

1 HAYES PAWLENKO LLP
MATTHEW B. HAYES (SBN 220639)
2 KYE D. PAWLENKO (SBN 221475)
mhayes@helpcounsel.com
3 kpawlenko@helpcounsel.com
595 E. COLORADO BLVD., SUITE 303
4 PASADENA, CA 91101
(626) 808-4357; FAX (626) 921-4932

5 Attorneys for Plaintiffs
6

7 WILLIAM V. WHELAN [SBN 116372]
wwhelan@swsslaw.com
8 LEAH S. STRICKLAND [SBN 265724]
lstrickland@swsslaw.com
9 SOLOMON WARD SEIDENWURM & SMITH, LLP
401 B Street, Suite 1200
10 San Diego, California 92101
(t) 619.231.0303
11 (f) 619.231.4755

12 Attorneys for Defendant
RENZENBERGER, INC.
13

14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**
16 **WESTERN DIVISION**

17 RODERICK WRIGHT, FERNANDO
OLIVAREZ, MARCUS HAYNES,
18 JR., and MICHAEL WATSON,
individuals on behalf of themselves
19 and others similarly situated,

20 Plaintiffs,
21 v.

22 RENZENBERGER, INC., a Kansas
corporation; and DOES 1 through 10
23 inclusive,

24 Defendants.
25 _____
26

Case No: 2:13-cv-06642-FMO-AGR

Complaint filed: July 15, 2013

CLASS ACTION

**STIPULATION AND SETTLEMENT
OF CLASS ACTION CLAIMS**

Assigned to: Fernando M. Olguin

Referred to: Magistrate Judge Alicia G.
Rosenberg

27
28

1 This Stipulation and Settlement of Class Action Claims (hereafter
2 “Stipulation” or “Settlement” or “Agreement”) is entered into by and between
3 Plaintiffs Roderick Wright, Fernando Olivarez, Marcus Haynes, Jr. and Michael
4 Watson (collectively “Plaintiffs”), on behalf of themselves and the members of the
5 certified classes as defined herein, on the one hand, and Defendant Renzenberger
6 Inc. (“Renzenberger”), on the other hand (collectively “the Parties”), with respect to
7 the lawsuit *Wright, et al. v. Renzenberger, Inc.*, Case No. 2:13-cv-06642-FMO-AGR
8 currently pending in the United States District Court for the Central District of
9 California (hereafter “the Action”).

10 WHEREAS the Action was initially filed on July 15, 2013 in Los Angeles
11 Superior Court and was subsequently removed to the United States District Court
12 for the Central District of California on September 11, 2013;

13
14 WHEREAS, the Action asserts wage and hour class claims against
15 Renzenberger on behalf of individuals Renzenberger employed as drivers;

16 WHEREAS, following multiple motions for class certification and an appeal
17 to the Ninth Circuit, the following Rule 23 classes have been certified in the Action:

- 18 • All road drivers employed by Renzenberger in California at any time
19 from August 1, 2011 through July 15, 2012 who were paid a piece rate
20 that Renzenberger deemed to cover non-driving tasks (hereafter
21 “Separate Pay Class”);
- 22 • All road drivers employed by Renzenberger in California at any time
23 from August 1, 2011 through February 22, 2014 whose minimum wage
24 entitlement was determined by dividing total weekly compensation by
25 total weekly hours worked (hereafter “Pay Averaging Class”);
- 26 • All yard drivers and road drivers employed by Renzenberger in
27 California at any time from July 16, 2012 through February 8, 2014
28 who received a wage statement that either listed the overtime rate as

1 just one-half of the regular rate (as opposed to one and one-half times
2 the regular rate), or equivalent to the regular rate (as opposed to twice
3 the regular rate for double time), or, alternatively, did not list the
4 overtime rate at all (hereafter “Wage Statement Class”);

- 5 • All members of the Separate Pay Class and the Pay Averaging Class
6 whose employment with Renzenberger ended at any time from August
7 1, 2011 through November 30, 2016 (hereafter “Waiting Time Class”);
8 and
- 9 • All yard drivers and road drivers employed by Renzenberger in
10 California from August 1, 2011 through September 30, 2017 who
11 worked one or more days of three and one half (3 ½) hours or more
12 (hereafter “Break Class”);

13
14 WHEREAS, on March 8, 2018, the Court issued an Order on the Parties’
15 cross-motions for partial summary judgment in which the Court granted Plaintiffs’
16 motion for partial summary judgment as to liability on the separate pay, pay
17 averaging, waiting time, wage statement, and rest break claims and granted
18 Renzenberger’s motion for partial summary judgment as to only the California
19 Unfair Competition Law (“UCL”) claim to the extent based on wage statement
20 violations and the California Labor Code Private Attorney General Act (“PAGA”)
21 claim;

22
23 WHEREAS, on April 11, 2018, Renzenberger filed a motion to certify the
24 Court’s summary judgment Order for appeal, which was under submission with the
25 Court at the time this Settlement was reached;

26
27 WHEREAS, Court-approved notice of class certification and an opportunity
28 to opt-out was provided to the Separate Pay Class, Pay Averaging Class, Wage
Statement Class, Waiting Time Class, and Break Class (collectively “Certified Class

1 Members”) and, following the return of opt-out forms by 21 individuals whose
2 names are listed on Exhibit 1 hereto, the Certified Class Members include more than
3 3,000 individuals; and

4
5 WHEREAS, after extensive discovery and investigation into the merits,
6 potential damages and Renzenberger’s financial ability to satisfy a judgment, and
7 following protracted arms-length settlement negotiations including private
8 mediation, the Parties have reached an agreement to the settle the Action.

9
10 NOW, THEREFORE, IT IS HEREBY STIPULATED THAT, subject to
11 Court approval of this Settlement and contingent on contemporaneous Court
12 approval of the proposed settlement in the class action entitled *McConville v.*
13 *Renzenberger*, United States District Court Case No. 2:13-cv-06642-FMO-AGR
14 (hereafter “McConville Settlement”), the Action shall be compromised and settled
15 pursuant to the following terms and conditions:

16 1. **Effective Date.** As used in this Settlement, “Effective Date”
17 means the date by which this Settlement and the McConville Settlement (together
18 “Class Action Settlements”) are finally approved by the Court and the Judgment in
19 both cases has become final. For purposes of this paragraph, the Judgment shall be
20 deemed “final” at the latest of the following dates: (a) if no objections to the Class
21 Action Settlements are filed, the date of the Court’s judgments finally approving the
22 Class Action Settlements; (b) if an objection to the Class Action Settlements has
23 been filed, the date immediately following the applicable deadline for filing a notice
24 of appeal of the Court’s judgments giving final approval of the Class Action
25 Settlements, assuming no notice of appeal is filed; or (c) if a notice of appeal is
26 filed, the date of termination of the appeal (including any requests for rehearing)
27 resulting in the final judicial approval of the Class Action Settlements.

28

1 2. Release Of Claims.

