

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
Julieann Alvarado (State Bar #334727)
5440 Morehouse Drive, Suite 3500
San Diego, CA 92121
Telephone: (619)255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
jackland@zakaylaw.com
julieann@zakaylaw.com

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (State Bar #068687)
Kyle R. Nordrehaug (State Bar #205975)
Nicholas J. De Blouw (State Bar #280922)
2255 Calle Clara
La Jolla, CA 92037
Telephone: (858)551-1223
Facsimile: (858) 551-1232
Website: www.bamlawca.com

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN JOAQUIN

JEAN-LOUIS CHALAYE and SCOTT
BALLIET, individuals, on behalf of themselves
and on behalf of all persons similiary situated,

Plaintiffs,
v.

PRIDE TRANSPORT., a Corporation; and
DOES 1-50, Inclusive,

Defendants.

Case No. STK-CV-UOE-2021-2766

**DECLARATION OF SHANI O. ZAKAY,
ESQ. IN SUPPORT OF PLAINTIFFS'
MOTION FOR FINAL APPROVAL OF
CLASS ACTION AND PAGA
SETTLEMENT**

Hearing Date: April 20, 2023
Hearing Time: 9:00AM

Judge: Hon. Barbara A. Kronlund
Dept: 10D

Date Filed: March 20, 2021
Trial Date: Not Set

1 I, SHANI O. ZAKAY, Esq., declare as follows:

2 1. I am over eighteen years of age and if called as a witness, I could and would competently
3 testify to the following facts from my own personal knowledge. I am an attorney-at-law and the owner
4 of the law firm of ZAKAY LAW GROUP, APLC (hereinafter “Class Counsel”). I am counsel of record
5 for Plaintiffs JEAN-LOUIS CHALAYE and SCOTT BALLIET (hereafter “Plaintiffs” or “Class
6 Representatives”) in this wage and hour class and representative action filed against Defendant PRIDE
7 TRANSPORT, INC.. (hereinafter “Defendant”).

8 2. This declaration is being submitted in support of Plaintiffs’ Motion for Final Approval of
9 Class Action and PAGA Settlement.

10 3. Attached hereto as **Exhibit “1”** is a true and correct copy of the fully executed Stipulation
11 of Settlement of Class and PAGA Action Claims and Release of Claims (hereinafter collectively
12 “Settlement Agreement”). Attached as **Exhibit “A”** to the Agreement is a true and correct copy of the
13 Class Notice.

14 4. Attached hereto as **Exhibit “2”** is a true and correct copy of the conformed December
15 16, 2022, Preliminary Approval Order.

16 5. Attached hereto as **Exhibit “3”** is a true and correct copy of the March 28, 2023 proof of
17 filing this motion seeking final approval of this Settlement with the LWDA.

18 **I. INTRODUCTION**

19 6. An objective evaluation of the proposed settlement of Three Hundred Fifty Thousand
20 Dollars and Zero Cents (\$350,000.00) (“Gross Settlement Amount”) confirms that the relief negotiated
21 on behalf of the Settlement Class is fair, reasonable, and valuable. The Settlement is a product of
22 informed, adversarial, and non-collusive negotiations, between experienced counsel, and presided over
23 by Tripper Ortman, Esq., an experienced and reputable mediator of wage and hour actions.. The Class
24 greeted news of the Settlement with almost unanimous approval as, at the time of the filing of this
25 motion, only two of the 1,591 members of the Settlement Class have opted-out of the Settlement.
26 Moreover, there are zero objections. Stated differently, 99.88% of the Settlement Class chose to
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1 participate in the Settlement. The high approval by the Settlement Class evidences the clear fairness
2 and reasonableness of the Settlement.

3 7. This Settlement provides substantial recovery to Class Members. After deducting any
4 Court-approved attorneys' fees and costs, class representative service awards, settlement administration
5 costs, and the payments to the Labor & Workforce Development Agency ("LWDA"), the net settlement
6 fund shall be distributed to the Settlement Class based on the number of Workweeks they worked while
7 employed by Defendant during the Class Period. Plaintiffs estimate that the Settlement, if approved,
8 would result in a Net Settlement Amount of approximately **\$166,295.34**. After deducting any Court-
9 approved attorneys' fees and costs, class representative service awards, settlement administration costs,
10 and the payments to the Labor & Workforce Development Agency ("LWDA"), the net settlement fund
11 shall be distributed to the Settlement Class based on the number of Workweeks they worked while
12 employed by Defendant during the Class Period. This will result in an average Individual Settlement
13 Payment of **\$104.65**, with the estimated highest gross payment being \$855.90. Aggrieved Employees
14 will receive an estimated average gross payment of \$2.67.

15 8. The relief offered by the Settlement is immediate and is particularly impressive when
16 viewed against the difficulties encountered by plaintiffs pursuing similar wage and hour cases (*see*
17 *infra*). Indeed, by settling now rather than proceeding to trial, the Settlement Class will not have to wait
18 (possibly years) for relief, nor will they have to bear the risks associated with prolonged and uncertain
19 litigation.

20 9. As discussed below, the proposed Settlement satisfies all criteria for final settlement
21 approval under California law and falls well within the range of reasonableness. Accordingly, the Class
22 Representatives and Class Counsel respectfully request this Court grant final approval of the Agreement
23 and entry of the proposed Final Approval Order and Judgment.

24 **II. OVERVIEW OF THE LITIGATION**

25 10. Defendant provides transportation services throughout the United States, approximately
26 10% of which is in California. This action asserts claims on behalf of Defendant's truck drivers who
27 are or previously were employed by Defendant and performed work in California and who received

1 piece-rate (cents per mile) compensation for work performed in California during the Class Period.
2 Plaintiffs worked for Defendant as truck drivers at various times during the Class Period. At all times
3 during their employment, Plaintiffs earned piece-rate compensation based on milage. Throughout their
4 employment, Plaintiffs were subject to Defendant’s written policies and procedures.

5 11. Generally, Plaintiffs claim that Defendant failed to pay for time spent not driving, issued
6 inaccurate itemized wage statements, failed to reimburse for required business expenses, and failed to
7 pay all wages when due. Defendant forcefully denies liability for each of Plaintiffs’ claims. Further,
8 Defendant asserts that it fully complied with all applicable employment laws and raised several other
9 significant defenses to Plaintiffs’ claims, including but not limited to, facially compliant policies,
10 compliant wage statements, and reimbursement for all required business expenses.

11 12. On December 30, 2020, Plaintiff Jean-Louis Chalaye served Defendant and the Labor
12 and Workforce Development Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”).
13 Plaintiff Chalaye’s PAGA Notice set forth the facts and theories supporting Defendant’s alleged
14 violations of various provisions of the California Labor Code and applicable Industrial Welfare
15 Commissions (“IWC”) Wage Order.

16 13. On March 30, 2021, Plaintiff Chalaye filed a class action complaint in the Superior Court
17 of the State of California, County of San Joaquin for: (1) Unfair Competition in Violation of Bus. and
18 Prof. Code §§ 17200; (2) Failure to Pay Minimum Wages in Violation of California Labor Code §§
19 1194, 1197 and 1197.1; (3) Failure to Pay Overtime Wages in Violation of California Labor Code §§
20 510 *et seq*; (4) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 and
21 512; (5) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (6)
22 Failure to Provide Accurate Itemized Wage Statements in Violation of Cal. Lab. Code §226; (7) Failure
23 to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203; (8) Failure to
24 Reimburse Employees for Required Expenses in Violation of Cal. Lab. Code §§ 2802; and (9) Violation
25 of the Private Attorneys General Act [Lab. Code §§ 2698, *et seq.*]. On May 13, 2021, Defendant
26 removed the Class Action to the Federal District Court for the Eastern District of California, the Federal
27 Class Action, Case No. 2:21-cv-00881-KJM-JDP. On June 10, 2021, the Parties filed a stipulation to

1 remand the Action back to State Court and for leave to allow Plaintiff to file an amended complaint,
2 which was filed concurrently with the stipulation. On July 7, 2021, the Parties' Joint Stipulation and
3 Motion for Leave to File First Amended Complaint and Joint Stipulation and Motion to Remand Action
4 to State Court were granted and the First Amended Class Action Complaint was deemed filed.
5 Consequently, the Federal Class Action was remanded to the San Joaquin County Superior Court.

6 14. Subsequently, the Parties agreed to mediate the Action. In anticipation of mediation, the
7 Parties agreed to stay formal discovery. To prepare for mediation, the Parties agreed to informally
8 exchange relevant documents and data points subject to the mediation privilege. Pursuant to that
9 agreement, Defendant produced a sample of the Class Members' time and payroll data along with
10 itemized wage statements and relevant policies applicable to Class Members. As discussed *infra*,
11 Plaintiffs' counsel retained the forensic consultants at Berger Consulting Group ("BCG") to analyze
12 Defendant's time and payroll data.

13 15. On February 1, 2022, the Parties participated in a full day mediation with Tripper Ortman,
14 Esq., an experienced and reputable mediator of wage and hour actions. After arms-length negotiations
15 and bargaining, the Parties reached an agreement to settle based on Mr. Ortman proposal, and signed a
16 Memorandum of Understanding. After reaching an agreement in principle, the Parties negotiated a
17 long-form settlement agreement, which is the subject of the instant motion.

18 **III. THE SETTLEMENT BEFORE THE COURT**

19 16. On December 16, 2022, the Court preliminarily approved an initial Gross Settlement
20 Amount of Three Hundred Fifty Thousand Dollars and Zero Cents (\$350,000.00). The Gross
21 Settlement Amount shall be used: (1) to satisfy Individual Settlement Payments; (2) to satisfy the Class
22 Representative Service Awards; (3) to satisfy the Class Counsel Award; (4) to satisfy the PAGA
23 Settlement; and (5) to satisfy the Settlement Administration Costs incurred in this action.

24 17. As explained in further detail below, the Settlement is fair, adequate, and reasonable to
25 the class and should be granted final approval. This is evidenced by the unanimous approval of the
26 Settlement by the Settlement Class and absence of any objections to the Settlement and the average
27 Individual Settlement Payment of **\$104.65**.

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1 periods during the Class Period. BCG also estimated the number of missed, late or truncated meal and
2 rest periods, the amount of paid missed meal period premiums paid during the Class Period, and the
3 amount of off-the-clock work performed by the Class Members during the Class Period. BCG
4 calculated and created a damage model for Defendant's potential liability exposure while accounting
5 for the uncertainties of continued litigation. The damage model informed and guided Class Counsel
6 during the mediated settlement discussions.

