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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

RANDY L. HOFF and KEISAR E. KIRK, on
behalf of themselves and all others similarly
situated;

Plaintiffs,

vs.

DEPENDABLE HIGHWAY EXPRESS, INC.,
a California Corporation; and DOES 1 through
10, inclusive;

Defendants.

Case No.: 34-2020-00272729-CU-OE-GDS

Assigned to the Hon. Richard K. Sueyoshi

**DECLARATION OF JOSHUA S.
FALAKASSA IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

HEARING INFO

Date: April 28, 2021

Time: 1:30 p.m.

Dept.: 53

RES: 2555614

Complaint filed: January 7, 2020

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1. I am an attorney at law, duly licensed to practice before all the Courts of the State of California and I am the principal of Falakassa Law, P.C., co-counsel with The Bokhour Law Firm, P.C., as attorneys of record for Plaintiffs Randy L. Hoff and Keisar E. Kirk (“Plaintiffs”) and the putative class. I am familiar with the file in this matter and if called as a witness I could competently testify to the following facts of my own personal knowledge. I submit this declaration in support of Plaintiffs’ Motion for Preliminary Approval of this Class Action Complaint.

3. I am a 2013 graduate from the University of California, Berkeley, School of Law, (“Boalt Hall”) where I successfully completed courses in Labor Law, Employment Discrimination and Labor/Employment Arbitrations. During law school, I served as a summer associate at Sanford, Wittels and Heisler LLP, a boutique plaintiffs’ side employment law firm focusing on FMLA wage and hour class action litigation, and other public interest lawsuits. As a second year law student, I served as a summer associate at the San Francisco office of Littler Mendelson, P.C., I aided employers in defending wage and hour class action lawsuits filed under California and federal law.

4. More recently, from August 2018-January 2019, I served as an associate at the Paul Haines Law Group, where I actively managed a caseload of more than 50 class and representative PAGA action lawsuits in California and federal courts. Thereafter, as principal of Falakassa Law, P.C., I have handled over 100 employee vs. employer litigation matters, including more than 40 class action wage/hour and PAGA cases. Over the last few years, my practice has almost entirely consisted of representing employees, the majority of which has included class action and representative action wage and hour matters. In total, I have handled

upwards of 50 class action and representative action wage/hour cases.

5. I was selected as a “Super Lawyer Rising Star” in Employment Litigation during the years 2017, 2018 and 2019, 2020 and 2021, a distinction that is reserved for the top 5 % of lawyers in the practice area.

6. Through a contested but productive mediation, Plaintiffs and Defendant Dependable Highway Express, Inc. (“Defendant” or “DHE”) (collectively, the “Parties”) entered into a Joint Stipulation of Settlement Agreement and Release of Class and Representative Action resolving the wage and hour claims of the putative class (“Settlement Agreement”), which is attached hereto as **Exhibit A**. The Settlement Agreement seeks to fully release and discharge Defendant from the claims brought against it in this matter in exchange for Defendant’s agreement to pay \$800,000 on a non-reversionary, non-claims made basis (each Class Member will receive his/her share of the Net Settlement Amount without having to submit a claim form or taking action, except for those who opt-out). Plaintiffs seek to represent a class of similarly situated non-exempt truck drivers employed by Defendant in California (the “Class” or “Class Members”) in its Harbor division or Truckload division and who were paid compensation on a piece-rate basis at any time during the period from January 7, 2016, through the Preliminary Approval Date or April 28, 2021, whichever occurs first (the “Class Period”).

