancement Award, Settlement Administration Costs, and the PAGA Payment.

The hearing may be continued without further notice to you. It is not necessary for you to appear at this hearing, but you may do so at your own expense. Notice of the final judgment will be on file with the Clerk of the Court and posted on [settlement administrator website].

### 15. How Do I Get Additional Information?

This Notice provides a summary of the Settlement. For the precise terms and conditions of the Settlement, you should consult the Class Action Settlement Agreement between Plaintiff and PNP which is on file with the Clerk of the Court. Additionally, the pleadings and other records in this Litigation may be examined at any time during regular business hours at the Office of the Clerk of the California Superior Court for the County of Alameda, located at 1221 Oak Street, Oakland, California 94612. If you have questions, you may contact the Settlement Administrator or Class Counsel.

<b>CLASS COUNSEL</b>	<b>COUNSEL FOR DEFENDANT</b>
Gene Williams MAKAREM & ASSOCIATES, APLC 11601 Wilshire Blvd., Suite 2440 Los Angeles, CA 90025 Tel: (310) 312-0299	Bonnie Glatzer NIXON PEABODY LLP One Embarcadero Center, Suite 3200 San Francisco, CA 94111 Tel.: (415) 984-8200

**PLEASE DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THIS SETTLEMENT.**

**BY ORDER OF THE COURT.**