7 22. Overall, Class Counsel thoroughly investigated the claims at issue, including: (1)
8 determining Plaintiffs' suitability as putative class representatives through interviews, background
9 investigations, and analysis of her employment files; (2) evaluating all of Plaintiffs' potential claims;
10 (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions,
11 and the type of employer; (4) analyzing the Settlement Class' time and payroll records; (5) analyzing
12 Defendant's labor policies and practices; (6) researching settlements in similar cases as well as
13 outstanding issues which could affect settlement approval; (7) evaluating Plaintiffs' claims and
14 estimating Defendant's liability for purposes of settlement; (8) drafting the mediation brief; and (9)
15 participating in the mediation. This investigation allowed Class Counsel to fully assess the nature and
16 magnitude of the claims being settled, as well as the impediments to recovery, such as to make an
17 independent assessment of the reasonableness of the terms to which the Parties have agreed.

18 23. Class Counsel only agreed to enter the Settlement following this thorough investigation
19 and evaluation of Plaintiffs' claims. Based on this investigation of the facts, applicable law, and
20 marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated
21 with litigation, and the various defenses asserted by Defendant, Class Counsel firmly believes this
22 Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair,
23 reasonable, and adequate, the Court should preliminarily approve the Settlement.

24 **B. The Parties Settled At Mediation**

25 24. On February 1, 2022, the Parties conducted a full-day mediation with Tripper Ortman,
26 Esq. a respected mediator of wage and hour class and representative actions. Mr. Ortman helped to
27 manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both
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1 sides. The Parties made substantial progress with Mr. Ortman's assistance. Namely, the Parties
2 exchanged information regarding their respective claims and defenses, including their respective
3 evaluations of the damages. After more than eight hours of arm's length and adversarial negotiations,
4 the mediation concluded with a settlement. The amount of the service awards was not negotiated until
5 after the parties agreed to the Gross Settlement Amount and many other terms. No action would likely
6 have been taken by Class Members individually, and no compensation would have been recovered for
7 them, but for Plaintiffs' services on behalf of the Class.

8 **C. Class Counsel is Experienced in Similar Litigation**

9 25. My firm has worked on this matter over the course of the litigation during the last two
10 years. My credentials are reflected in my resume, a true and correct copy of which is attached hereto as
11 **Exhibit 3**. Some of the major cases my firm has undertaken are also set forth in **Exhibit 3**. I have had
12 class litigation experience, mostly in the area of employment class actions, unfair business practices,
13 and other complex litigation. I have experience in cases involving labor code violations and wage and
14 hour claims. I have litigated similar wage and hour cases against other employers on behalf of
15 employees. I have been approved as experienced class counsel in courts throughout California. It is
16 this level of experience which enabled my firm to undertake the instant matter and to successfully
17 combat the resources of the defendants and its capable and experienced counsel.

18 **D. The Gross Settlement Amount is Fair and Reasonable**

19 26. Here, the Settlement is clearly within the "ballpark" of reasonableness because the
20 Settlement provides a sizeable recovery to the Settlement Class Members and need not necessarily
21 obtain 100 percent of the damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*,
22 91 Cal.App.4th at 250. While the Gross Settlement Amount of Three Hundred Fifty Thousand Dollars
23 and Zero Cents (\$350,000.00) represents a discount on Defendant's potential exposure if Plaintiffs
24 established liability on all claims and were awarded the full amount of the estimated damages at trial,
25 this compromise is reasonable because (1) the formidable defenses raised by Defendant presented a risk
26 that could award significantly less in damages than Plaintiffs' estimate and (2) any theoretical post-trial
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1 recovery may require many more years of litigation, resulting in added fees and costs without any
2 guarantee of recovery for the Class.

3 27. As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and
4 reasonable considering the nature and magnitude of the claims being settled and the various potential
5 impediments to recovery. Class Counsel developed varied economic damages models measuring
6 Defendant's liability exposure while accounting for the uncertainties of continued litigation. The
7 various models were informed by Class Counsel's investigation, including the analysis of a significant
8 sample of time and payroll data. As detailed in greater depth during the preliminary approval process,
9 Class Counsel projected a range of Defendant's liability exposure for the claims asserted on behalf of
10 the Settlement Class. The Gross Settlement Amount represents approximately 23.5% of the value of
11 the maximum potential *damages* at issue, assuming all of these amounts could be proved at trial.

12 28. This average net recovery is on par with many wage and hour class action settlements
13 approved by California state and federal courts. *See, e.g., Palencia v. 99 Cents Only Stores*, No. 34-
14 2010-00079619 (Sacramento County Super. Ct.) (average net recovery of approximately \$80); *Fukuchi*
15 *v. Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net recovery of approximately
16 \$120); *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average
17 net recovery of approximately \$120); *Ressler v. Federated Department Stores, Inc.*, Case No.
18 BC335018 (L.A. County Super. Ct.) (average net recovery of approximately \$90); *Doty v. Costco*
19 *Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of
20 approximately \$65); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (ED. Cal.)
21 (average net recovery of approximately \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No.
22 04CC00213 (Orange County Super. Ct.) (average net recovery of approximately \$35); and *Gomez v.*
23 *Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct.) (average net recovery of approximately
24 \$20). Additionally, Defendant must separately fund its share of any employer side payroll taxes.
25 Agreement, ¶ I(II).

26 29. Clearly the goal of this litigation to obtain redress for the class has been met by this
27 Settlement. Given the amount of the Settlement, the risks of litigation and the arm's length negotiations
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1 between experienced counsel, the settlement is fair and reasonable, and is therefore entitled to final
2 approval.

3 **E. The Strength of Plaintiff's Case and Risks of Continued Litigation**

4 30. Although Class Counsel believes strongly in Plaintiffs' claims, it would be misguided to
5 ignore the asserted defenses. If successful on any one its defenses, Defendant could defend the action
6 or, at least, drastically undercut Plaintiffs' claims.

7 31. With respect to the most immediate challenge, i.e., class certification, the risks attendant
8 to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart*
9 *Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated, reversed, and remanded
10 a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed
11 the trial court to enter judgement in favor of the employer. *See also O'Conner v. Uber Technologies,*
12 *Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
13 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
14 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
15 1077, 1088 ("[T]he reason, if any, that employees might not take their breaks were predominantly
16 individualized questions of fact not susceptible to class treatment."); *Ali v. U.S.A. Cab Ltd.* (2009) 176
17 Cal.App.4th 1333, 1341 (affirming denial of certification because employees' declarations attesting to
18 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
19 harm); *Campbell v. Best Buy Stores, L.P.,* (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
20 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
21 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
22 certification of driver meal and rest period claims based on the predominance of individual issues).
23 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
24 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
25 settlement.

26 32. Although Plaintiffs are confident about the strength of their claims, Plaintiffs nevertheless
27 recognize that Defendant has factual and legal defenses that, if successful, would potentially defeat or
28

1 impair the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can
2 drastically affect the value of Plaintiffs' claims and, in fact, already has.

3 33. As demonstrated by the decisions in *Magadia, supra*, 999 F.3d 668, *O'Conner v. Uber*
4 *Technologies* (N.D. Cal. 2018) 82 F.Supp.3d 1133 and *Duran v. U.S. Bank National Assn.* (2014) 59
5 Cal.4th 1, the complexities and duration of further litigation cannot be overstated. There is little doubt
6 that if Defendant faced a large adverse judgement, Defendant undoubtedly has the resources to post a
7 bond and appeal. A post-judgment appeal by Defendant would have required many more years to
8 resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case
9 could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh
10 an uncertain result three or more years in the future.

11 34. Class Representatives and Class Counsel recognize the expense and length of a trial
12 against Defendant through possible appeals which could take another three years. In arriving at their
13 informed belief that the present settlement is fair and adequate, Class Counsel accounted for the
14 uncertain outcome and risk inherent in complex actions such as this one. Class Counsel is also mindful
15 of and recognize the inherent problems of proof under, and alleged defenses to, the claims asserted in
16 the litigation. Moreover, post-trial motions and appeals would have been inevitable. Costs would have
17 mounted, and recovery would have been delayed if not denied, thereby reducing the benefits of an
18 ultimate victory. Class Representatives and Class Counsel believe that the Settlement confers
19 substantial monetary and non-monetary benefits upon the Class. Based upon their evaluation, Class
20 Representatives and Class Counsel have determined that the Settlement set forth in the Agreement is in
21 the best interest of the Class, is fair, reasonable, and adequate, and should be granted final approval.

22 **IV. THE PENALTIES UNDER PAGA ARE REASONABLE**

23 35. Here, the Parties negotiated a good faith PAGA Settlement in the amount of \$12,000
24 which is 3.4% of the Gross Settlement Amount. As illustrated above, this amount falls well within the
25 range of approved PAGA Settlements. Seventy-five percent (75%) of the PAGA Settlement (\$3,750)
26 will be paid to the LWDA ("LWDA Payment") with the remaining twenty-five percent (25%) to be
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1 distributed to the Aggrieved Employees, which is within the range of PAGA penalties approved by
2 courts and should be approved.

3 36. Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing
4 a copy of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval
5 with the LWDA. On March 28, 2023, Plaintiffs gave the LWDA notice of this motion seeking final
6 approval of this settlement.

7
8 I declare under the penalty of perjury under the laws of the State of California that the foregoing
9 is true and correct. Executed this 28th day of March 2023, at San Diego, California.

10
11 **ZAKAY LAW GROUP, APLC**

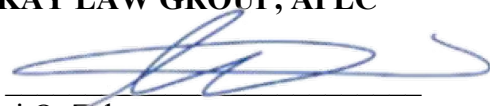
12 By: 
13 Shani O. Zakay
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EXHIBIT 1

CLASS AND COLLECTIVE ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement ("Agreement") is made by and between plaintiffs Jean-Louis Chalaye and Scott Balliet ("Plaintiffs"), individually and as representatives of the Class as defined below and on behalf of all others similarly situated, and defendant Pride Transport, Inc. ("Defendant"). Plaintiffs and Defendant collectively are referred to in this Agreement as the "Parties."