2 (a) Certified Class Members’ Released Claims. As of the
3 Effective Date, the Certified Class Members release Renzenberger and its assignees,
4 and each of their past or present officers, directors, shareholders, employees, agents,
5 principals, heirs, representatives, accountants, auditors, consultants, insurers and
6 reinsurers, and their respective successors and predecessors in interest, subsidiaries,
7 affiliates, parents and attorneys and all of their respective officers, directors,
8 employees, administrators, fiduciaries, trustees and agents (the “Released Parties”),
9 from the “Released Claims.” For purposes of this Agreement, the “Released
10 Claims” include all claims, other than claims under the federal Fair Labor Standards
11 Act (“FLSA”), that were or could have been pled based on the factual allegations in
12 the operative complaint, including without limitation, those having all of the
13 characteristics below:

14 (1) all claims, demands, rights, liabilities, and causes of
15 action of every nature and description whatsoever that arose from August 1, 2011
16 through the date Court enters an Order preliminarily approving this Settlement; and

17 (2) whether in tort, contract, or for violation of any state
18 constitution, statute, rule or regulation, including state wage and hour laws; and

19 (3) whether for economic damages, non-economic
20 damages, restitution, premium pay, penalties or liquidated damages; and

21 (4) arising out of, relating to, or in connection with:

22 a. any and all facts, transactions, events,
23 policies, occurrences, acts, disclosures, statements,
24 omissions or failures to act, which are or could be
25 the basis of claims: (a) that Renzenberger failed to
26 pay all straight time wages; (b) that Renzenberger
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

failed to pay all overtime pay; (c) that Renzenberger failed to provide meal periods and/or rest breaks, or failed to compensate for all hours worked in connection with meal periods and/or rest breaks, in accordance with California law, including any claims for waiting time penalties, premium pay, or inaccurate wage statements based on the factual allegations pled in the Action; (d) that Renzenberger failed to compensate for all hours worked, including any claims for waiting time penalties, or inaccurate wage statements based on the factual allegations pled in the Action; (e) that Renzenberger failed to compensate for all wages due upon termination in a timely fashion; (f) that Renzenberger failed to provide the paystubs required by California law; (g) that Renzenberger failed to comply with any California state wage and hour laws based on the factual allegations pled in the Action; (h) that Renzenberger failed to keep any and all records required by California law based on the factual allegations pled in the Action; (i) that Renzenberger failed to comply with Labor Code sections 201-203, 206, 206.5, 226, 226.7, 510, 512, California Business & Professions Code section 17200, and/or Wage Order 1-2001 based on the factual allegations pled in the Action; (j) any claims brought under California Labor Code section 2699, the “Private Attorney General Act” based on the factual

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

allegations pled in the Action; or (k) that Renzenberger owes wages, premium pay, penalties, interest, attorney’s fees or other damages of any kind based on a failure to comply with these state wage and hour laws and record keeping laws based on the factual allegations pled in the Action; and/or

b. the causes of action asserted in the Action, including any and all claims for alleged failure to provide meal periods and/or rest breaks, or alleged failure to pay all wages and/or premium pay on termination of employment, or alleged failure to provide accurate wage statements, or for waiting time penalties or for premium pay and, as related to the foregoing, for alleged unlawful, unfair and/or fraudulent business practices under California Business and Professions Code § 17200, et seq.; and/or

c. any other claims based on any factual allegations pled in this Action.

The Released Claims are based on the factual and legal claims asserted in the Action and only applies to the Certified Class Members. The 21 individuals listed on Exhibit 1 timely opted out of this Action and are therefore not included in the Certified Class Members and shall not be affected by this release. Further, the Released Claims do not include any claim that as a matter of law cannot be released, including but not limited to claims for indemnification pursuant to California Labor Code section 2802, unemployment insurance benefits, and workers’ compensation

1 claims.

2
3 **(b) Certified Class Members' Release of FLSA Claims.**

4 In addition to releasing the Released Parties from the Released Claims, as
5 outlined in subsection (a) above, those Certified Class Members who affirmatively
6 consent to join the FLSA collective by executing and returning the FLSA Opt-In
7 Form and Release of Claims in the form attached hereto as Exhibit 3 (hereafter
8 "FLSA Opt-In"), shall also release the Released Parties from the "Released Federal
9 Law Claims." For purposes of this Agreement, the "Released Federal Law Claims"
10 include all claims that were or could have been pled under federal law based on the
11 factual allegations in the operative complaint, including without limitation:

12 (1) any and all applicable federal law claims, demands,
13 rights, liabilities, and causes of action of every nature and description whatsoever,
14 known or unknown, asserted or that might have been asserted,

15 (2) whether in tort, contract, or for violation of any federal
16 constitution, statute, rule or regulation, including federal wage and hour laws,
17 whether for economic damages, non-economic damages, restitution, penalties or
18 liquidated damages, arising out of, relating to, or in connection with:

19 a. all federal law causes of action alleged in or
20 that could have been alleged in the Action based
21 upon the facts pleaded in the Action under any
22 theory of law, including but not limited to: failure
23 to pay wages, including straight time and overtime
24 wages under the FLSA; failure to provide rest
25 periods; failure to timely pay wages owed; and/or

26 b. any and all facts, transactions, events,
27 policies, occurrences, acts, disclosures, statements,
28 omissions or failures to act, alleged in or that could

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

have been alleged in the Action based on the facts
pled in the Action under any theory of law, which
are or could be the basis of claims related to
Renzenberger’s alleged failure to pay wages,
including straight time and overtime under the
FLSA; failure to provide rest periods; failure to
timely pay wages owed; or other damages of any
kind based on a failure to comply with any federal
wage and hour laws, at any time from August 1,
2011 through the date the Court enters an Order
preliminarily approving this Settlement.

(c) **Plaintiffs’ Released Claims.** As of the Effective Date,
Plaintiffs release the Released Parties from the Released Claims and Released
Federal Law Claims and, in addition, generally release, to the greatest extent
permitted by law, the Released Parties from any and all claims, demands, rights,
liabilities and causes of action of every nature and description whatsoever, known or
unknown, asserted or that might have been asserted, whether in tort, contract, or for
violation of any state or federal statute, rule or regulation arising out of, relating to,
or in connection with any act or omission by or on the part of any of the Released
Parties committed or omitted prior to the execution of this Agreement (hereafter
“General Release”). The General Release does not apply to claims for workers’
compensation benefits or other claims that, as a matter of law, cannot be released.
With respect to the General Release, Plaintiffs waive their rights under California
Civil Code section 1542, which states:

“A general release does not extend to claims which the creditor does
not know or suspect to exist in his or her favor at the time of

1 executing the release, which if known by him or her must have
2 materially affected his or her settlement with the debtor.”

3 **3. No Admission of Wrongdoing.** Renzenberger and the Released
4 Parties specifically and generally deny any and all liability and wrongdoing of any
5 sort with regard to the claims alleged in the Action and, by entering into this
6 Settlement, make no concessions or admissions of wrongdoing of any sort. Neither
7 this Settlement, nor any settlement documents prepared by the Parties, nor any
8 actions taken pursuant to this Settlement, is or shall be construed or interpreted as
9 any admission of any fault, wrongdoing, or liability on the part of Renzenberger or
10 the Released Parties. Renzenberger and its counsel have concluded that it is
11 desirable that the Action be settled in a manner and upon such terms and conditions
12 set forth herein in order to avoid further expense, inconvenience, and distraction of
13 further legal proceedings, and the risk of the outcome of the Action. Therefore,
14 Renzenberger has determined that it is desirable and beneficial to resolve the claims
15 in the Action.

16 **4. Funding of the Gross Settlement Amount.** No later than
17 eighteen (18) calendar days after the Effective Date, Renzenberger shall wire a non-
18 reversionary gross settlement amount of Four Million Five Hundred Fifty Thousand
19 Dollars (\$4,550,000) (hereafter “Gross Settlement Amount”) to a Qualified
20 Settlement Fund (“QSF”) that shall be set up, held and controlled by the settlement
21 administrator, CPT Group, Inc. (hereafter “Settlement Administrator”). The Parties
22 agree that the QSF is intended to be a “Qualified Settlement Fund” under Section
23 468B of the Code and Treas. Reg. section 1.469B-1, 26CFR section 1.468B-1, et
24 seq., and will be administered by the Settlement Administrator as such. The Gross
25 Settlement Amount is the total, maximum, and non-reversionary amount that
26 Renzenberger shall be required to pay in connection with the Settlement, including
27 without limitation, attorneys’ fees and costs to Plaintiffs’ counsel as determined by
28

1 the Court, individual settlement payouts to Certified Class Members, employer
2 payroll taxes owing on the individual settlement payouts, enhancements awards to
3 Plaintiffs as determined by the Court, and the Settlement Administrator’s fees and
4 costs. Under no circumstances shall Renzenberger be required to pay more than the
5 Gross Settlement Amount for any reason under this Settlement.