7. Under the terms of the Settlement Agreement, Defendant will not oppose Class Counsels’ application for a reasonable award of attorneys’ fees not to exceed one-third (33.33%) of the Settlement Amount, Class Counsels’ litigation expenses not to exceed \$15,000, settlement administrator costs not to exceed \$10,000, PAGA payment of \$15,000 to the LWDA, and enhancement awards not to exceed \$10,000 to each Plaintiff. After subtracting the agreed-upon deductions from the Settlement Amount (subject to Court approval), approximately \$473,333.34 will be available to pay the individual settlement amounts to the Class Members who do not opt-out of the settlement, as follows:

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	Total Amount
<i>Gross Settlement Amount</i>	\$800,000
Attorneys' Fees (1/3)	\$266,666.66
Litigation Costs	\$15,000
Administrator Costs	\$10,000
PAGA payment to LWDA (75% of \$20k award)	\$15,000
Class Representatives' Service Awards (\$10,000 each)	\$20,000
<i>Net Settlement Amount</i>	\$473,333.34

In terms of average recoveries, assuming a total class size of 338 Class Members, the average payment to each Class Member will be approximately \$1,400.39. Of course, those who worked more workweeks stand to recover proportionally more.

8. Each Settlement Class Members will receive the Class Notice and an Explanation Form (collectively "Class Notice"), explaining the nature of the case, and the process for participating, objecting and opting-out, and advising of his/her estimated settlement payment and the number of workweeks he/she is credited with working during the Class Period (attached hereto as **Exhibit B**).

9. Co-Counsel and I have performed considerable work and diligently investigated and prosecuted this case to a successful conclusion. Our work has resulted in the creation of a significant settlement fund for the benefit of the Class. We effectively communicated and exchanged information informally with Defense counsel, which enabled the parties to successfully settle the case at mediation before Jeffrey Krivis, Esq. Because of the risks involved in litigating the case and the contested legal and factual issues, Plaintiffs' counsel believe this settlement to be fair, reasonable, and adequate.

10. After being retained by Plaintiff Randy L. Hoff ("Plaintiff"), we sent a letter to Defendant requesting the production of Plaintiff's personnel file and timekeeping records in order to further evaluate her wage and hour claims. Thereafter, on or about January 7, 2020, we submitted a letter to the Labor Workforce Development Agency (the "LWDA") for civil penalties under the Private Attorneys General Act of 2004 ("PAGA").

11. On January 7, 2020, Plaintiff Hoff filed his Class Action Complaint against Defendant in Sacramento County Superior Court. On or about July 15, 2020, Plaintiffs filed the

operative First Amended Class and Representative Action Complaint (“FAC”), adding Plaintiff Keiser Kirk as an additional Class Representative and alleging claims for (1) minimum wage violations, (2) meal period violations, (3) rest period violations, (4) failure to indemnify all necessary business expenditures, (5) wage statement violations, (6) waiting time penalties, (7) unfair competition, and (8) civil penalties under PAGA.

13. As alleged in the FAC, this action arises out of Defendant’s alleged numerous wage and hour violations on behalf of the non-exempt Truckload and Harbor Division truck drivers who were paid compensation on a piece-rate basis at DHE during the Class Period.

14. Defendant retained counsel, denied the allegations and vowed to vigorously defend against them. For example, Defendant presented evidence that Plaintiffs along with other class members had signed arbitration agreements with class waiver clauses. The parties then engaged in formal discovery and conducted multiple telephonic meet and confer discussions regarding the viability of Plaintiffs’ class claims.

15. Thereafter, the parties agreed to explore an early resolution through mediation. In preparation for mediation, the Parties agreed to an informal discovery process where information was exchanged relating to the applicable policies and procedures, a sampling of payroll and time keeping records, size of the class, and potential value of the case. The sampling enabled Plaintiffs’ counsel and its expert to fully evaluate the potential claims and extrapolate the data to the entire class. During this process, Plaintiffs and their counsel analyzed, researched, and investigated the potential claims of all similarly situated employees.

16. On February 23, 2021, the parties participated in a full-day mediation with Jeffrey Krivis, Esq., who is a full-time mediator with extensive experience in wage and hour class and PAGA action lawsuits. At the conclusion of the mediation, Mr. Krivis issued a mediator’s proposal calling for a class-wide settlement for \$800,000. The parties accepted the mediator’s proposal and memorialized the terms of the settlement in a long-form Settlement Agreement.

17. Plaintiffs alleged numerous wage and hour violations on behalf of the non-exempt truck drivers who were paid compensation on a piece-rate basis at DHE during the Class Period.