I. DEFINITIONS

In addition to other terms defined in this Agreement, the capitalized terms below have the following meaning in this Agreement:

- A. "Action" means the lawsuits and Complaints that were filed in California state court and Federal district court and any amendments thereto, which are currently captioned *Chalaye, et al. v. Pride Transport, Inc., et al.*, Case No. STK-CV-UOE-2021-2766 pending in Superior Court of the State of California, County of San Joaquin (the "Action").
- B. "Class" and "Class Members" mean all truck drivers who are or previously were employed by Defendant and performed work in California and who received piece-rate (cents per mile) compensation for work performed in California during the period of March 30, 2017, to February 1, 2022.
- C. "Class Counsel" means Shani O. Zakay of Zakay Law Group, APLC and Norman B. Blumenthal of Blumenthal Nordrehaug Bhowmik De Blouw LLP.
- D. "Class Counsel Fees Payment" means the amounts to be paid to Class Counsel as approved by the Court to compensate them for, respectively, their legal work in connection with this Action, including their pre-filing investigation, their filing of the Action, all related litigation activities, all Settlement work, all post-Settlement compliance procedures, and "Class Counsel Litigation Expenses Payment" means the amount awarded by the Court to pay Class Counsel for all litigation expenses billed in connection with this Action. Class Counsel Fees Payment shall be divided between Class Counsel as follows: 70% to Zakay Law Group, APLC, and 30% to Blumenthal Nordrehaug Bhowmik De Blouw LLP.
- E. "Class Data" means, for each Class Member, his or her name; last-known mailing address; Social Security number; his or her employee identification number; dates of employment and miles driven in California during the Class Period as a Class Member.
- F. "Class Member" is a member of the Class.
- G. "Class Notice" means the Notice of Proposed Settlement of Class and Collective Action and Hearing Date for Final Court Approval as evidenced by Exhibit A to this Agreement and incorporated by reference into this Agreement.
- H. "Class Period" means the period of time from March 30, 2017 to February 1, 2022.

- I. "Class Representative Service Payments" means the service payments made to each Plaintiff in their capacity as a Class Representative in order to compensate them for initiating the Action, performing work in support of the Action, and undertaking the risk of liability for Defendant's expenses in the event they were unsuccessful in the prosecution of the Action.
- J. "Court" means the San Joaquin County Superior Court.
- K. "Defendant's Counsel" means Michael A. Hood, Adam L. Lounsbury and Lynsey D. Johnson of Jackson Lewis P.C.
- L. "Effective Date" means the date by which all of the following have occurred:
 - a. This Agreement is approved by the Court at the Final Approval Hearing; and
 - b. The Judgment becomes Final as defined in Section I(N) of this Agreement.
- M. "Election Not to Participate in Settlement" means the written request by a Class Member to exclude himself or herself from the Settlement submitted in accordance with the instructions in the Class Notice.
- N. "Final," means the last of the following dates, as applicable:
 - c. If no objection to the settlement is made, the date the Judgment is entered.
 - d. If Judgment is entered, but no appeal is filed, the last date on which a notice of appeal from the Judgment may be filed and none is filed.
 - e. If Judgment is entered and a timely appeal from the Judgment is filed, the date the Judgment is affirmed and is no longer subject to appeal.
- O. "Final Approval Hearing" means the hearing to be conducted by the Court to determine whether to approve finally and implement the terms of this Agreement and enter the Judgment.
- P. "Gross Settlement Amount" means Three Hundred and Fifty Thousand Dollars (\$350,000) to be paid by Defendant as provided by this Agreement. This amount is an all-in amount without any reversion to Defendant and shall be inclusive of all payments contemplated in this Agreement, excluding any employer payroll taxes, if any, due on the portion of the Settlement Shares allocated to wages which shall not be paid from the Gross Settlement and shall be the separate additional obligation of Defendant.
- Q. "Judgment" means the Order Granting Final Approval of Class Action Settlement and Judgment entered by the Court.
- R. "LWDA" means the California Labor and Workforce Development Agency.
- S. "Net Settlement Amount" means the Gross Settlement Amount less the Court approved amounts for the Class Representative Service Payments, the Class Counsel Fees and

Expenses Payment, the PAGA Payment, and the Settlement Administrator's fees and expenses.

- T. "Non-Participating Class Member" means a Class Member who submits a valid and timely Election Not to Participate in Settlement.
- U. "Participating Class Member" means a Class Member who does not submit a valid and timely Election Not to Participate in Settlement.
- V. "Preliminary Approval Order" means the Court's order granting preliminary approval of the Settlement substantially in the form evidenced by Exhibit B to this Agreement and incorporated by reference in this Agreement.
- W. "Released Parties" means Defendant, its parent, sibling, affiliated companies, shareholder and their respective current and former officers, directors, managing agents, non-exempt employees, and representatives.
- X. "Settlement" means the disposition of the Action and all related claims effectuated by this Agreement.
- Y. "Settlement Administrator" means the administrator proposed by the Parties and appointed by the Court to administer the Settlement.
- Z. "Settlement Share" means each Participating Class Member's share of the Net Settlement Amount as provided by this Agreement.
- AA. "PAGA Employees" means all truck drivers who are or previously were employed by Defendant and performed work in California and who received piece-rate compensation for work performed in California during the period of December 30, 2019, to February 1, 2022.
- BB. "PAGA Period" means the period of time from December 30, 2019, to February 1, 2022.
- CC. "Released Class Claims" are defined as all class claims alleged or that could have been alleged based on the facts alleged in the operative complaint which occurred during the Class Period.
- DD. "Released PAGA Claims" are defined as all PAGA claims alleged in the operative complaint and Plaintiffs' PAGA notice to the LWDA which occurred during the PAGA Period, and expressly excluding claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and PAGA claims outside of the PAGA Period ("Released PAGA Claims").

II. RECITALS

- A. On March 30, 2021, Plaintiff Chalaye filed a Complaint against Defendant in the Superior Court of the State of California, County of San Joaquin. Plaintiff Chalaye asserted claims that Defendant:
1. Violated California Business and Professions Code § 17200 *et seq.*;
 2. Failed to pay minimum wages in violation of California Labor Code §§ 1194, 1197, and 1197.1;
 3. Failed to pay overtime wages in violation of California Labor Code §§ 510, *et seq.*;
 4. Failed to provide required meal periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order;
 5. Failed to provide required rest periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order;
 6. Failed to provide accurate itemized wage statements in violation of California Labor Code § 226;
 7. Failed to provide wages when due in violation of California Labor Code §§ 201, 202 and 203
 8. Failed to reimburse employees for required expenses in violation of California Labor Code §§ 2802; and,
 9. Violation of the Private Attorneys General Act [Labor Code §§ 2698, *et seq.*].
- B. On May 13, 2021, Defendant removed the Class Action lawsuit to the United States District Court for the Eastern District of California, the Federal Class Action, Case No. 2:21-cv-00881-KJM-JDP.
- C. On June 10, 2021, the Parties filed the following in the Federal Class Action: (1) Joint Stipulation and Motion for Leave to File First Amended Complaint; (2) Joint Stipulation and Motion to Remand Action to State Court; and (3) First Amended Class Action Complaint, asserting claims that Defendant:
1. Violated California Business and Professions Code § 17200 *et seq.*;
 2. Failed to pay minimum wages in violation of California Labor Code §§ 1194, 1197, and 1197.1;
 3. Failed to provide accurate itemized wage statements in violation of California Labor Code § 226;
 4. Failed to provide wages when due in violation of California Labor Code §§ 201, 202 and 203
 5. Failed to reimburse employees for required expenses in violation of California Labor Code §§ 2802; and,
 6. Violation of the Private Attorneys General Act [Labor Code §§ 2698, *et seq.*].

Plaintiff Chalaye sought to represent a putative class of truck driver employees who worked for Defendant in California. Plaintiff Chalaye's Complaint alleged, *inter alia*, that Defendant failed to properly pay Plaintiff Chalaye and Class Members minimum wages, failed to provide Plaintiff Chalaye and Class Members with complete and accurate wage

statements, failed to reimburse Plaintiff Chalaye and Class Members for required expenses, and failed to timely pay Plaintiff Chalaye and Class Members all wages owed at the time of the termination of their employment.

- D. On July 7, 2021, the Parties' Joint Stipulation and Motion for Leave to File First Amended Complaint and Joint Stipulation and Motion to Remand Action to State Court were granted, and the First Amended Class Action Complaint was deemed filed. Consequently, the Federal Class Action was remanded to the San Joaquin County Superior Court.
- E. On February 1, 2022, the Parties participated in an all-day mediation presided over by Tripper Ortman, Esq., a respected mediator of wage and hour class actions. At the conclusion of the full-day mediation, the Parties reached an agreement for settlement based on a mediator's proposal. The Parties' agreement was memorialized in a Memorandum of Understanding. At all times, the Parties' settlement negotiations have been non-collusive, adversarial, and at arm's length. This Agreement replaces and supersedes the Memorandum of Understanding and any other agreements, understandings, or representations between the Parties.
- F. Before filing his motions for approval of the settlement, Plaintiff Chalaye will file a second amended complaint to add Plaintiff Scott Balliet as an additional plaintiff in the Action and to add back class and PAGA claims that Defendant (a) Failed to pay overtime wages in violation of California Labor Code §§ 510, *et seq.*; (b) Failed to provide required meal periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order; and (c) Failed to provide required rest periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order.
- G. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant that the claims in the Action of Plaintiffs or the Class have merit or that Defendant bears any liability to Plaintiffs or the Class on those claims or any other claims, or as an admission by Plaintiffs that Defendant's defenses in the Action have merit. The Parties agree to certification of a class for purposes of this Settlement only. If for any reason the settlement does not become effective, Defendant reserves the right to contest certification of any class for any reason, and reserves all available defenses to the claims in the Action.

Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

III. SETTLEMENT TERMS AND CONDITIONS

- A. **Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the Gross Settlement Amount that Defendant will pay under this Settlement is Three Hundred and Fifty Thousand Dollars (\$350,000). This amount is all-inclusive of all payments contemplated in this resolution, excluding any employer-side payroll taxes on the portion of the Settlement Shares allocated to wages. All of the Gross Settlement Amount will be disbursed pursuant to this Agreement without the need to submit a claim form and none of the Gross Settlement

Amount will revert to Defendant, except as otherwise provided by Paragraph E(4). Defendant will separately remit the employer's share of payroll taxes to the Settlement Administrator on the amount allocated to wages.