6
7 **5. Allocation of the Gross Settlement Amount.**

8 **(a) Individual Settlement Payments.** Payments to the
9 Certified Class Members (hereafter “Individual Settlement Payments”) shall be paid
10 from the balance of the Gross Settlement Amount after deductions for Settlement
11 Administrator expenses, Court-approved attorneys-fees and costs to Plaintiffs’
12 counsel, and Court-approved enhancements payments to the Plaintiffs (hereafter
13 “Net Settlement Amount”). Individual Settlement Payments shall be mailed by the
14 Settlement Administrator using regular First Class U.S. Mail within thirty (30)
15 calendar days after the Effective Date. Certified Class Members shall not be
16 required to submit a claim or claim form to receive an Individual Settlement
17 Payment.

18 **(b) Calculation of Individual Settlement Payments.** Each of
19 the Certified Class Members shall be entitled to a portion of the Net Settlement
20 Amount pursuant to a weighted point system. Certified Class Members shall be
21 awarded points pursuant to the following formula: (1) two points will be earned for
22 each workweek an individual worked as a road driver between August 1, 2011 and
23 February 22, 2014, (2) one point will be earned for each workweek an individual
24 worked as a road driver between February 23, 2014 and the date of preliminary
25 approval, (3) one point will be earned for each workweek a class member worked as
26 a yard driver between August 1, 2011 and the date of preliminary approval, and (4)
27 four points will be earned for qualifying for membership in the Waiting Time Class.
28 Each Certified Class Member’s share of the Net Settlement Amount shall be

1 equivalent to the ratio of points earned by the individual divided by the total
2 combined points earned by all Certified Class Members. By way of example, if the
3 Net Settlement Amount were \$2,000,000 and there were a total of 100,000
4 combined points between all Certified Class Members, and a particular individual
5 earned 300 of those points, that person's Individual Settlement Payment would be
6 \$6,000 [$300/100,000 \times \$2,000,000 = \$6,000$]. Each Individual Settlement Payment
7 will be reduced by any legally required tax withholdings (e.g., employer and
8 employee payroll taxes, etc.) owed by Renzenberger and the Certified Class
9 Member.

10 The Parties recognize that the Individual Settlement Payments to be paid to
11 Certified Class Member reflect a settlement of a dispute over claimed wages,
12 interest, penalties, and other alleged damages. Individual Settlement Payments shall
13 be apportioned for purposes of tax reporting as follows: (a) 1/3 for alleged interest;
14 (b) 1/3 for alleged unpaid wages; and (c) 1/3 for alleged penalties.

15 The Individual Settlement Payments shall be distributed to the Certified Class
16 Members pursuant to two checks. Ninety Five percent (95%) of each Certified
17 Class Members' Individual Settlement Payment shall be contained in a check with a
18 memo line that reads "Payment for Released Claims" (hereafter "Rule 23
19 Payment"). Such checks shall include language on the back stating: "As explained
20 in the Notice of Class Action Settlement, regardless of whether this check is cashed,
21 you have released all claims, other than claims under the federal Fair Labor
22 Standards Act ("FLSA"), that were asserted in or, based on the facts alleged, could
23 have been asserted in *Wright, et al. v. Renzenberger, Inc.*, Case No. 2:13-cv-06642-
24 FMO-AGR."

25 The remaining five percent (5%) of each Certified Class Members' Individual
26 Settlement Payment shall be contained in a separate check (hereafter "FLSA
27 Payment") payable to those Certified Class Members who have affirmatively
28 consented to join the FLSA collective by executing and returning the FLSA Opt-In.

1 The memo line for such checks shall state “FLSA Settlement Payment” and the back
2 of such checks shall include the following language: “As explained in the Notice of
3 Class Action Settlement, regardless of whether this check is cashed, you have
4 released all claims under the federal Fair Labor Standards Act (“FLSA”) that were
5 asserted in or, based on the facts alleged, could have been asserted in *Wright, et al.*
6 *v. Renzenberger, Inc.*, Case No. 2:13-cv-06642-FMO-AGR.” Funds allocated to the
7 FLSA Payment for individuals who do not timely execute and return the FLSA Opt-
8 In shall remain a part of the Net Settlement Amount and shall be reallocated pro-
9 rata, pursuant to the weighted point system described above, among those Certified
10 Class Members who did timely execute and return the FLSA Opt-In, and shall be
11 added to their FLSA Payment.

12 Any checks issued to Certified Class Members shall remain valid and
13 negotiable for one hundred eighty days (180) days from the date of their issuance.
14 After that time, any such unclaimed checks will be voided and those funds will be
15 sent to the State of California’s Controller’s Office of Unclaimed Property in the
16 employee’s name.

17 (c) **Class Representative Service Award.** Renzenberger
18 agrees to not oppose Plaintiffs’ request for up to \$40,000 in class representative
19 service awards to be deducted from the Gross Settlement Amount, including a
20 \$15,000 service award to Roderick Wright, a \$10,000 service award to Fernando
21 Olivarez, a \$10,000 service award to Marcus Haynes, and a \$5,000 service award to
22 Michael Watson. If any class service awards are awarded, such awards shall be in
23 addition to Plaintiffs’ Individual Settlement Payments. The class representative
24 service awards shall be paid to Plaintiffs from the Gross Settlement Amount no later
25 than thirty (30) calendar days after the Effective Date. Any portion of the amount
26 requested as class representative service awards that is not awarded to Plaintiffs
27 shall become part of the Net Settlement Amount for distribution to Certified Class
28 Members. The Settlement Administrator shall issue an IRS Form 1099-MISC to

1 each of the Plaintiffs for their class representative service award. Plaintiffs shall be
2 solely responsible to pay any and all applicable taxes owing on the class
3 representative service awards.

4 **(d) Class Counsel Award.** Renzenberger agrees not to
5 oppose Plaintiffs' counsel's request for an award of attorneys' fees of up to one-
6 third of the Gross Settlement Amount (i.e. \$1,516,666.60) and reimbursement of
7 actual costs not to exceed \$40,000 (together "Class Counsel Award"). The Class
8 Counsel Award shall be paid to Plaintiff's counsel from the Gross Settlement
9 Amount no later than thirty (30) calendar days after the Effective Date. Any portion
10 of the amount requested as Class Counsel Award that is not awarded to Plaintiffs'
11 counsel shall become part of the Net Settlement Amount for distribution to Certified
12 Class Members. Plaintiffs' counsel shall be solely responsible to pay all applicable
13 taxes based on receipt of the Class Counsel Award. Plaintiffs' counsel shall provide
14 the Settlement Administrator, with a copy to Renzenberger, an IRS Form W-9 prior
15 to payment of the Class Counsel Award. The Settlement Administrator shall issue
16 an IRS Form 1099-MISC to Plaintiffs' counsel for the payment made pursuant to
17 this paragraph.

18 **(e) Settlement Administrator Charges.** The Settlement
19 Administrator shall be paid its charges for administration of the Settlement out of
20 the Gross Settlement Amount. The Settlement Administrator charges shall include
21 all costs of administering the Settlement, including but not limited to: all tax
22 document preparation, custodial fees, and accounting fees incurred by the
23 Settlement Administrator; all costs and fees associated with establishing and
24 maintaining a QSF; all costs and fees associated with preparing, issuing and mailing
25 any and all notices and other correspondence to Certified Class Members; all costs
26 and fees associated with computing, processing, reviewing, and paying the
27 Individual Settlement Payments, and resolving disputed claims; all costs and fees
28 associated with calculating tax withholdings and payroll taxes, making related

1 payments to federal and state tax authorities, and issuing tax forms relating to
2 payments made under the Settlement; all costs and fees associated with preparing
3 any tax returns and any other filings required by any governmental taxing authority
4 or agency; all costs and fees associated with preparing any other notices, reports, or
5 filings to be prepared in the course of administering the Settlement; and any other
6 costs and fees incurred and/or charged by the Settlement Administrator in
7 connection with the execution of its duties under this Stipulation. The Parties and
8 their attorneys each represent that they do not have any financial interest in the
9 Settlement Administrator or otherwise have a relationship with the Settlement
10 Administrator that could create a conflict of interest.