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1 18. First, Plaintiffs allege they and the Class were paid using a piece-rate formula,
2 including but not limited to, per mile pay, per load pay and per delivery pay. As a result, Class
3 Members were not paid for time spent on non-driving duties including, but not limited to, pre-
4 and post-trip safety inspections, preparation of trucks, loading/unloading of cargo, cleaning of
5 trucks, swapping/changing trucks, idle time in traffic, mechanical failures, lines at distribution
6 centers, late or absent drivers, fueling, and maintenance. Plaintiffs allege that DHE's piece-rate
7 pay policies failed to pay for all non-driving tasks, which must be paid for separately and hourly,
8 regardless of what the employer intended or what the employees believed was or was not included
9 in the piece-rate. As a result, Plaintiffs and the Class were and are not being paid at least the
10 minimum wage for all hours worked in violation of Labor Code §§ 204, 510, 1338, 1197.1, 1199,
11 and Wage Order No. 4. (See *Bluford v. Safeway, Inc.*, 216 Cal.App.4th 864 (2013) [holding that
12 a piece-rate system of pay, like Defendant's system, is illegal unless it separately pays drivers on
13 an hourly basis for all of their non-driving duties].)

14 19. Next, Plaintiffs allege that DHE also failed to provide timely and compliant meal
15 periods, or wage premiums in lieu thereof pursuant to Labor Code § 226.7. Specifically, Plaintiffs
16 and the Class routinely worked shifts in excess of 10.0 hours but were not provided with legally
17 complaint off-duty meal periods of at least thirty (30) minutes before the end of the fifth and tenth
18 hour of work due to DHE's unlawful meal period practices that required Class Members to remain
19 working on duty during meal periods. Plaintiffs allege, Defendant's work requirements did not
20 allow Plaintiffs and other non-exempt truck drivers to take timely off-duty meal periods, as truck
21 drivers were expected and required to continue working through meal periods in order to meet
22 rigorous delivery expectations and specific timelines.

23 20. Additionally, Plaintiffs allege that they and the Class were not provided with
24 complaint rest periods and were not provided with wage premiums in lieu thereof pursuant to
25 Labor Code § 226.7. Plaintiffs allege that Defendant's work requirements did not allow truck
26 drivers to take timely off-duty rest periods, as truck drivers were expected and required to
27 continue working through rest periods in order to meet rigorous delivery expectations and
28 timelines. Plaintiffs also allege that Defendant failed to comply with Labor Code § 226.2, and

1 with the requirements to pay drivers for 10-minute rest periods at their regular rate of pay, or at
2 least at California's applicable minimum wage.

3 21. Further, Plaintiffs allege that Defendant denied Class Members reimbursement for
4 necessary expenditures incurred as a direct consequence and requirement of performing their job
5 duties, including but not limited to, expenses associated with the usages of their personal cell
6 phones and other driving related business expenses. Consequently, Defendant failed to comply
7 with Labor Code §§ 2802-2804 and Wage Order No. 9.

8 22. Finally, Plaintiffs claim that Defendant failed to provide accurate itemized wage
9 statements, failed to provide timely pay upon separation of employment, and alleged various
10 PAGA claims arising out of the alleged Labor Code violations.

11 23. DHE contested and denied each of Plaintiffs' material allegations on the merits
12 and as to the propriety of the class and representative action.

13 24. First, as it pertained to Plaintiffs' claim based on Defendant's failure to pay
14 minimum wages for all hours worked, DHE argued that its pay plans for the Harbor and Truckload
15 divisions adequately compensated Plaintiffs and the Class for all non-driving tasks. In addition to
16 the mileage-based pay, DHE contended that Class Members received additional pay for all non-
17 driving tasks, including but not limited to, "Meet & Turn Pay," "Pallet Jack Pay," and "Driver
18 Count Pay". "Layover Pay" and "Breakdown Pay." Defendant further contended that any unpaid
19 non-driving tasks were minimal, and subject to individualized inquiries.