B. Payments from the Gross Settlement Amount. Subject to the terms and conditions of this Agreement, the Settlement Administrator will make the following payments out of the Gross Settlement Amount within 15 days of the receipt of the Gross Settlement Amount from Defendant:

- 1. To Plaintiffs:** In addition to their respective Settlement Share, the Plaintiffs will apply to the Court for an award of not more than \$10,000 for Plaintiff Jean-Louis Chalaye and not more than \$10,000 for Plaintiff Scott Balliet as Class Representative Service Payments. Defendant will not oppose the Class Representative Service Payments. The Settlement Administrator will pay the Class Representative Service Payments approved by the Court out of the Gross Settlement Amount. If the Court approves a Class Representative Service Payments of less than \$10,000 for each Plaintiff, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. Payroll tax withholding and deductions will not be taken from the Class Representative Service Payment and instead a Form 1099 will be issued to Plaintiffs with respect to their payment. Plaintiffs shall be solely responsible for any tax obligations with respect to this payment.
- 2. To Class Counsel:** Class Counsel will apply to the Court for an award of not more than 1/3 of the Gross Settlement Amount (currently \$116,666.66) as their Class Counsel Fees Payment and an amount not more than \$20,000 for all expenses incurred as documented in Class Counsel's billing records as their Class Counsel Litigation Expenses. Defendant does not presently intend to oppose their request for a Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment consistent with this Agreement and approved by the Court. The Settlement Administrator will pay the amounts approved by the Court (but not more than 1/3 of the Gross Settlement Amount for fees and \$20,000 for costs, respectively) out of the Gross Settlement Amount. If the Court approves a Class Counsel Fees Payment or a Class Counsel Litigation Expenses Payment of less than 1/3 for fees and/or \$20,000 for costs, respectively, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. Payroll tax withholding and deductions, if any, will not be taken from the Class Counsel Fees and Expenses Payment and instead one or more Forms 1099 will be issued to Class Counsel with respect to those payments. The payment of Class Counsel's fees and costs shall be made to Zakay Law Group, APC and Blumenthal Nordrehaug Bhowmik De Blouw LLP by the Settlement Administrator in accordance with this Agreement.
- 3. PAGA Payment.** The Parties will seek approval from the Court for a "PAGA Payment" of \$12,000 out of the Gross Settlement Amount, which shall be allocated \$9,000 to the LWDA (the "LWDA Payment") as the LWDA's share of the settlement of civil penalties paid under this Agreement pursuant to the PAGA and

\$3,000 for distribution to the PAGA Employees (the "Net PAGA Amount"). If the Court approves a PAGA Payment of less than \$12,000, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members.

4. **To the Settlement Administrator.** The Settlement Administrator will pay out of the Gross Settlement Amount to itself its reasonable fees and expenses incurred in the administration of this Settlement that are documented and approved by the Court in an amount not to exceed \$15,250 ("Settlement Administration Expenses"). To the extent the fees and expenses that are documented and approved by the Court are less than \$15,250 the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members.

C. **Payments From the Net Settlement Amount.** The Net Settlement Amount shall include the following payments after the deductions have been made from the Gross Settlement Amount as described in this Agreement. The Net Settlement Amount shall include the following:

1. **Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay a Settlement Share from the Net Settlement Amount to each Participating Class Member. The submission of a claim form is not required to be paid.
2. **Calculation.** The Settlement Share for each Participating Class Member will be calculated by (a) dividing the Net Settlement Amount by the total number of workweeks for all Participating Class Members that occurred during the Class Period and (b) multiplying the result by each individual Participating Class Member's workweeks that occurred during the Class Period. A "workweek" is defined as a normal seven-day week of work during the Class Period in which, according to Defendant's records, a member of the class worked at least one-day during any such workweek with some time worked on a piece rate (cents per mile) basis in California.
3. **PAGA Penalties Calculation.** The value of each PAGA Employee's PAGA Share will be based on the number of each PAGA Employee's Workweeks during the PAGA Period. Specifically, 25% of the approved PAGA Payment allocated to the Net PAGA Amount will be divided by the total number of Workweeks worked by all PAGA Employees and then taking that number and multiplying it by the number of Workweeks worked by each respective PAGA Employee.
4. **Withholding.**
 - a) Forty percent (40%) of each Participating Class Member's Settlement Share is allocated towards settlement of wage claims (the "Wage Portion"). Accordingly, the Wage Portion is subject to wage withholdings, and shall be

reported on IRS Form W-2 and shall be paid for from the Net Settlement Amount.

b) Sixty percent (60%) of each Participating Class Member's Settlement Share is allocated towards settlement of claims for interest penalties allegedly due to employees (the "Non-Wage Portion"). Accordingly, the Non-Wage Portion shall not be subject to wage withholdings and shall be reported on IRS Form 1099.

c) One Hundred percent (100%) of each PAGA Employee's PAGA Share is in settlement of claims for civil penalties. Accordingly, the PAGA Employee's PAGA Share shall not be subject to wage withholdings, and shall be reported on IRS Form 1099 and shall be paid from the Gross Settlement Amount.

5. **Effect of Non-Participating Class Members.** Non-Participating Class Members will receive no Settlement Share, and their Election Not to Participate in Settlement will reduce neither the Gross Settlement Amount nor the Net Settlement Amount. Their respective Settlement Shares will remain a part of the Net Settlement Amount for distribution to Participating Class Members on a *pro rata* basis relative to their Settlement Shares. However, Non-Participating Class Members will still receive their pro-rata PAGA Share if employed during the PAGA Period.

6. **Class Size Modification.** At mediation, Defendant represented that the class consists of an estimated total of 1,551 Class Members who collectively worked 72,000 workweeks during the Class Period with some of the time in those workweeks being worked in California on a piece rate basis. Defendant will provide a declaration under oath as to the number of Class Members and workweeks worked by the members of the Class during the Class Period prior to the filing of the motion for preliminary approval. If the workweek number increases by more than 10% of the estimate provided for herein, then the Gross Settlement Amount will increase proportionally for the number of workweeks over 110% of 72,000 (79,200 workweeks).

D. **Appointment of Settlement Administrator.** After obtaining a not-to-exceed quote from multiple qualified settlement administrators, The Parties will ask the Court to appoint Simpluris, an experienced wage and hour class action administrator, as the qualified administrator, to serve as the Settlement Administrator, which, as a condition of appointment, will agree to be bound by this Agreement with respect to the performance of its duties and its compensation. The Settlement Administrator's duties will include preparing, printing, and mailing the Class Notice to all Class Members; conducting a National Change of Address search on any Class Notice Packet returned by the U.S. Postal Service as non-deliverable, and re-mailing the Class Notice Packet to the Class Member's new address; setting up a toll-free telephone number to receive calls from Class Members; receiving and reviewing for validity completed Elections Not to Participate in Settlement; providing the Parties with weekly status reports about the delivery of Class Notice Packets and receipt of completed Elections Not to Participate in Settlement; calculating

Workweeks; calculating Settlement Shares; maintaining the Settlement Fund account in an interest-bearing account; issuing the checks to effectuate the payments due under the Settlement; sending one reminder notice to members of the Class reminding them to cash their settlement checks, providing periodic updates on the status of uncashed checks, issuing the tax reports required under this Settlement; and otherwise administering the Settlement pursuant to this Agreement. The Settlement Administrator will have the final authority to resolve all disputes concerning the calculation of a Participating Class Member's Settlement Share, subject to the dollar limitations and calculations set forth in this Agreement. The Settlement Administrator's reasonable fees and expenses, including the cost of printing and mailing the Class Notice Packet, will be paid out of the Gross Settlement Amount.

The Settlement Administrator shall have its own Employer Identification Number under Internal Revenue Service Form W-9 and shall use its own Employer Identification Number in calculating payroll withholdings for taxes and shall transmit the required employers' and employees' share of the withholdings to the appropriate state and federal tax authorities. The Settlement Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.

E. Procedure for Approving Settlement.

1. Motion for Preliminary Approval of Settlement by the Court.

- a) After Execution of this Settlement Agreement, Plaintiffs will file a Preliminary Approval Motion with the Court for an order giving Preliminary Approval of the Settlement, setting a date for the Final Approval Hearing, and approving the Class Notice (the "Motion for Preliminary Approval"). Any disagreement among the Parties concerning the Class Notice, or other documents necessary to implement the Settlement will be referred to the mediator, Tripper Ortman, for resolution.
- b) At the hearing on the Motion for Preliminary Approval, the Parties will jointly appear, support the granting of the motion, and submit an Order Granting Preliminary Approval of the Settlement substantially in the form evidenced by Exhibit B to this Agreement and incorporated by reference into this Agreement.
- c) Should the Court decline to preliminarily approve material aspects of the Settlement (including but not limited to the scope of release to be granted by Participating Class Members or the binding effect of the Settlement on Participating Class Members), the Parties shall work together in good faith to address any concerns raised by the Court and propose a revised Settlement for the Court's approval.

2. **Notice to Class Members.** After the Court enters its Order Granting Preliminary Approval of the Settlement, every Class Member will be sent the Class Notice (which will include the Class Notice completed to reflect the Order Granting

Preliminary Approval of the Settlement and showing the Class Member's Settlement Share) as follows:

- a) No later than 14 calendar days after the Court enters its Order Granting Preliminary Approval of the Settlement, Defendant will provide to the Settlement Administrator with each Class Member's Class Data. If any or all of the Class Data is unavailable to Defendant, Defendant will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon the Class Data prior to when it must be submitted to the Settlement Administrator. The Settlement Administrator shall update addresses using the National Change of Address database. This information will otherwise remain confidential and will not be disclosed to anyone (including Class Counsel, Plaintiffs, or any other Class Members) in order to protect the privacy rights of Class Members, except as required to applicable taxing authorities, in order to carry out the reasonable efforts described in section III.B.2.c., or pursuant to Defendant's express written authorization or by order of the Court. All Class Data will be used for settlement notification and settlement administration and shall not be used for any other purpose by Class Counsel. The confidentiality of Class Data will not impede Class Counsel's ability to discharge its fiduciary duties.
- b) Using best efforts to mail it as soon as possible, and in no event later than 14 calendar days after receiving the Class Data, the Settlement Administrator will mail the Class Notice Packets to all Class Members via first-class regular U.S. Mail using the mailing address information provided by Defendant, unless modified by any updated address information that the Settlement Administrator obtains in the course of administration of the Settlement.
- c) If a Class Notice Packet is returned because of an incorrect address, the Settlement Administrator will promptly, and not longer than ten (10) calendar days from receipt of the returned packet, search for a more current address for the Class Member in the National Change of Address database and re-mail the Class Notice Packet to the Class Member. The Settlement Administrator will use the Class Data and otherwise work with Defendant to locate a more current address. The Settlement Administrator will be responsible for taking reasonable steps, consistent with its agreed upon job parameters, Court orders, and fee, as agreed to with Class Counsel and according to the following deadlines, to trace the mailing address of any Class Member for whom a Class Notice Packet is returned by the U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches in the National Change of Address database for all mail returned without a forwarding address; and promptly re-mailing to Class Members for whom new addresses are found. If the Class Notice Packet is re-mailed, the Settlement Administrator will note for its own records and notify Class Counsel and Defendant's Counsel of the date and address of each such re-mailing as part of a weekly status report provided to the Parties.