11 The Settlement Administrator shall be responsible for: providing notice;
12 administering the settlement process; issuing checks; creating a maintaining a toll-
13 free hotline for inquiries by Certified Class Members regarding the Settlement;
14 handling all tax reporting; issuing appropriate tax forms to Plaintiffs, Plaintiffs'
15 counsel, and all Certified Class Members; calculating, processing and mailing
16 employer-side payroll tax payments to the appropriate state and federal taxing
17 authorities; providing declaration(s) as necessary or appropriate; and other tasks as
18 the Parties mutually agree or the Court orders. The Settlement Administrator will
19 mail the notice, the checks, and handle phone calls and inquiries relating to the
20 Settlement.

21 No later than thirty-five (35) days prior to the final approval/fairness hearing,
22 the Settlement Administrator shall send counsel for the Parties a final accounting of
23 the planned disposition of the Gross Settlement Amount and report the amounts of
24 all payments to be made to the Certified Class Members.

25 **6. Prospective Employment Practices.** As noted above, after
26 thorough investigation, the Parties disagree as to whether Renzenberger provided
27 the Certified Class Members with compliant meal periods and rest breaks as
28

1 required by California law, whether Renzenberger paid all premium pay owed,
2 whether Renzenberger timely paid all wages due and owed upon termination, and
3 whether Renzenberger provided accurate wage statements. Renzenberger believes
4 its policies do comply, and have always complied, with the law. However, because
5 the Parties desire to eliminate future disputes regarding the issues raised in this
6 Action, Renzenberger has agreed to comply with California law regarding meal and
7 rest periods, payment of wages, recording of hours worked, and paystubs.

8 Renzenberger is not obligated by virtue of this Settlement Agreement to make
9 any particular changes to its policies. To the extent Renzenberger makes any
10 changes to its policies, Renzenberger may again change those policies based on any
11 relevant changes to California or federal law or for any other reason.

12
13 7. **Preliminary Approval.** Plaintiffs' counsel shall submit this
14 Settlement for preliminary approval by the Court. Plaintiffs' counsel will prepare
15 and file the preliminary approval papers for the Court, subject to Renzenberger's
16 prior review. Renzenberger shall have at least three business days to review the
17 preliminary approval papers. The Court's preliminary approval of this Settlement
18 shall be embodied in an Order preliminarily approving the Settlement and providing
19 for notice of the Settlement and final fairness hearing to be mailed to the Certified
20 Class Members in the form attached hereto as Exhibit 2 (hereafter "Class Notice").

21 8. **Notice of Settlement to the Certified Class Members.**

22 (a) **Class Data.** Within twenty-one (21) calendar days after
23 the Court enters an Order granting preliminary approval of the Settlement,
24 Renzenberger shall provide the Settlement Administrator with the following
25 information in electronic form with respect to each Certified Class Member: (1) full
26 name; (2) last known address; (3) Social Security Number; (4) dates employed
27 between August 1, 2011 and Order granting preliminary approval in position of road
28 driver; (5) dates employed between August 1, 2011 and Order granting preliminary

1 approval employed in the position of yard driver; and (6) date of termination of
2 employment, if any (collectively “Class Data”). The Class Data shall be based on
3 Renzenberger’s personnel, payroll, and/or other business records and provided in a
4 format acceptable to the Settlement Administrator. Renzenberger agrees to consult
5 with the Settlement Administrator prior to the production date to ensure that the
6 format will be acceptable to the Settlement Administrator. The Settlement
7 Administrator shall maintain the Class Data as private and confidential and shall not
8 disclose such data to any persons or entities other than counsel for the Parties unless
9 otherwise required by law. Renzenberger will make reasonable efforts to ensure
10 that to the best of its knowledge the Class Data is complete and accurate and
11 provides all of the information required pursuant to this Stipulation and any
12 applicable Court orders. The Class Data is being supplied solely for purposes of the
13 administration of the Settlement and cannot be used by the Settlement Administrator
14 for any purposes other than to administer the Settlement.

15 **(b) Notice to Certified Class Members.** Upon receipt of the
16 Class Data, the Settlement Administrator will perform a search based on the
17 National Change of Address Database to update and correct any known or
18 identifiable address changes. Within thirty (30) calendar days of entry of the Order
19 granting preliminary approval, the Settlement Administrator shall mail the Class
20 Notice and FLSA Opt-In to all Certified Class Members via regular First Class U.S.
21 Mail (“Class Mailing Date”). The Settlement Administrator shall exercise its best
22 judgment to determine the current mailing address for each Certified Class Member.
23 The addresses identified by the Settlement Administrator as the current mailing
24 addresses shall be presumed to be the best mailing addresses for the Certified Class
25 Members. Each Class Notice shall state the number of workweeks the individual is
26 credited with working as a yard driver and/or as a road driver since August 1, 2011,
27 and an estimate of the Individual Settlement Payment the individual is to receive.

28 **(c) Undeliverable Notices.** Any Class Notice returned to the

1 Settlement Administrator as undelivered on or before the deadline for submitting an
2 objection to the Settlement shall be re-mailed to the forwarding address affixed
3 thereto. If no forwarding address is affixed, the Settlement Administrator shall
4 promptly attempt to determine a correct address by use of skip tracing or any other
5 equivalently effective search method, and shall then perform a re-mailing, if another
6 mailing address is identified by the Settlement Administrator from the search.
7 Certified Class Members who are sent a re-mailed Class Notice shall have an
8 additional fifteen (15) days to submit an objection or dispute.

9 **(d) Disputes Regarding Individual Settlement Payments.**

10 While the workweeks listed in the Class Notice are presumed to be correct,
11 Settlement Class Members shall have the opportunity to dispute the number of
12 workweeks stated on their Class Notice by sending the Settlement Administrator
13 documentation and/or an explanation to show contrary workweek numbers. The
14 dispute must be sent to the Settlement Administrator no later than forty-five (45)
15 days from the Class Mailing Date (hereafter “Dispute Deadline”). For all timely
16 disputes, the Settlement Administrator will consult with the Parties to determine
17 whether an adjustment is warranted. The Settlement Administrator shall then
18 determine the correct workweek data for the individual at issue, and the Settlement
19 Administrator’s determination shall be binding upon the Certified Class Member
20 and the Parties. The Settlement Administrator shall make all such determinations no
21 later than 30 days after the Dispute Deadline.

22 **(e) Objections.** The Class Notice shall provide that those
23 Certified Class Members who wish to object to the Settlement must submit a written
24 objection to the Court, either by mailing the objection to the clerk of court or by
25 filing the objection in person at the courthouse, no later than forty-five days from
26 the Class Mailing Date (hereafter “Objection Deadline”). The postmark date shall
27 be deemed the exclusive means for determining if the mailing of an objection is
28 timely. The Class Notice shall state that the written objection must: (1) clearly

1 identify the case and number (*Wright, et al. v. Renzenberger, Inc.*, Case No. 2:13-
2 cv-06642-FMO-AGR); (2) include the objector's full name, address, and last four
3 digits of social security number; (3) specify the reason(s) for objecting to the terms
4 of the proposed settlement and whether the objection applies only to the individual
5 class member, or to a specific subset of class members, or to all of the class
6 members; (4) be submitted to the Court either by mailing the written objection to
7 the Clerk of Court, United States District Court for the Central District of California,
8 350 W. 1st St., Suite 4311, Los Angeles, CA 90012-4565, or by filing the written
9 objection in person at any location of the United States District Court for the Central
10 District of California; and (5) be filed or postmarked on or before forty-five days
11 from the Class Mailing Date.

12 Certified Class Members who fail to make objections in the manner specified
13 above shall be deemed to have waived any objections and shall be foreclosed from
14 making any objections (whether by appeal or otherwise) to the Settlement, unless
15 the Court orders otherwise. Any Certified Class Member who submits a timely
16 objection will have a right to appear at the final fairness hearing to have his or her
17 objections heard by the Court. At no time shall any of the Parties or their counsel
18 solicit, encourage, counsel, or advise any Certified Class Members to object to the
19 Settlement or appeal from the Order and final Judgment. Plaintiffs' counsel shall not
20 represent any Certified Class Members in making any such objection.