20 25. Furthermore, as it pertains to Plaintiffs' claim for meal and rest period violations,
21 DHE argued that these claims are preempted by federal law. Specifically, DHE relied on the
22 Federal Motor Carrier Safety Administration's ("FMCSA") determination that interstate motor
23 carriers are exempt from California's meal and rest period requirements. DHE's position was
24 recently upheld by the Ninth Circuit Court of Appeals in the case *International Brotherhood of*
25 *Teamsters, Local 2785 v. Federal Motor Carrier Safety Administration*, No. 18-73488 (2021),
26 wherein the appellate panel of the Ninth Circuit concluded that the FMCSA properly determined
27 that California's meal and rest period requirements were state regulations "on commercial motor
28 vehicle safety, so that they were within the agency's pre-emption authority."

1 26. Notwithstanding, DHE also argued that its meal and rest period policies as stated
2 in its Employee Handbook were compliant with California law, that it provided and made
3 available 30-minute meal periods to all employees, and that employees did in fact take their
4 required meal and rest periods.

5 27. Moreover, DHE argued that claims for wage statement violations, waiting time
6 penalties and PAGA penalties were derivative of other claims, which it argued had no merit. DHE
7 further contended that Plaintiffs' waiting time penalty and wage statement claims based on the
8 underlying meal and rest period violations were unfounded in light of the authority in *Naranjo*,
9 *et al. v. Spectrum Security Services, Inc.* (2019) No. B256232, holding that "Labor Code section
10 226.7 actions do not entitle employees to pursue the derivative penalties in section 203 and 226."

11 28. In addition, DHE contended that Plaintiffs' claims were not suitable for class
12 certification because individual inquiries would be required to establish, amongst other things,
13 which employees, if any, took meal and rest periods of less than 30-minutes and why a particular
14 employee received a meal period of less than 30-minutes on a particular shift.

15 29. Finally, DHE relied on the fact that a majority of the Class Members signed valid
16 and enforceable arbitration agreements that would preclude various Labor Code claims on a class
17 wide basis.

18 30. Of particular relevance to the reasonableness of the proposed Settlement is the fact
19 that significant legal and factual grounds for defending this action exist. As further detailed
20 below, in addition to disputing the merits of Plaintiffs' claims, DHE disputed that Plaintiffs could
21 obtain class certification, arguing a lack of commonality of the legal claims and injuries. DHE
22 further argued that it complied with the applicable law, that all Class Members were paid for all
23 non-driving tasks, that claims for meal and rest periods were pre-empted by federal law, that Class
24 Members were allowed and actually took their meal and rest periods, and that any purported
25 deviations therefrom were individualized in nature, thereby limiting Plaintiffs' ability to certify
26 the class. Finally, DHE argued that Plaintiffs and Class Members signed arbitration agreements
27 that would preclude them from bringing various claims.

1 31. While Plaintiffs assert that this is a suitable case for certification, they realize that
2 there is always a significant risk associated with class certification proceedings, which could
3 significantly limit the claims that they could pursue on a class basis.

4 32. In light of the uncertainties of protracted litigation, this negotiated settlement
5 reflects the best practicable recovery for the Class. While the total settlement amount is, of course,
6 a compromise figure, the potential risks and opportunities of both parties were effectively
7 weighed and considered by the parties, resulting in a fair and equitable settlement.

8 33. Based upon detailed data obtained through informal discovery and information
9 exchanges, and factoring in claim certification probabilities and liability probabilities, Class
10 counsel formulated detailed damages models to evaluate the claims in preparation for mediation
11 and in order to reach a realistic and reasonable resolution as further detailed below.

12 34. Plaintiffs' primary claim is for minimum wage violations resulting from DHE's
13 piece-meal pay policies/practices that failed to pay for all non-driving tasks. First, DHE's pay
14 plan for the Truckload Division, including Plaintiff Hoff, fails to adequately compensate Class
15 Members the minimum wage for all hours worked and non-driving tasks, including but not limited
16 to adequately compensate Class Members for layover and breakdown pay. Pursuant to DHE's
17 pay plan, truck drivers are far less than the California minimum wage requires. As a result,
18 Plaintiff Hoff and other Class Members are only paid for the time spent driving, and not for the
19 myriad of other activities related to the delivery of its customers' freight. Here, it is undisputed
20 that DHE's piece rate pay plan did not compensate for all the time spent on non-driving tasks.