- d) As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defendant's Counsel of the number of Elections Not to Participate in Settlement it receives (including the numbers of valid and deficient), and number of objections received.
 - e) Not later than 10 calendar days before the date by which the Plaintiffs file the motion for final approval of the Settlement, the Settlement Administrator will provide the Parties for filing with the Court a declaration of due diligence setting forth its compliance with its obligations under this Agreement and detailing the Elections Not to Participate in Settlement it received (including the numbers of valid and deficient Elections) and objections received. Prior to the Final Approval Hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.
3. **Objections to Settlement; Disputes as to Workweeks allocated to Class Members; Objections to Class Counsel Fees and Expenses Payment; Elections Not to Participate in Settlement.** Participating Class Members may submit objections to the Settlement and objections to Class Counsel's Fees and Expenses Payment. Class Members may also submit disputes as to workweeks allocated to them and Elections Not to Participate in Settlement pursuant to the following procedures:
- a) **Objections to Settlement and Disputes as to Workweeks.** The Class Notice will provide that only Participating Class Members who wish to object to the Settlement and/or Class Counsel's Fees and Expense Payment must submit to the Settlement Administrator, not later than 45 days after the Settlement Administrator first mails the Class Notice Packets, or 45 days after the Settlement Administrator re-mails the Class Notice Packets to Class Members whose first mailing came back because of an incorrect address, written objections to the Settlement setting forth the grounds for the objection. A Participating Class Member who fails to timely submit a written objection may still appear at the Final Approval hearing. Non-Participating Class Members shall have no ability to comment on or object to the Settlement and/or Class Counsel's Fees and Expense Payment.

Each Class Member shall also have 45 calendar days from the date of the initial mailing of the Class Notice Packet, or 45 days after the Settlement Administrator re-mails the Class Notice Packets to Class Members whose first mailing came back because of an incorrect address, in which to dispute the number of workweeks the Class Notice allocates to them during the Class Period. Any dispute as to this allocation shall be resolved by the Settlement Administrator. Any Notice of Dispute shall be directed to the Settlement Administrator.

- b) **Objections to Class Counsel Fees and Expense Payment.** Unless otherwise ordered by the Court, Class Counsel shall file their application for the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment no later than the date the motion for final approval is to be filed, and the application will be scheduled to be heard by the Court at the Final Approval Hearing. The Class Notice will provide that Participating Class Members who wish to object to the Class Counsel's Fees and Expense Payment must do so as provided in paragraph III.E.3(a) above.
- c) **Election Not to Participate in Settlement.** The Class Notice also will provide that Class Members who wish to exclude themselves from the Settlement must mail to the Settlement Administrator not later than 45 days after the Settlement Administrator first mails the Class Notice Packets, or 45 days after the Settlement Administrator re-mails the Class Notice Packets to Class Members whose first mailing came back undeliverable, a signed Election Not to Participate in Settlement. To be valid, an Election Not to Participate must be timely and must comply with the instructions in the Class Notice. If a question is raised about the authenticity of a signed Election Not to Participate in Settlement, the Settlement Administrator will have the right to demand additional proof of the Class Member's identity. A Non-Participating Class Member will not participate in or be bound by the Settlement and the Judgment. Defendant will remain free to contest any claim brought by the Class Member that would have been barred by this Agreement, and nothing in this Agreement will constitute or be construed as a waiver of any defense Defendant has or could assert against such a claim. A Class Member who does not complete and mail a timely Election Not to Participate in Settlement in the manner and by the deadline specified above will automatically become a Participating Class Member and be bound by all terms and conditions of the Settlement, including the Released Class Claims by the Class, if the Settlement is approved by the Court, and by the Judgment, regardless of whether he or she has objected to the Settlement. Persons who submit an Election Not to Participate in Settlement shall not be permitted to file objections to the Settlement or appear at the Final Approval Hearing to voice any objections to the Settlement. However, any Class Member that submits a timely request for exclusion will still receive his/her pro PAGA Employee's PAGA Share only, but will not be bound by the Settlement Agreement otherwise, and will not be deemed to have released the Released Class Claims except Released PAGA Claims. The Notice will specifically explain that the Released PAGA Claims will be released whether or not a Class Member opts out in accordance with this paragraph.

All Participating Class Members who do not submit a valid and timely Election Not to Participate in Settlement will receive a Settlement Share, without the need to file a claim form, and will be bound by all of the terms of the Settlement, including without limitation, the release of the Released Class Claims and Released PAGA Claims by the Participating Class Members set forth in this Agreement.

- d) **Report.** Not later than 10 calendar days after the deadline for submission of Elections Not to Participate in Settlement, the Settlement Administrator will provide the Parties with a complete and accurate list of all Participating Class Members and all Non- Participating Class Members.
- 4. **Right of Parties to Reject Settlement.** If the Court does not approve the Settlement, the Parties will have the right, but not the obligation, to void the settlement *ab initio* and the Parties will have no further obligations under the Settlement, and the Parties shall not refer to or utilize the Settlement for any purpose whatsoever.
- 5. **No Solicitation of Objection or Election Not to Participate.** Neither the Parties nor their respective counsel have or will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, appeal from the Judgment, or elect not to participate in the Settlement.
- 6. **Additional Briefing and Final Approval.**
 - a) Class Counsel will file with the Court their application for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment no later than the date the Plaintiffs file their Motion for Final Approval, and the application will be scheduled to be heard by the Court at the Final Approval Hearing.
 - b) No later than 16 court days before the Final Approval Hearing, the Plaintiffs will file with the Court a motion for final approval of the Settlement, the PAGA Payment, and payment of the Settlement Administrator's reasonable fees and expenses.
 - c) If any opposition is filed, then not later than seven (7) days before the Final Approval Hearing, both Parties may file a reply in support of the motion for final approval of the Settlement, the PAGA Payment, and payment of the Settlement Administrator's reasonable fees and expenses; and Plaintiffs and Class Counsel may also file a reply in support of their motions for the Class Representative Service Payments, the Class Counsel Fees Payment, and the Class Counsel Litigation Expenses Payment.
 - d) If the Court does not grant final approval of the Settlement or grants final approval conditioned on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members), then the Parties shall work together in good faith to address any concerns raised by the Court and propose a revised Settlement for the Court's approval. However, an award by the Court of a lesser amount than that sought by Plaintiffs and Class Counsel for the PAGA Payment, Class Representative Service Payment, the Class Counsel Fees Payment, or the Class Counsel

Litigation Expenses Payment, will not constitute a material modification to the Settlement within the meaning of this paragraph, and will not impact the validity and enforceability of the Agreement.

- e) Upon final approval of the Settlement by the Court at or after the Final Approval Hearing, the Parties will present for the Court's approval and entry the Judgment in the form attached hereto as Exhibit C. After entry of the Judgment, the Court will have continuing jurisdiction over the Action and the Settlement solely for purposes of (i) enforcing this Agreement, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as may be appropriate under court rules or applicable law. After entry of the Judgment, the Settlement Administrator will provide notice of the final judgment to the Class Members by posting the Judgment on the administrator's website.
7. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms and conditions of this Agreement, Plaintiffs and Participating Class Members who did not timely object to the Settlement, Defendant, and their respective counsel hereby waive any and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as, but not limited to, a motion to vacate judgment, a motion for new trial, and any extraordinary writ. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings or post-judgment proceedings. If an appeal is taken from the Judgment, the time for consummation of the Settlement (including making payments under the Settlement) will be suspended until such time as the appeal is finally resolved and the Judgment becomes Final.
8. **Vacating, Reversal, or Material Modification of Judgment on Appeal or Review.** If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other motion, petition, or application, the reviewing Court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members), and that Court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher Court, then the Parties shall work together in good faith to address any concerns raised by the reviewing Court and propose a revised Settlement for the approval of the Court not later than fourteen days after the reviewing Court's decision vacating, reversing, or materially modifying the Judgment becomes Final. A vacation, reversal, or modification of the Court's award of the Class Representative Service Payment or the Class Counsel Fees Payment or Litigation Expenses Payment will not constitute a vacation, reversal, or material modification of the Judgment within the meaning of this paragraph, provided that Defendant's obligation to make payments under this Settlement will remain limited by the Gross Settlement Amount.
9. **Timing of Provision of Settlement Shares and Other Payments.** Defendant will fund the Gross Settlement Amount by depositing the money with the Settlement Administrator. Defendant shall fund the Gross Settlement Amount and the amount

necessary to pay Defendant's share of payroll taxes within ten (10) calendar days of the Effective Date if no objection is made/filed. If an objection is made/filed, and in the event it is overruled, an appeal is filed, then Defendant shall fund the Gross Settlement Amount and the amount necessary to pay Defendant's share of payroll taxes within ten (10) days from the final disposition of the appeal or the expiration of time for appeal. Within fifteen (15) days after Defendant funds the Gross Settlement Amount, the Settlement Administrator will pay to Participating Class Members, their Settlement Shares; to Plaintiffs, their Class Representative Service Payments; to Class Counsel, their Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment; to the LWDA, their LWDA Payment; and to the Settlement Administrator, its reasonable fees and expenses.

10. Uncashed Settlement Share Checks. A Participating Class Member must cash his or her Settlement Share check within 180 days after it is mailed to him or her. If a check is returned to the Settlement Administrator, the Settlement Administrator will make all reasonable efforts to re-mail it to the Participating Class Member at his or her correct address. If a Participating Class Member's Settlement Share check is not cashed within 120 days after its last mailing to the Participating Class Member, the Settlement Administrator will send the Participating Class Member a notice informing him or her that unless the check is cashed in the next 60 days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced but not cashed. If the check remains uncashed by the expiration of the 60-day period after this notice the funds from such uncashed checks will be paid to the State Controller's Office, Unclaimed Property Division in the name of the Settlement Class Member, and the Participating Class Member will remain bound by the Settlement.

11. Final Report by Settlement Administrator to Court. Within ten (10) calendar days after final disbursement of all funds from the Gross Settlement Amount, the Settlement Administrator will serve on the Parties and file with the Court a declaration proving a final report on the disbursements of all funds from the Gross Settlement Amount.

F. Release of Claims.

- 1. Participating Class Members.** As of the Settlement Effective Date, and funding in full of the Gross Settlement Amount by Defendant, Plaintiffs and the Participating Class Members shall release all Released Class Claims that occurred during the Class Period as to the Released Parties.
- 2. Plaintiffs.** As of the Settlement Effective Date and funding in full of the Gross Settlement Amount by Defendant, Plaintiffs fully and finally release the Defendant and the other Released Parties from any and all claims and damages of any and every kind and nature, actual and potential, known and unknown, which exist or may exist as of the date the Judgment becomes Final, including but not limited to all claims which were asserted or which could have been asserted in the Action,

and any and all claims which arise out of Plaintiffs' employment with Defendant, through and including the date the Judgment becomes Final ("Plaintiffs' Released Claims"). This release excludes only the release of claims not permitted by law.