21 (f) **FLSA Opt-Ins.** The Class Notice shall provide that those
22 Certified Class Members who wish to affirmatively consent to join the FLSA
23 collective must execute and return to the Settlement Administrator the enclosed
24 FLSA Opt-In postmarked no later than forty-five days from the Class Mailing Date
25 (hereafter "FLSA Opt-In Deadline"). The postmark date shall be deemed the
26 exclusive means for determining if the FLSA Opt-In is timely. The Settlement
27 Administrator shall provide counsel for the Parties with complete copies of all
28 FLSA Opt-Ins received, including the postmark dates for each FLSA Opt-In, within

1 two business days of receipt. Plaintiffs' counsel shall file the FLSA Opt-Ins with the
2 motion for final approval.

3 The Class Notice shall advise employees that by executing and
4 returning the FLSA Opt-In, they are consenting to join the FLSA collective and
5 release all FLSA claims that were asserted in or, based on the facts alleged, could
6 have been asserted in this action.

7
8 **9. Final Approval and Entry of Final Judgment.** Upon
9 expiration of the deadline for objecting to the Settlement, a final fairness hearing
10 shall be conducted by the Court to determine the fairness, adequacy, and
11 reasonableness of the Settlement and whether to order final approval of the
12 Settlement and to determine the amounts to be deducted from the Gross Settlement
13 Amount for the Class Counsel Award, class representative service awards, and
14 Settlement Administrator charges. If the Court grants final approval of the
15 Settlement, the Court shall enter Judgment upon the terms of the Settlement as
16 finally approved, and shall retain jurisdiction over the Parties and the Settlement
17 Administrator to enforce the terms of the Judgment.

18 Prior to the final fairness hearing, Plaintiffs will move the Court for entry of
19 an Order of final approval and associated entry of Judgment that: (a) finds the
20 Settlement fair, reasonable, adequate, and in the best interest of the Certified Class
21 Members; (b) approves Plaintiffs' counsel's application for a Class Counsel Award;
22 (c) approves Plaintiffs' application for class representative service awards; and (d)
23 approves the Settlement Administrator's charges. Renzenberger shall have at least
24 three business days to review the draft motion for final approval.

25 **10. Return to Status Before Execution of Stipulation.** If the Court
26 does not grant final approval of this Settlement, the Settlement shall be null and void
27 and shall not be used in this Action or in any other proceeding for any purposes, and
28 any order or judgment theretofore entered by the Court in furtherance of this

1 Settlement shall be treated as void from the beginning. In such a case, the Parties
2 shall be returned to their respective statuses as of the time immediately prior to the
3 execution of this Stipulation, except that Renzenberger shall pay any charges
4 already incurred by the Settlement Administrator. Notwithstanding any other
5 provision of this Stipulation, no order of the Court, or modification or reversal of an
6 appeal of any order of the Court, reducing the amount of the Class Counsel Award
7 or reducing the amount of the class representative service awards shall constitute
8 grounds for cancellation or termination of the Stipulation.

9
10 **11. No Impact on Employee Benefits.** The Individual
11 Settlement Payments or class representative service awards paid to the Certified
12 Class Members and/or Plaintiffs shall be deemed not to be pensionable earnings and
13 shall not have any effect on the eligibility for, or the calculation of, any of the
14 employee benefits (e.g., vacations, holiday pay, retirement plans, etc.) of the
15 Certified Class Members. The Parties agree that any Individual Settlement Payments
16 or class representative service awards under the terms of this Settlement do not
17 represent any modification of their previously credited hours of service or other
18 eligibility criteria under any employee pension benefit plan or employee welfare
19 benefit plan sponsored by Renzenberger. Further, any Individual Settlement
20 Payments or class representative service awards shall not be considered
21 “compensation” in any year for purposes of determining eligibility for, or benefit
22 accrual within, an employee pension benefit plan or employee welfare benefit plan
23 sponsored by Renzenberger.

24 **12. Taxation.** The Parties make no representations as to the tax
25 treatment or legal effect of the payments called for in the Settlement, and Plaintiffs
26 and Certified Class Members are not relying on any statement or representation by
27 the Parties in this regard. The portion of Individual Settlement Payments allocated to
28 unpaid wages will be subject to regular and/or applicable payroll and income tax

1 withholdings, and will be reported on an IRS Form W-2. The employer portion of
2 payroll taxes attributable to the Individual Settlement Payments shall be deducted
3 from the Gross Settlement Amount. Plaintiffs and Certified Class Members shall be
4 responsible for the payment of any taxes owing on the portions of the Individual
5 Settlement Payments reported as non-wage income.

6 **13. Circular 230 Disclaimer.** The Parties each acknowledge and
7 agree that:

8 (1) No provision of this Stipulation, and no written communication or
9 disclosure between or among the Parties or their attorneys and other advisers, is or
10 was intended to be relied upon as tax advice within the meaning of United States
11 Treasury Department circular 230 (31 CFR part 10, as amended), nor shall any such
12 communication or disclosure constitute or be construed as such tax advice;

13 (2) Each party (a) has relied and will rely exclusively upon his or its own
14 independent legal and tax counsel for advice (including tax advice) in connection
15 with this Agreement; (b) has not entered into this Agreement based upon the
16 recommendation of any other party or any attorney or adviser to any other party; and
17 (c) is not entitled to rely upon any communication or disclosure by any attorney or
18 adviser to any other party to avoid any tax or tax penalty; and

19 (3) No Attorney or adviser to any party has imposed any limitation that
20 protects the confidentiality of any such attorney's or adviser's tax strategies upon
21 disclosure by the party of the tax treatment or tax structure of any transaction,
22 including any transaction contemplated by this Settlement.

23 **14. Publicity.** The Parties agree that, prior to filing a motion for
24 Preliminary Approval of the Settlement, the terms of this Settlement will be kept
25 confidential.
26

27 From and after Preliminary Approval of the Settlement, Class Counsel agrees
28 that – aside from providing notice of the Settlement to, and discussing the

1 Settlement with, Certified Class Members – Class Counsel will not publicize the
2 Settlement by means of holding any press conference, making any press release, or
3 r publishing the Settlement on Class Counsel’s website or in social media.

4
5 **15. Exhibits and Headings.** The terms of this Agreement include
6 the terms set forth in any Exhibits referred to herein, which are incorporated herein
7 by this reference. The headings of any paragraphs or sections of this Agreement are
8 for convenience or reference only and shall not be used in interpreting this
9 Agreement.

10 **16. Interim Stay of Proceedings.** The Parties agree to hold in
11 abeyance all proceedings in this Action, except such proceedings necessary to
12 implement and complete the Settlement pending the approval hearings to be
13 conducted by the Court.

14
15 **17. No Retaliation.** Renzenberger will not take any retaliatory
16 action against Plaintiffs or any Certified Class Members who participated in the
17 Settlement.

18 **18. Amendment or Modification.** This Agreement may be amended
19 or modified only by a written instrument signed by counsel for all Parties or their
20 successors-in-interest.

21
22 **19. Entire Agreement.** This Agreement and any attached Exhibits
23 constitute the entire agreement among these Parties, and no oral or written
24 representations, warranties or inducements have been made to any party concerning
25 this Agreement or its Exhibits other than the representations, warranties, and
26 covenants contained and memorialized herein.

27 **20. Cooperation in Implementing Settlement.** The Parties and
28 their counsel shall cooperate with each other and use their best efforts to implement

1 the Settlement.

2
3 **21. Warranty of Authority, No Assignments.** The person signing
4 this Agreement on behalf of Renzenberger represents and warrants that he or she is
5 authorized to sign this Agreement on behalf of such entity. Each party represents
6 and warrants that he or she or it has not assigned to any third party, in whole or in
7 part, any claim that is to be released pursuant to this Settlement.