21 35. Similarly, DHE's Harbor Division pay plan fails to pay Plaintiff Kurk and other
22 Class Members separately for all hours worked. During the Class Period, Plaintiff Kurk and other
23 Harbor drivers were paid on a piece-meal basis based on a per load pay, which failed to separately
24 pay hourly wages for non-driving tasks required as part of the job. Plaintiff Kurk and Class
25 Members were required to engage in various pre-shift and post-shift non-driving tasks, including
26 but not limited to, fuel their trucks, fill out paperwork, load and unload the truck at pickup and
27 drop-off locations, maintenance, truck-wash, drop and hook, loading/unloading of freight,
28 cleaning, mechanical failures/repairs.

36. Based on Plaintiffs' expert's review of the data, Plaintiffs estimated there were approximately 30,870 total shifts during the Class Period, with the shifts averaging 8.5 for Harbor Drivers and 9.6 hours for Truckload Drivers. Plaintiff also estimated an average of 2.0 hours of unpaid time (at the minimum wage) per shift during the Class Period. Thus, Plaintiffs calculated Defendant's maximum potential exposure on this claim as: 30,870 x \$12 (average minimum wage during the Class Period) x 2 hours of unpaid hour = \$740,880

37. In response to Plaintiffs' claim for minimum wage violations, DHE argued that its pay plans for the Harbor and Truckload divisions adequately compensated Plaintiffs and the Class for all non-driving tasks. In addition to being paid based on miles, DHE contended that it paid Plaintiffs and the Class for all non-driving tasks because the mileage pay incorporated the time it took to partake in additional non-driving related tasks. DHE further argued that Class Members received "accessorial" pay for all non-driving tasks, including but not limited to, "Meet & Turn Pay," "Pallet Jack Pay," and "Driver Count Pay". "Layover Pay" and "Breakdown Pay."

38. Based on these risks, Plaintiffs discounted its minimum wage claim by 35% for risk of non-certification and an additional 20% for risk of not prevailing on the merits or failing to recover the full amount sought, for an estimated exposure of \$385,257.60

39. Moreover, Plaintiffs alleged that Class Members routinely worked shifts in excess of 10.0 hours but were not provided with legally complaint off-duty meal periods of at least thirty (30) minutes before the end of the fifth and tenth hour of work, due to Defendant's unlawful meal period practices that required Class Members to remain working on duty during meal periods. Plaintiffs allege Defendant's work requirements did not allow Plaintiffs and other Class Members to take timely off-duty meal periods, as truck drivers were expected and required to continue working through meal periods in order to meet rigorous delivery expectations and timelines.

40. For similar reasons, Plaintiffs allege that they and the Class Members were not provided with complaint rest periods and were not provided with wage premiums in lieu thereof pursuant to Labor Code § 226.7. Plaintiffs allege that Defendant's work requirements did not allow Class Members to take timely off-duty rest periods, as truck drivers were expected and required to continue working through rest periods in order to meet rigorous delivery expectations.

1 41. Based on Plaintiffs' expert's review of the data, Plaintiffs estimated there were
2 approximately 3,440 total shifts during the Class Period with at least one unique meal period
3 violation and 7,283 total shifts with at least one rest break violation. Plaintiffs calculated
4 Defendant's maximum potential exposure on this claim as: 10,723 x \$15 (average hourly rate
5 during Class Period) x 2.0 hours (2 violations) = \$321,750.

6 42. First, DHE argued that it has always maintained compliant written meal and rest
7 period policies in its Employee Handbook. Further, DHE contended that Plaintiffs' claims for
8 meal and rest period were preempted by Federal Motor Carrier Safety Administration's
9 ("FMCSA") determination that interstate motor carriers are exempt from California's meal-and-
10 rest-break rules. (See *International Brotherhood of Teamsters, Local 2785 v. Federal Motor*
11 *Carrier Safety Administration*, No. 18-73488 (2021) [The Ninth Circuit concluded that the
12 FMCSA properly determined that California's meal and rest break rules were state regulations
13 "on commercial motor vehicle safety, so that they were within the agency's pre-emption
14 authority"].) Finally, DHE maintained that Plaintiffs' meal period claims are not amenable to
15 class treatment because individual inquiries would be required to establish which employees
16 missed second meal periods, how many each missed, and why a particular employee missed a
17 second meal period on a particular shift. Additionally, DHE contended that Plaintiffs and the
18 Class had signed arbitration agreements that would preclude class wide meal and rest period
19 claims.