3. **Plaintiffs' Waiver of Rights Under California Civil Code Section 1542.** As partial consideration for the Class Representative Service Payments, the Plaintiffs' Released Claims shall include all such claims, whether known or unknown by the releasing party. Thus, even if Plaintiffs discover facts and/or claims in addition to or different from those that they now know or believe to be true with respect to the subject matter of the Plaintiffs' Released Claims, those claims will remain released and forever barred. Therefore, with respect to those Released Class Claims, Plaintiffs expressly waive and relinquish the provisions, rights and benefits of section 1542 of the California Civil Code (or any other similar provision under federal or state law), which reads:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

4. **PAGA Release.** As of the Settlement Effective Date and upon funding in full of the Gross Settlement Amount by Defendant, all PAGA Employees shall release all Released PAGA Claims, irrespective of whether they opted-out of the class settlement, and will be bound by this PAGA Release.
- G. **No Effect on Other Benefits.** The Settlement Shares will not result in any additional benefit payments (such as 401(k) or bonus) beyond those provided by this Agreement to Plaintiffs or Participating Class Members, and Plaintiffs and Participating Class Members will be deemed to have waived all such claims, whether known or unknown by them, as part of their release of claims under this Agreement.
- H. **Non-Disparagement Limitation on Public Statements About Settlement.** Plaintiffs and Class Counsel represent that they have not and will not issue any press, social media or other media releases about the Settlement (including, but not necessarily limited to advertising or marketing materials or on social media) or have any communication with the press or media or anyone else regarding the Settlement. This provision shall not prohibit Class Counsel from communicating with Class Members after preliminary approval is granted for the sole purpose of administering the Settlement. This provision does not limit Class Counsel from complying with ethical obligations or from posting court-filed documents on their website for viewing by Class Members after preliminary approval. Plaintiffs understand and agree that they shall not disparage or make comments that can be construed as negative of Defendant, its employees, or its programs to any third parties. Defendant understands and agrees that it shall not disparage or make comments that can be construed as negative of Plaintiffs to any third parties. Defendant and Plaintiffs understand that this is a material term of this Settlement Agreement, and should either

Defendant or Plaintiffs breach this obligation, Defendant and Plaintiffs shall be liable for any damages caused by the failure to comply with this requirement.

I. Miscellaneous Terms.

1. No Admission of Liability or Class Certification for Other Purposes.

- a) Defendant and the Released Parties deny that they have engaged in any unlawful activity, have failed to comply with the law in any respect, have any liability to anyone under the claims asserted in the Action, or that but for the Settlement a class should be certified in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement or the negotiation thereof is intended or will be construed as an admission of liability or wrongdoing by Defendant or the Released Parties, or an admission by Plaintiffs that any of the claims were non-meritorious or any defense asserted by Defendant was meritorious. This Settlement and the fact that Plaintiffs and Defendant were willing to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with effectuating the Settlement pursuant to this Agreement).
 - b) Whether or not the Judgment becomes Final, neither the Settlement, this Agreement, any document, statement, proceeding or conduct related to the Settlement or the Agreement, nor any reports or accounting of those matters, will be (i) construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Plaintiffs or Defendant or any of the Released Parties, including, but not limited to, evidence of a presumption, concession, indication or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession or damage; or (ii) disclosed, referred to or offered in evidence against any of the Released Parties, in any further proceeding in the Action, or any other civil, criminal or administrative action or proceeding except for purposes of effectuating the Settlement pursuant to this Agreement.
 - c) This section and all other provisions of this Agreement notwithstanding, any and all provisions of this Agreement may be admitted in evidence and otherwise used in any and all proceedings for the limited purpose of enforcing any or all terms of this Agreement or defending any claims released or barred by this Agreement.
- 2. Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any Party concerning this Agreement or its exhibits other than the

representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.

3. **Attorney Authorization.** Class Counsel and Defendant's Counsel warrant and represent that they are authorized by Plaintiffs and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement including any amendments to this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Mediator Gig Kyriacou for resolution.
4. **No Prior Assignments:** The Parties represent, covenant and warrant that they have not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged in this Settlement.
5. **No Tax Advice:** Neither Class Counsel nor Defendant's Counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
6. **Modification of Agreement.** Except as set forth in III.I.3 hereinabove this Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives.
7. **Agreement Binding on Successors.** This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
8. **Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California.
9. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
10. **Fair Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.

- 11. Use and Return of Documents and Data.** All originals, copies, and summaries of documents and data provided to Class Counsel by Defendant in connection with the mediation or other settlement negotiations in this matter may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule. Within thirty days after the Judgment becomes Final, Class Counsel will return or destroy and confirm in writing to Defendant the destruction of all such documents and data.
- 12. Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 13. Notice.** All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, addressed as follows:

To Plaintiffs and Class:

Shani O. Zakay, Esq.
Zakay Law Group, APLC
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Tel: (619) 255-9047
Email: shani@zakaylaw.com

AND

Norman B. Blumenthal, Esq.
Blumenthal Nordrehaug Bhowmik De Blouw LLP
2255 Calle Clara
La Jolla, CA 92037
Tel.: (858) 551-1223
Fax: (858) 551-1232
E-Mail: norm@bamlawca.com

To Defendant:

Michael A. Hood, Esq.
JACKSON LEWIS P.C.
200 Spectrum Center Dr., Suite 500
Irvine, CA 92618
Tel: (949) 885-1374
Fax: (949) 885-1360
Email: michael.hood@jacksonlewis.com

Adam L. Lounsbury, Esq.
JACKSON LEWIS P.C.
701 East Byrd Street, 17th Floor
Richmond, CA 94804
Tel: (804) 649-0404
Email: adam.lounsbury@jacksonlewis.com

Lynsey Johnson, Esq.
JACKSON LEWIS P.C.
50 California Street, 9th Floor
San Francisco, CA 94111-4615
Tel: (415) 394-9400
Fax: (415) 394-9401
Email: lynsey.johnson@jacksonlewis.com

14. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

15. Continuing Jurisdiction. Pursuant to California Code of Civil Procedure section 664.6, the Parties agree that the Court shall retain jurisdiction over the Parties, and over this Settlement Agreement, in order to monitor and enforce compliance of this Settlement Agreement, and/or resolve any disputes over this Settlement Agreement or the administration of the benefits of this Settlement Agreement. The Parties further agree that the time within which to bring this action to trial under California Code of Civil Procedure section 583.310 shall be extended from the date of the signing of this agreement by all parties until entry of the final approval order and judgment, or if not entered, the date this agreement shall not longer be of any force or effect.

16. Court Filings

The Parties agree not to object to any Court filings consistent with this Agreement.

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated: 06/27/2022

Jean-Louis Chalaye

Jean-Louis Chalaye
Fabienne Chalaye [Jun 27, 2022 13:14 PDT]

Dated: 06/27/22

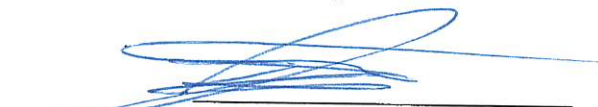
Scott Balliet



Scott Balliet (Jun 27, 2022 16:04 PDT)

Dated: 7/21/22

Pride Transport, Inc.



by Dan J. Peterson C.E.O.

Dated: 6/27/22

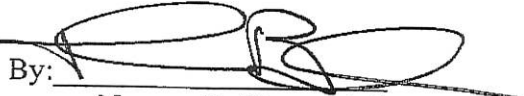
Zakay Law Group, APLC

By: 

Shani O. Zakay, Esq.
Attorneys for Plaintiffs

Dated: 6/29/22

Blumenthal Nordrehaug Bhowmik De Blouw LLP

By: 

Norman B. Blumenthal
Attorneys for Plaintiffs

Dated: 7/21/22

Jackson Lewis P.C.

By: 

Michael A. Hood
Adam L. Lounsbury
Lynsey D. Johnson
Attorneys for Defendant

EXHIBIT A

**NOTICE OF PENDENCY OF CLASS ACTION SETTLEMENT
AND FINAL HEARING DATE**

(Chalaye, et al. v. Pride Transport, Inc., et al., Case No. STK-CV-UOE-2021-2766)

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT ACT. PLEASE
READ THIS NOTICE CAREFULLY.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	To receive a cash payment from the Settlement, you do not have to do anything. Your estimated Settlement Share of the Class Settlement is: \$<<[REDACTED]>>. Your estimated Settlement Share of the PAGA Settlement is: \$<<[REDACTED]>>. See the explanation below. After final approval by the Court, the payment will be mailed to you at the same address as this notice. If your address has changed, please notify the Settlement Administrator as explained below. In exchange for the settlement payment, you will release claims against the Defendant as detailed below.
Exclude Yourself	If you wish to exclude yourself from the Settlement, you must send a written request for exclusion to the Settlement Administrator as provided below. If you request exclusion, you will receive no money from the Settlement, except for your portion of the PAGA Payment to the extent applicable. Instructions are set forth below.
Object	You may write to the Court about why you believe the settlement should not be approved. Directions are provided below.

1. Why did I get this Notice?

A proposed class action settlement (the “Settlement”) of this lawsuit pending in the Superior Court for the State of California, County of San Joaquin (the “Court”) has been reached between Plaintiffs Jean-Louis Chalaye and Scott Balliet (“Plaintiffs”) and Defendant Pride Transport, Inc. (“Defendant”). The Court has granted preliminary approval of the Settlement. **You may be entitled to receive money from this Settlement.**

You have received this Class Notice because you have been identified as a member of the Class, which is defined as:

All truck drivers who are or previously were employed by Defendant and performed work in California and who received piece-rate (cents per mile) compensation for work performed in California during the period of March 30, 2017 to February 1, 2022.

The “Class Period” is the period of time running from March 30, 2017 to February 1, 2022.

This Class Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you read this Notice carefully as your rights may be affected by the Settlement.

2. What is this class action lawsuit about?

The operative complaint, filed on June 10, 2021, filed by Plaintiff against Defendant in the Superior Court of the State of California, County of San Joaquin asserted claims that Defendant: (a) Violated California Business and Professions Code § 17200 *et seq.*; (b) Failed to pay minimum wages in violation of California Labor Code §§ 1194, 1197, and 1197.1; (c) Failed to provide accurate itemized wage statements in violation of California Labor Code § 226; (d) Failed to provide wages when due in violation of California Labor Code §§ 201, 202 and 203; (e) Failed to reimburse employees for required expenses in violation of California Labor Code §§ 2802; and (f) Violation of the Private Attorneys General Act [Labor Code §§ 2698, *et seq.*].