8 **22. Binding on Successors and Assigns.** This Agreement shall be
9 binding upon, and inure to the benefit of, the successors or assigns of the Parties.
10 Renzenberger may assign this Agreement and delegate all of its duties under this
11 Agreement to any successor or assign including without limitation any person or
12 entity acquiring more than fifty percent of its Renzenberger's outstanding ownership
13 interests, all or substantially all of its material business assets, or all or substantially
14 all of the material business assets of any business unit or division, effective
15 immediately upon written notice to the Class Representative and her
16 attorneys. Renzenberger may assign this Agreement without the consent of the
17 Plaintiffs or their attorneys. Upon such an assignment, this Agreement will be
18 binding upon and will inure to the benefit of such assignee.

19 **23. California Law Governs.** All terms of this Agreement and the
20 Exhibits shall be governed by and interpreted according to the laws of the State of
21 California and the procedures of the Court.
22

23 **24. This Settlement is Fair, Adequate, and Reasonable.** The
24 Parties believe this Settlement is a fair, adequate, and reasonable settlement of this
25 Action and have arrived at this Settlement in arms-length negotiations, taking into
26 account all relevant factors, present and potential. This Settlement was reached after
27 extensive negotiations.
28

1 **25. Cooperation and Drafting.** Each of the Parties has cooperated
2 in the drafting and preparation of this Agreement. Accordingly, in interpreting the
3 Agreement, the language shall not be construed as though drafted by any particular
4 party.

5 **26. Invalidity of Any Provision.** Before declaring any provision of
6 this Agreement invalid, the Court shall first attempt to construe the provisions valid
7 to the fullest extent possible consistent with applicable precedents so as to define all
8 provisions of this Agreement valid and enforceable. The provisions of this
9 Agreement are severable. To the extent any provision is deemed unlawful, to the
10 extent possible, such provision shall be severed and the remainder of the Agreement
11 shall remain valid and enforceable.

12 **27. Defense.** To the extent permitted by law, this Agreement may be
13 pleaded as a full and complete defense to, and may be used as the basis for an
14 injunction against, any action, suit, or other proceedings that may be instituted,
15 prosecuted, or attempted with respect to the claims released herein in breach of or
16 contrary to this Settlement.

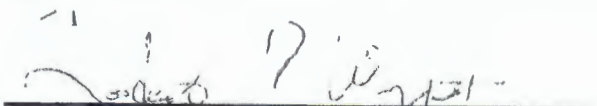
17 **28. Enforcement.** The Parties agree this Agreement shall be
18 enforceable by the Court, and the Court shall retain exclusive and continuing
19 jurisdiction of this Action over all Parties and Certified Class Members to interpret
20 and enforce the terms, conditions, and obligations of the Settlement. The Plaintiffs,
21 Certified Class Members, and Renzenberger hereby submit to the personal and
22 exclusive jurisdiction of the Court for purposes of interpreting, implementing and
23 enforcing this Agreement and all orders and judgments entered in connection
24 therewith. In any action between the Plaintiffs and Renzenberger to enforce the
25 terms of this Agreement, the prevailing party shall be awarded his, her, or its costs
26 and attorneys' fees.

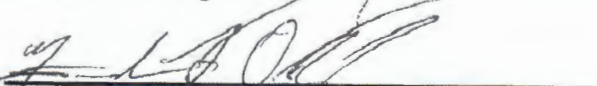
27
28 *[signatures on next page]*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28


Dated: July __, 2019

PLAINTIFFS:


Roderick Wright

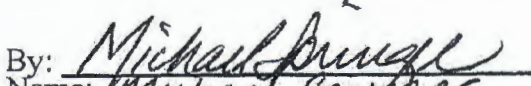

Fernando Olivarez


Marcus Haynes, Jr.


Michael Watson

Dated: July 10, 2019

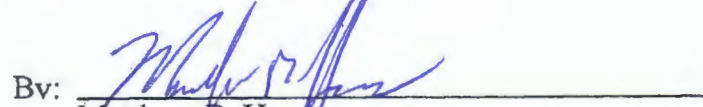
NAMED DEFENDANT:
RENZENBERGER, INC.

By: 
Name: Michael Springer
Title: Chief People Officer

APPROVED AS TO FORM:

Dated: July 11 . 2019

HAYES PAWLENKO LLP

By: 
Matthew B. Hayes
Kye D. Pawlenko
Attorneys for Plaintiffs

Dated: July 10 . 2019

SOLOMON WARD SEIDENWURM & SMITH LLP

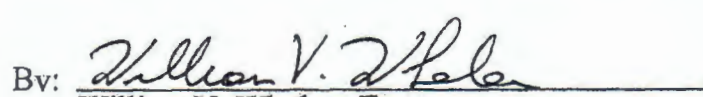
By: 
William V. Whelan, Esq.
Attorneys for Defendant Renzenberger, Inc.

EXHIBIT 1

#	Name
1	Michael Purcell
2	Freddy Montoya
3	Roberto Lopez
4	Jesus Motta
5	Ronald Lechuga
6	Lloyd Phillips
7	Paul Gipson
8	Matthew Logan
9	Tracee Gallegos Campas
10	Anthony Escalante
11	Adrienne Dupree
12	Renee Reed
13	Maria Gonzalez
14	Joel Bernard
15	Thomas Basurto
16	Crystal Douglas
17	Rudolph Hammari
18	Marlene Saligan
19	Michael Marshall
20	Chandler Torgeson
21	Steve Hall

EXHIBIT 2

A FEDERAL COURT AUTHORIZED THIS NOTICE. YOU ARE NOT BEING SUED. THIS IS NOT AN ADVERTISEMENT. YOUR LEGAL RIGHTS MAY BE AFFECTED. PLEASE READ THIS NOTICE CAREFULLY.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

RODERICK WRIGHT, FERNANDO OLIVAREZ, MARCUS HAYNES, JR., and MICHAEL WATSON, individuals on behalf of themselves and others similarly situated,

Case No: 2:13-cv-06642-FMO-AGR

Complaint filed: July 15, 2013

Plaintiffs,

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

v.

RENZENBERGER, INC., a Kansas corporation; and DOES 1 through 10 inclusive,

Defendants.

IF YOU WORKED AS A DRIVER FOR RENZENBERGER, INC. IN CALIFORNIA BETWEEN AUGUST 1, 2011 AND SEPTEMBER 30, 2017, YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	You will automatically receive 95% of your settlement payment based on the calculation set forth in this Notice after the Court grants final approval to the settlement. To obtain 100% of your settlement payment, you must fill out and submit the enclosed "FLSA Opt-In Form and Release of Claims."
OBJECT BY _____, 2019	Write to the Court about why you oppose the settlement.
GO TO A HEARING ON _____, 2019	Ask to speak in Court about the settlement at the settlement hearing.

These rights and options – and the deadlines to exercise them – are explained in this Notice.

WHY AM I RECEIVING THIS NOTICE?

You are receiving this notice because the records of Renzenberger, Inc. (“Renzenberger”) identify you as a member of one or more certified classes of drivers who will be affected by a proposed class action settlement. The purpose of this notice is to explain the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how they will be distributed.

The Court in charge of the case is the United States District Court for the Central District of California. The case is known as *Wright, et al. v. Renzenberger, Inc.*, Case No. 2:13-cv-06642-FMO-AGR (“Action” or “Lawsuit”), and is assigned to the Honorable Fernando M. Olguin, United States District Judge.

On _____, 2019, the Court entered an order granting preliminary approval of a proposed settlement and directing that this Notice be sent to class members because they have a right to know about the proposed settlement, and about all of their options, before the Court decides whether to grant final approval of the proposed settlement.

WHO IS INCLUDED IN THE SETTLEMENT?