Defendant denies and disputes all claims asserted in the Action. Specifically, Defendant contended (and continues to contend) that the Action could not properly be maintained as a class action; that Defendant properly paid members of the class all wages that were due; that Defendants paid any members of the class all wages due them at the time of their terminations; that Defendant reimbursed members of the class for all required business expenses; that Defendant provided accurate, itemized wage statements to members of the class; that Defendant did not violate California Business and Professions Code section 17200 *et seq.*; and that Defendant is not liable for any of the penalties claimed or that could be claimed in the Action.

On February 1, 2022, the Parties participated in an all-day mediation presided over by Tripper Ortman, Esq., a respected mediator of wage and hour class actions. At the conclusion of the full-day mediation, the Parties reached an agreement for settlement based on a mediator's proposal. The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>>. At that time, the Court also preliminarily approved the Plaintiffs to serve as the Class Representatives, and the law firms of Zakay Law Group, APC and Blumenthal Nordrehaug Bhowmik De Blouw LLP to serve as Class Counsel.

3. What are the terms of the Settlement?

Gross Settlement Amount. Defendant has agreed to pay an “all in” amount of Three Hundred Fifty Thousand Dollars (\$350,000) (the “Gross Settlement Amount”) to fund the settlement. The Gross Settlement Amount includes the payment of all Settlement Shares to Participating Class Members, Class Counsel's attorneys' fees and costs, Settlement Administration Expenses, the LWDA Payment, PAGA Shares, and the Class Representative Service Payments to the Plaintiffs.

After the Judgment becomes Final, Defendant will pay the Gross Settlement Amount by depositing the money with the Settlement Administrator. “Final” means the date the Judgment is no longer subject to appeal, or if an appeal is filed, the date the appeal process is completed, and the Judgment is affirmed.

Amounts to be Paid From the Gross Settlement Amount. The Settlement provides for certain payments to be made from the Gross Settlement Amount, which will be subject to final Court approval, and which will be deducted from the Gross Settlement Amount before settlement payments are made to Class Members, as follows:

- Settlement Administration Expenses. Payment to the Settlement Administrator, estimated not to exceed \$15,250, for expenses, including expenses of sending this Notice, processing opt outs, and distributing settlement payments.
- Attorneys' Fees and Costs. Payment to Class Counsel of an award of a Class Counsel Fees Payment of no more than 1/3 of the Gross Settlement Amount (currently \$116,666.66) and a Class Counsel Litigation Expenses Payment of not more than \$20,000 for all expenses incurred as documented in Class Counsel's

billing records, both subject to Court approval. Class Counsel have been prosecuting the Actions on behalf of Plaintiffs and the Class on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses.

- Class Representative Service Payments. Class Representative Service Payments of up to Ten Thousand Dollars (\$10,000.00) to each Plaintiff, or such lesser amount as may be approved by the Court, to compensate them for services on behalf of the Class in initiating and prosecuting the Action, and for the risks they undertook.
- PAGA Payment. A payment of \$12,000 relating to Plaintiffs' claim under the Private Attorneys General Act ("PAGA"), \$9,000 of which will be paid to the State of California's Labor and Workforce Development Agency ("LWDA") and the remaining \$3,000 will be distributed to PAGA Employees as part of the Net PAGA Amount.
- Calculation of Payments to Participating Class Members. After all the above payments of the court-approved Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the Class Representative Service Payments, the LWDA Payment, and the Settlement Administration Expenses are deducted from the Gross Settlement Amount, the remaining portion, called the "Net Settlement Amount," shall be distributed to class members who do **not** request exclusion ("Participating Class Members"). The Settlement Share for each Participating Class Member will be calculated by (a) dividing the Net Settlement Amount by the total number of workweeks for all Participating Class Members that occurred during the Class Period and (b) multiplying the result by each individual Participating Class Member's workweeks that occurred during the Class Period. A "workweek" is defined as a normal seven-day week of work during the Class Period in which, according to Defendant's records, a member of the class worked at least one-day during any such workweek with some time worked on a piece rate (cents per mile) basis in California.
- Calculation of PAGA Penalties Payments to PAGA Employees. The Net PAGA Amount shall be distributed to PAGA Employees irrespective of whether they exclude themselves or opt-out. The Net PAGA Amount will be divided by the total number of Workweeks worked by all PAGA Employees during the PAGA Period, and then taking that number and multiplying it by the number of Workweeks worked by each respective PAGA Employee during the PAGA Period. "PAGA Employees" means all truck drivers who are or previously were employed by Defendant and performed work in California and who received piece-rate compensation for work performed in California during the period of December 30, 2019 to February 1, 2022.

If the Settlement is approved by the Court, you will automatically be mailed a check for your Settlement Share to the same address as this Class Notice. You do not have to do anything to receive a payment. If your address has changed, you must contact the Settlement Administrator to inform them of your correct address to insure you receive your payment.

Tax Matters. Forty percent (40%) of each Settlement Share is allocated to wages. Taxes are withheld from this amount, and each Participating Class Member will be issued an Internal Revenue Service Form W-2 for such payment. Sixty percent (60%) of each Settlement Share is allocated to interest (thirty percent (30%)), penalties and other non-wage payments (thirty percent (30%)), and no taxes will be withheld, and each Participating Class Member will be issued an Internal Revenue Service Form 1099 for such payment. In addition, no taxes will be withheld from the PAGA Penalties paid to PAGA Employees, and each PAGA Employee will be issued an Internal Revenue Service Form 1099 for such payment. Neither Class Counsel nor Defendant's counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability. You may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order granting final approval of the Settlement and entering judgment.

4. What Do I Release Under the Settlement?

Released Claims. As of the Settlement Effective Date and funding in full of the Gross Settlement Amount by Defendant, Plaintiffs and the Participating Class Members shall release all Released Class Claims that occurred during the Class Period as to the Released Parties. Released Class Claims are defined as all class claims alleged or that could have been alleged based on the facts alleged in the operative complaint which occurred during the Class Period, and expressly excluding claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and claims outside of the Class Period. The Released PAGA Claims shall be released as follows. As of the Settlement Effective Date and upon funding in full of the Gross Settlement Amount by Defendant, all PAGA Employees shall release all Released PAGA Claims as to the Released Parties, irrespective of whether they opted-out of the class settlement, and will be bound by this PAGA Release (the "PAGA Release"). "Released PAGA Claims" are defined as all PAGA claims alleged in the operative complaint and Plaintiffs' PAGA notice to the LWDA which occurred during the PAGA Period, and expressly excluding claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and PAGA claims outside of the PAGA Period.

This means that, if you do not timely and formally exclude yourself from the settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant about the legal issues resolved by this Settlement. It also means that all of the Court's orders in this Action will apply to you and legally bind you.

5. How much will my payment be?

Defendant's records reflect that you have << _____ >> work-weeks worked during the Class Period (March 30, 2017 to February 1, 2022). Defendant's records reflect that you have << _____ >> work-weeks worked during the PAGA Period (December 30, 2019 to February 1, 2022).

Based on this information, your estimated Class Settlement Share is << _____ >> and PAGA Settlement Share is << _____ >>.

If you wish to challenge the information set forth above, then you must submit a written, signed dispute challenging the information along with supporting documents, to the Settlement Administrator at the address provided in this Notice no later than _____ [forty-five (45) days after the Notice or re-mailed Notice].

6. How can I get a payment?

To get money from the settlement, you do not have to do anything. A check for your settlement payment will be mailed automatically to the same address as this Notice. If your address is incorrect or has changed, you must notify the Settlement Administrator. The Settlement Administrator is: _____. (800) _____.

The Court will hold a hearing on _____ to decide whether to finally approve the Settlement. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed within a few months after this hearing. If there are objections or appeals, resolving them can take time, perhaps more than a year. Please be patient. After entry of the Judgment, the Settlement Administrator will provide notice of the final judgment to the Class Members by posting a copy of the Judgment on the administrator's website at www._____.com

7. What if I don't want to be a part of the Settlement?

If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement or “opt out.” **If you opt out, you will receive NO money from the Settlement, and you will not be bound by its terms, except as provided as follows.** Irrespective of whether you exclude yourself from the Settlement or “opt out,” you will be bound by the PAGA Release, you will be deemed to have released the Released PAGA Claims, and you will receive a share of the Net PAGA Amount.

To opt out, you must submit to the Settlement Administrator, by First Class Mail, a written, signed and dated request for exclusion postmarked no later than _____. The address for the Settlement Administrator is Simpluris. The request for exclusion must state in substance: “I have read the Class Notice and I wish to opt out of the class action and settlement of the case *Chalaye, et al. v. Pride Transport, Inc., et al., Case No. STK-CV-UOE-2021-2766*.” The request for exclusion must contain your name, address, signature and the last four digits of your Social Security Number for verification purposes. The request for exclusion must be signed by you. No other person may opt out for a member of the Class.

Written requests for exclusion that are postmarked after _____, or are incomplete or unsigned will be rejected, and those Class Members will remain bound by the Settlement and the release described above.

8. How do I tell the Court that I would like to challenge the Settlement?

Any Class Member who has not opted out and believes that the Settlement should not be finally approved by the Court for any reason, may object to the proposed Settlement. Objections may be in writing and state the Class Member’s name, current address, telephone number, and describe why you believe the Settlement is unfair and whether you intend to appear at the final approval hearing. All objections or other correspondence must also state the name and number of the case, which is *Chalaye, et al. v. Pride Transport, Inc., et al., Case No. STK-CV-UOE-2021-2766*. You may also object without submitting a written objection by appearing at the final approval hearing scheduled as described in Section 9 below.

To object to the Settlement, you cannot opt out. If the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Class Members who do not object. Any Class Member who does not object in the manner provided in this Class Notice shall have waived any objection to the Settlement, whether by appeal or otherwise.

Written objections must be delivered or mailed to the Settlement Administrator no later than _____. The address for the Settlement Administrator is _____.

The addresses for the Parties’ counsel are as follows:

Class Counsel:

Shani O. Zakay, Esq.
Zakay Law Group, APLC
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Tel: (619) 255-9047
Email: shani@zakaylaw.com

Class Counsel:

Norman B. Blumenthal, Esq.
Blumenthal Nordrehaug Bhowmik De Blouw LLP
2255 Calle Clara
La Jolla, CA 92037
Tel.: (858) 551-1223
Fax: (858) 551-1232
E-Mail: norm@bamlawca.com

Counsel for Defendant:

Michael A. Hood, Esq.
JACKSON LEWIS P.C.
200 Spectrum Center Dr., Suite 500
Irvine, CA 92618
Tel: (949) 885-1374
Fax: (949) 885-1360
Email: michael.hood@jacksonlewis.com

9. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at **00:00 AM/PM on _____**, at the San Joaquin County

Superior Court, located at 180 E. Weber Avenue, Stockton, CA 95202 in Department 10D before Judge Barbara A. Kronlund. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement. If there are objections, the Court will consider them. The Court will listen to people who have made a timely written request to speak at the hearing or who appear at the hearing to object. This hearing may be rescheduled by the Court without further notice to you. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

10. How do I get more information about the Settlement?

You may call the Settlement Administrator at _____ or write to *Chalaye, et al. v. Pride Transport, Inc., et al., Case No. STK-CV-UOE-2021-2766*, Settlement Administrator, c/o _____.

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, the Final Judgment or other Settlement documents by writing to Zakay Law Group, APLC, 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- You must inform the Settlement Administrator of any change of address to ensure receipt of your settlement payment.
- Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall pay all funds from such uncashed checks to the State Controller's Office, Unclaimed Property Division. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

EXHIBIT 2

1 **ZAKAY LAW GROUP, APLC**
2 Shani O. Zakay (SBN 277924)
3 Jackland K. Hom (SBN 327243)
4 5440 Morehouse Drive, Suite 3600
5 San Diego, CA 92121
6 Telephone (619) 255-9047
7 Fax: (858) 404-9203
8 shani@zakaylaw.com
9 jackland@zakaylaw.com

10 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

11 Norman B. Blumenthal (State Bar #068687)
12 Kyle R. Nordrehaug (State Bar #205975)
13 Aparajit Bhowmik (State Bar #248066)
14 Nicholas J. De Blouw (State Bar #280922)
15 2255 Calle Clara
16 La Jolla, CA 92037
17 Telephone: (858) 551-1223
18 Facsimile: (858) 551-1232
19 Website: www.bamlawca.com

20 Attorneys for Plaintiffs

21 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
22 **IN AND FOR THE COUNTY OF SAN JOAQUIN**

23 JEAN-LOUIS CHALAYE, an individual, on)
24 behalf of himself and on behalf of all persons)
25 similarly situated,)

26 Plaintiffs,)

27 vs.)

28 PRIDE TRANSPORT, INC., a Corporation;)
and DOES 1 through 50, Inclusive,)

Defendants.)

Filed **DEC 16 2022**
BRANDON E. RILEY, CLERK

By **ALLISON LITTLE**
DEPUTY

Case No. STK-CV-UOE-2021-2766

~~PROPOSED~~ ORDER GRANTING
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT

Hearing Date: **NOV 17 2022**
Hearing Time: 9:00 a.m.

Judge: Hon. Barbara A. Kronlund
Dept: 10D

Date Filed: March 20, 2021
Trial Date: Not Set

OCT 04 2022

1 The Motion for Preliminary Approval of Class Action Settlement by Plaintiffs Jean-Louis
2 Chalaye and Scott Balliet ("Plaintiffs") came on for hearing before this Court, the Honorable
3 Barbara A. Kronlund presiding. The Court, having considered the papers submitted in support of
4 the motion, **HEREBY ORDERS THE FOLLOWING:**

5 1. The Court grants preliminary approval to the Settlement based on the terms set
6 forth in Class Action Settlement Agreement ("Agreement"). This Order incorporates by
7 reference the definitions in the Agreement, and all terms defined therein shall have the same
8 meaning in this Order as set forth in the Agreement.

9 2. The Settlement provides for Defendant Pride Transport, Inc. ("Defendant") to pay
10 the Gross Settlement Amount of Three Hundred and Fifty Thousand Dollars (\$350,000.00). The
11 Court preliminarily finds that the Settlement is fair, adequate, and reasonable to the Class, and
12 preliminarily approves the terms of the settlement. This preliminary approval is subject to the
13 objections of Class Members and final review by the Court.

14 3. A Final Approval Hearing shall be held before this Court on April 20, 2023 at
15 9:00 AM in Department 10D of the Superior Court of the State of California for the
16 County of San Joaquin, to determine all necessary matters concerning the Settlement, including:
17 whether the proposed settlement of the Action on the terms and conditions provided for in the
18 Settlement is fair, adequate, and reasonable and should be finally approved by the Court; whether
19 an Order Granting Final Approval should be entered; whether the plan of allocation contained in
20 the Settlement should be approved as fair, adequate, and reasonable to the Class Members; and
21 whether to finally approve the PAGA payment, the Class Counsel Fees Payment, the Class
22 Counsel Litigation Expenses Payment, the Class Representative Service Payments to the
23 Plaintiffs, and Settlement Administration Expenses. The motion for final approval and the
24 motion for award of attorneys' fees and costs shall be filed no later than sixteen (16) court days
25 before the Final Approval Hearing.

26 4. The Court recognizes that Plaintiffs and Defendant stipulate and agree to
27 certification of the Class for settlement purposes only. This stipulation will not be deemed
28 admissible in this or any other proceeding should this Settlement not become final. Whether or

1 not the settlement is finally approved, neither the Agreement, nor any document, statement,
2 proceeding, or conduct related to the Agreement may be admitted in any proceeding as an
3 admission by Defendant or any of the Released Parties, Plaintiffs, or any person within the
4 definition of the Class.

5 5. For settlement purposes only, the Court certifies the following Class: "all truck
6 drivers who are or previously were employed by Defendant and performed work in California
7 and who received piece-rate (cents per mile) compensation for work performed in California
8 during the period of March 30, 2017 to February 1, 2022." The Class Period means the period of
9 time from March 30, 2017 to February 1, 2022.

10 6. The Court preliminarily approves Plaintiffs as the representatives of the Class.
11 The Court preliminarily approves Zakay Law Group, APC, and Blumenthal Nordrehaug
12 Bhowmik De Blouw LLP as counsel for the Class ("Class Counsel").

13 7. The Agreement specifies for an attorneys' fees award not to exceed one-third
14 (1/3) of the Gross Settlement Amount not to exceed \$116,666.66, an award of litigation expenses
15 incurred not to exceed \$20,000, proposed Class Representative Service Payments to Plaintiffs in
16 an amount not to exceed \$10,000 to each Plaintiff, and proposed PAGA payment to the LWDA
17 in an amount not to exceed \$12,000 (75% of which shall be payable to the State of California,
18 and 25% of which shall be payable to the PAGA Employees). While these awards appear to be
19 within the range of reasonableness, the Court will not approve the amount of attorneys' fees and
20 costs until the Final Approval Hearing. Similarly, the Court will not decide the amount of any
21 Class Representative Service Payments until the Final Approval Hearing. Plaintiffs will be
22 required to present evidence supporting these requests, including lodestar, prior to final approval.

23 8. The Court hereby approves, as to form and content, the Class Notice attached as
24 Exhibit A to the Agreement. The Court finds that the distribution of the Class Notice
25 substantially in the manner and form set forth in the Agreement and this Order meets the
26 requirements of due process, is the best notice practicable under the circumstances, and shall
27 constitute due and sufficient notice to all persons entitled thereto.
28

1 9. The Court hereby approves on a preliminary basis the Gross Settlement Amount
2 as provided for in the Agreement. It appears to the Court on a preliminary basis that the
3 settlement amount and terms are fair, adequate, and reasonable as to all potential Class Members
4 when balanced against the probable outcome of further litigation relating to liability and
5 damages issues. It further appears that investigation and research have been conducted such that
6 counsel for the Parties at this time are able to reasonably evaluate their respective positions. It
7 further appears to the Court that settlement at this time will avoid substantial additional costs by
8 all Parties, as well as avoid the delay and risks that would be presented by the further prosecution
9 of the Actions. It further appears that the Settlement has been reached as the result of intensive,
10 serious and non-collusive, arms-length negotiations before an experienced mediator.

11 10. The Court hereby appoints Simpluris as Settlement Administrator. Within 14
12 days of this Order, Defendant will provide to the Settlement Administrator an electronic database
13 containing each Class Member's Class Data. No later than 14 days after receiving the Class
14 Data, the Settlement Administrator will mail the Class Notice Packets to all Class Members via
15 first-class regular U.S. Mail to their last known address.

16 11. Any Class Member may choose to opt out of and be excluded from the Class as
17 provided in the Class Notice by following the instructions for requesting exclusion from the
18 Class that are set forth in the Class Notice. All requests for exclusion must be submitted within
19 forty-five (45) days from the date the Class Notice is first mailed. Any such person who chooses
20 to opt out of and be excluded from the Class will not be entitled to any recovery under the
21 Settlement and will not be bound by the Settlement or have any right to object, appeal, or
22 comment thereon. Any written request to opt out must comply with the instructions in the Class
23 Notice and be signed by each such person opting out. Class Members who have not validly
24 requested exclusion shall be bound by all determinations of the Court, the Agreement, and the
25 Judgment.

26 12. Any Class Member who has not opted out may appear at the final approval
27 hearing and may object or express their views regarding the Settlement and may present
28 evidence and file briefs or other papers that may be proper and relevant to the issues to be heard

1 and determined by the Court as provided in the Class Notice. Class Members will have forty-
2 five (45) days from the date the Class Notices are mailed to postmark their written objections to
3 the Settlement Administrator. Class Members who fail to timely submit a written objection may
4 still appear at the Final Approval Hearing to object orally in person.

5 13. The Settlement is not a concession or admission, and shall not be used against
6 Defendant as an admission or indication with respect to any claim of any fault or omission by
7 Defendant. Whether or not the Settlement is finally approved, neither the Settlement, nor any
8 document, statement, proceeding or conduct related to the Settlement, nor any reports or
9 accounts thereof, shall in any event be construed as, offered or admitted in evidence as, received
10 as or deemed to be evidence for any purpose adverse to the Defendant, including, but not limited
11 to, evidence of a presumption, concession, indication or admission by Defendant of any liability,
12 fault, wrongdoing, omission, concession, or damage.

13 14. In the event the Settlement does not become effective in accordance with the
14 terms of the Agreement, or the Settlement is not finally approved, or is terminated, canceled, or
15 fails to become effective for any reason, this Order shall be rendered null and void and shall be
16 vacated, and the Parties shall revert to their respective positions as of before entering into the
17 Agreement.

18 15. The Court reserves the right to adjourn or continue the date of the final approval
19 hearing and all dates provided for in the Agreement without further notice to Class Members,
20 and retains jurisdiction to consider all further applications arising out of or connected with the
21 proposed Settlement.

22 **IT IS SO ORDERED.**

23 Dated: **DEC 16 2022**
24 _____

BARBARA A. KRONLUND

25 HON. BARBARA A. KRONLUND
26 JUDGE, SUPERIOR COURT OF
27 CALIFORNIA, COUNTY OF SAN JOAQUIN
28

EXHIBIT 3