The Court has certified five classes in the lawsuit and the settlement includes anyone who is a member of any of these certified classes. You may be a member of one or more of the certified classes depending on when you worked for Renzenberger and whether you performed work as a road driver or yard driver. The five classes that have been certified by the Court are as follows:

1. Separate Pay Class: All road drivers employed by Renzenberger in California at any time from August 1, 2011 through July 15, 2012 who were paid a piece rate that Renzenberger deemed to cover non-driving tasks;
2. Pay Averaging Class: All road drivers employed by Renzenberger in California at any time from August 1, 2011 through February 22, 2014 whose minimum wage entitlement was determined by dividing total weekly compensation by total weekly hours worked;
3. Wage Statement Class: All yard drivers and road drivers employed by Renzenberger in California at any time from July 16, 2012 through February 8, 2014 who received a wage statement that either listed the overtime rate as just one-half of the regular rate (as opposed to one and one-half times the regular rate), or equivalent to the regular rate (as opposed to twice the regular rate for double time), or, alternatively, did not list the overtime rate at all;
4. Waiting Time Class: All members of the Separate Pay Class and the Pay Averaging Class whose employment with Renzenberger ended at any time from August 1, 2011 through November 30, 2016; and

5. *Rest Break Class*: All yard drivers and road drivers employed by Renzenberger in California from August 1, 2011 through September 30, 2017 who worked one or more days of three and one half (3 ½) hours or more.

Excluded from the above classes and proposed settlement are any person who previously excluded himself or herself from this class action by submitting a valid and timely request for exclusion. If you are not sure whether you are included, you can call the Settlement Administrator, [Name of Administrator], at [TOLL FREE NUMBER] for more information.

WHAT IS THIS CLASS ACTION LAWSUIT ABOUT?

Each of the certified classes challenges the legality of a specific wage and hour policy or practice that Renzenberger allegedly applied to its road and/or yard drivers.

The Separate Pay Class challenges the legality of Renzenberger's alleged policy and practice of deeming mileage piece rate pay to cover time spent by road drivers performing non-driving work.

The Pay Averaging Class challenges the legality of Renzenberger's alleged policy and practice of determining minimum wage compliance for road drivers through an effective hourly rate reached by dividing total weekly compensation by total weekly hours worked, instead of determining whether each individual hour worked, standing alone, was paid at or above the minimum wage.

The Waiting Time Class challenges Renzenberger's alleged failure to timely pay all wages owing to former employees of the Separate Pay Class and Pay Averaging Class as a result of the policies challenged by those classes.

The Wage Statement Class challenges the legality of Renzenberger's alleged policy and practice of issuing both yard and road drivers wage statements that did not accurately reflect all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

The Rest Break Class challenges the legality of Renzenberger's alleged policy and practice of counting waiting time and time in between yard moves as rest breaks and requiring drivers to remain on-duty and/or on-call during rest breaks.

Renzenberger denies all the claims and allegations of the lawsuit.

On March 8, 2018, the Court granted summary judgment to the members of the five certified classes, finding that Renzenberger is liable to members of the Separate Pay Class, Pay Averaging Class, Wage Statement Class, Waiting Time Class, and Rest Break Class. The Court did not, however, rule on the amount of damages owing, if any.

WHO ARE THE PARTIES IN THIS CLASS ACTION?

Roderick Wright, Fernando Olivarez, Marcus Haynes, Jr., and Michael Watson (collectively "Plaintiffs") are the class representatives in this class action. As class representatives,

Plaintiffs are acting on behalf of themselves and all other class members. Renzenberger is the defendant.

WHO ARE THE ATTORNEYS FOR THE PARTIES?

Counsel for Plaintiff and the Class (Class Counsel)

Hayes Pawlenko LLP
Matthew B. Hayes
Kye D. Pawlenko
595 E. Colorado Blvd., Ste. 303
Pasadena, CA 91101
Tel: 626.808.4357

Counsel for Renzenberger

Solomon Ward Seidenwurm & Smith LLP
William V. Whelan
Leah S. Strickland
401 B Street, Ste. 1200
San Diego, CA 92101
Tel: 619.231.0303

WHY IS THERE A SETTLEMENT?

The Court has not decided what, if any, damages are owing to the certified classes. Plaintiffs have agreed to the proposed settlement because they believe it will provide prompt and substantial benefits to the class. These benefits were compared with the risk of zero recovery after a contested trial and likely appeals, possibly years into the future, and collectability problems from defendant. Renzenberger, who vigorously denies all allegations of wrongdoing or liability whatsoever, has agreed to the proposed settlement to eliminate the burden, expense, uncertainty, and distraction of further litigation.

WHAT IS THE SETTLEMENT AMOUNT?

The proposed settlement provides for a payment by Renzenberger of \$4,550,000 (referred to as the “Gross Settlement Amount”). Class Counsel will apply to the Court for attorneys’ fees of no more than one-third of the Gross Settlement Amount and for a reimbursement for litigation costs of no more than \$40,000. Class Counsel will also apply for Class Representative Service Awards of no more than \$15,000 to Roderick Wright, \$10,000 to Fernando Olivarez, \$10,000 to Marcus Haynes, and \$5,000 to Michael Watson for the work and efforts prosecuting this case. Settlement administration costs and Renzenberger’s share of payroll taxes owing on the payments to class members will also be deducted from the Gross Settlement Amount. The exact amount of attorneys’ fees, litigation costs, Class Representative Service Awards, and settlement administration costs to be deducted from the Gross Settlement Amount will be determined by the Court at the final approval hearing.

The remaining portion of the Gross Settlement Amount – the “Settlement Pool” – is currently estimated to be approximately \$_____. The Settlement Pool will be apportioned and paid out to eligible class members. **You are not required to do anything to be eligible to receive 95% of your payment from the Settlement Pool. To obtain 100% of your settlement payment, you must fill out and submit the enclosed “FLSA Opt-In Form and Release of Claims.”**

HOW WILL THE CLASS MEMBER SETTLEMENT PAYMENTS BE CALCULATED?

Class members will receive their pro rata share of the Settlement Pool based upon a weighted point system. Class members will be awarded points pursuant to the following formula: (1) two point will be earned for each workweek a class member worked as a road driver between August 1, 2011 and February 22, 2014, (2) one point will be earned for each workweek a class member worked as a road driver between February 23, 2014 and [date of preliminary approval], and (3) one point will be earned for each workweek a class member worked as a yard driver between August 1, 2011 and [date of preliminary approval]. Each class member's share of the Settlement Pool shall be equivalent to the ratio of points earned by that individual divided by the total combined points earned by all class members. For example, if a particular class member earned 50 points and the total combined points earned by all class member were 10,000, that class member would be entitled to 50/10,000 of the Settlement Pool.

All settlement payments to class members will be allocated as follows for tax purposes: (a) 1/3 for for alleged interest; (b) 1/3 for alleged unpaid wages; and (c) 1/3 for alleged penalties. The portion of the settlement payments allocated to unpaid wages will be subject to regular and/or applicable payroll and income tax withholdings, and will be reported on an IRS Form W-2. An IRS Form 1099 will be issued for the portion of the settlement payments allocated to alleged interest and penalties. Class members receiving a settlement payment will be responsible for correctly characterizing this compensation for tax purposes and paying taxes due, if any.

HOW MUCH WILL MY PAYMENT BE?

The amount of your settlement payment is estimated to be \$_____. That amount is based on Renzenberger's records that show you worked _____ workweeks as a road driver and _____ workweeks as a yard driver for Renzenberger in California during the time period between August 1, 2011 and [date of preliminary approval].

WHAT DO I DO IF I BELIEVE MY WORKWEEK INFORMATION IS INCORRECT?

If you believe your amount of workweeks worked as a road driver and/or yard driver in California between August 1, 2011 through [date of preliminary approval] as stated in the paragraph above is incorrect, you may send a letter to the Settlement Administrator indicating what you believe to be the correct information. You should include any documents or other information that supports what you believe to be the correct number of workweeks. The Settlement Administrator will resolve any disputes regarding these issues based on Renzenberger's records and any information that you provide. The estimated payment amount and number of workweeks stated in the preceding paragraph will be presumed correct unless you supply company records from Renzenberger or other competent records showing different information. Your letter must be postmarked on or before _____, 2019 [45 days from mailing of Notice] and sent to the following address:

[Class Administrator Address Line 1]
[Class Administrator Address Line 2]
[Class Administrator Address Line3]

DO I HAVE TO TAKE ANY ACTION TO RECEIVE A PAYMENT?

Your settlement payment will be distributed pursuant to two checks. Ninety Five percent (95%) of the total amount of your settlement payment will be for settlement of claims other than claims under the federal Fair Labor Standards Act (“FLSA”). **You do not need to do anything in order to receive that check other than keep the Settlement Administrator informed of any change in your address.**

The remaining five percent (5%) of the total amount of your settlement payment will be for settlement of FLSA claims. **If you wish to receive that check, you must affirmatively consent to join the FLSA collective by executing and returning to the Settlement Administrator the enclosed FLSA Opt-In Form and Release of Claims no later than [45 days from mailing of Notice].**

Your settlement payment will be mailed to the last address the Settlement Administrator has on file for you. Settlement payment checks should be deposited soon after receipt. Checks uncashed for 180 days will be voided and the funds sent to the State of California’s Controller’s Office of Unclaimed Property in your name.

WHEN WILL I GET MY PAYMENT?

The class member settlement payments will be distributed only if the Court approves the proposed settlement. The Court will hold a final approval hearing on _____, 2019 to decide whether to finally approve the proposed settlement. If the Court grants final approval and there is no appeal of that order, settlement payments will be distributed approximately one month after the Court enters a Judgment approving the settlement. If there is an appeal of the Court’s Judgment granting final approval, however, the approval process will take additional time to resolve and could last for more than a year.

WHAT AM I GIVING UP IN RETURN FOR MY PAYMENT?

If the proposed settlement is finally approved by the Court, you will release Renzenberger and its assignees, and each of their past or present officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys and all of their respective officers, directors, employees, administrators, fiduciaries, trustees and agents (the “Released Parties”), from the following claims through [date of preliminary approval]: All claims and causes of action that are pled in or, based on the facts alleged, could have been pled in the Complaint, First Amended Complaint, Second Amended Complaint, Third Amended Complaint, or Fourth Amended Complaint in the Action, including without limitation, all claims for failure to pay minimum and/or overtime wages in violation of Labor Code sections 510 or 1197 or the California Wage Orders; all claims for waiting time penalties pursuant to Labor Code section 203; all claims for inaccurate wage statements in violation of Labor Code section 226; all claims for failure to authorize and permit required rest breaks or missed rest break premiums in violation of Labor Code section 226.7 and the California

Wage Orders; and all claims under Business & Professions Code section 17200 et. seq. based on or resulting from the above-described claims (hereafter “Released Claims”).

If you choose to consent to join the FLSA collective by executing and returning the FLSA Opt-In, the Released Claims will also include all FLSA claims that were asserted in or, based on the facts alleged in this action, could have been asserted against the Released Parties.

HOW DO I OBJECT TO THE SETTLEMENT?

If you don’t think the proposed settlement is fair, you can object to the proposed settlement and tell the Court that you don’t agree with the settlement or some part of it. The Court will consider your input.

Any objection to the proposed settlement must be in writing. The written objections must: (1) clearly identify the case and number (*Wright, et al. v. Renzenberger, Inc.*, Case No. 2:13-cv-06642-FMO-AGR); (2) include your full name, address, and last four digits of your social security number; (3) specify the reason(s) you object to the terms of the proposed settlement and whether the objection applies only to you, or to a specific subset of class members, or to all of the class members; (4) be submitted to the Court either by mailing the written objection to the Clerk of Court, United States District Court for the Central District of California, 350 W. 1st St., Suite 4311, Los Angeles, CA 90012-4565, or by filing the written objection in person at any location of the United States District Court for the Central District of California; and (5) be filed or postmarked on or before [45 days from mailing of Notice Packet]. You should also state in the written objection whether you (or your attorney) intends to appear at the final approval hearing. If you are represented by an attorney, the written objection should include the name, address, and telephone number of the attorney.

WHEN AND WHERE IS THE FINAL APPROVAL/FAIRNESS HEARING?

The Court will hold a final approval/fairness hearing on _____, 2019, at the First Street Courthouse, 350 W. 1st Street, Los Angeles, CA 90012, commencing at _____ in Courtroom 6D (6th Floor). At this hearing the Court will determine whether the proposed settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel’s request for attorneys’ fees and costs and the Class Representative Service Awards.

The Court may reschedule the final approval/fairness hearing without further notice to class members. However, any class member who has submitted a timely objection to the settlement will be notified by Class Counsel of any rescheduling of the date and time of the hearing.

You are **not** required to come to the final approval/fairness hearing. Class Counsel will represent the interests of class members at the hearing. But you are welcome to come at your own expense and you may ask the Court for permission to speak at the hearing. If you send an objection, you don’t have to come to Court to talk about it. As long as you timely mailed your written objection,

the Court will consider it. You may also hire and pay your own lawyer to attend if you so desire.

WHO MAY I CONTACT IF I HAVE QUESTIONS ABOUT THE SETTLEMENT?

You may contact Class Counsel at 626.808.4357 listed above if you have any questions about the Settlement. You may also contact the Settlement Administrator, [Name of Administrator], by calling toll free [Phone Number], or you can write to the Settlement Administrator at [address].

PLEASE DO NOT CALL THE COURT ABOUT THE SETTLEMENT

EXHIBIT 3

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA
Roderick Wright, et al v. Renzenberger, Inc.; Case No. 13-cv-06642 (“Wright”)
Kristina McConville v. Renzenberger, Inc.; Case No. 17-cv-02972 (“McConville”)

FLSA OPT-IN FORM AND RELEASE OF CLAIMS

You are receiving this form because you are a class member in one or both of the cases listed above. You must return this form by [DATE] to receive your share of the FLSA settlements reached in the *Wright* and *McConville* cases.

Instructions: Please complete this FLSA Opt-In Form and Release of Claims if you would like to claim your share of the settlement monies allocated to claims under the federal Fair Labor Standards Act (“FLSA”) in the *Wright* and *McConville* cases.

To assist you in getting your claim form postmarked by [DATE], a pre-printed, postage paid return envelope has been enclosed for your convenience. It is addressed to the Settlement Administrator, CPT Group, Inc. Once you have signed and dated this claim form, please place the claim form in the pre-printed, postage paid return envelope and provide it to the U.S. Postal Service.

If you have lost or misplaced the pre-printed, postage paid return envelope, you may mail your signed and dated claim form to the Settlement Administrator via first class mail at the following address:

CPT Group, Inc.
16630 Aston Street
Irvine, CA 92606

#2984
CLAIM FORM

Name/Address Changes, if any:

<<Claim Number>>

<<Name>>

<<Address>>

<<City>>, <<State>> <<Zip Code>>

(_____) _____ - _____

Telephone: _____(h)/_____ (cell)

Home or Cell Telephone Number

FLSA CONSENT TO JOIN / OPT-IN TO THESE CASES.

BY SUBMITTING THIS CLAIM FORM, I CONSENT TO JOIN THE COLLECTIVE IN THE FLSA PORTION OF THE *WRIGHT V. RENZENBERGER, INC.* AND/OR *MCCONVILLE V. RENZENBERGER, INC.* ACTIONS AND ELECT TO PARTICIPATE IN THE SETTLEMENT AND RELEASE OF THE FLSA CLAIMS.

RELEASE AND SIGNATURE

I understand that by consenting to join the FLSA claims in the *Wright* and *McConville* cases and participate in the FLSA settlement of these cases, I have agreed to release Renzenberger, Inc. and its assignees, and each of their past or present officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys and all of their respective officers, directors, employees, administrators, fiduciaries, trustees and agents from all FLSA claims arising from the factual allegations in the Operative Complaint from August 1, 2011 through [**PRELIMINARY APPROVAL DATE**].

DATE AND SIGNATURE

Dated: _____, 2019

Print Name

Signature