20 43. Based on these risks, Plaintiffs discounted its meal period claim by 90% for risk
21 of non-certification and an additional 90% for risk of not prevailing on the merits, for an estimated
22 exposure of \$3,217.50.

23 44. Furthermore, Plaintiffs contend that DHE failed to provide accurate itemized wage
24 statements to Class Members due to DHE's failure to pay all minimum wages, and premium pay
25 for each meal and rest period violation. As a result, the wage statements provided to the Class
26 failed to include the accurate amount of all net and gross wages earned in violation of Labor Code
27 § 226(a)(1), (5). Plaintiffs' analysis of the data reflected approximately \$591,000 in wage
28 statement penalties based on 143 employees during the statute of limitations period corresponding

1 with Lab. Code § 226(a) during pay periods in which at least one violation allegedly occurred.

2 45. In response to Plaintiffs' wage statement claims, DHE contends that any alleged
3 violations were not "knowing and intentional," that Plaintiffs could not establish that they or
4 anyone else suffered "injury" as a result of any alleged wage statement violations, and that no
5 wage statement penalties can be recovered for failure to pay meal and rest period premium wages
6 pursuant to *Gustavo Naranjo, et al. v. Spectrum Security Services, Inc.*, holding that "section
7 226.7 actions do not entitle employees to pursue the derivative penalties in section 203 and 226."
8 Further, DHE relied on its defenses to Plaintiffs' underlying claims both on the merits and to class
9 certification.

10 46. As such, Plaintiffs discounted the calculated maximum exposure by 30% for risk
11 of non-certification, and by an additional 40% for risk of being unsuccessful on the merits, to
12 arrive at an estimated total of \$248,220.

13 47. Moreover, Plaintiffs argued that based on the violations above, DHE failed to pay
14 the Class all wages due upon separation of employment and is thus liable for waiting time
15 penalties. That penalty is calculated as the employee's daily wage for each day the final wages
16 are not paid, capped at a maximum of 30 days. Based on data provided by DHE, there are
17 approximately 70 Class Members whose employment with Defendant ended during the relevant
18 time period, and an estimated average maximum waiting time penalty of \$3,825 (\$15.00 x 8.5 x
19 30) for a total maximum exposure of approximately \$267,750.00.

20 48. In response, DHE contends that waiting time penalties are not available for meal
21 or rest period claims after *Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal. 4th 1244, which
22 held meal period claims are not actions for "nonpayment of wages," a view adopted in *Ling v.*
23 *P.F. Chang's China Bistro, Inc.*, 245 Cal.App.4th 1242, 1261 (2016) ("Following *Kirby*, section
24 226.7 cannot support a section 203 penalty"). Additionally, DHE argues that there was no actual
25 wage loss because Class Members were always provided full 30-minute meal periods. Finally,
26 DHE relies on its defenses to Plaintiffs' underlying claims on both the merits and as to class
27 certification.

49. Accordingly, Plaintiffs discounted this maximum amount by 30% for risk of non-certification and by an additional 30% for risk of being unsuccessful on the merits, to arrive at an estimated exposure of \$131,197.50.

50. Finally, based on the labor code violations above, Plaintiffs contend that DHE is separately liable for civil penalties pursuant to the Private Attorneys General Act ("PAGA"). Based on Plaintiffs' expert analysis, there are 3,027 pay periods in the PAGA one-year statutory period. Based thereon, Plaintiffs estimated a total maximum PAGA exposure of \$591,100 ("initial violations" at \$100 each).

51. However, these penalties derived from the underlying violations discussed herein, each of which Defendant disputes. (See, e.g., *Green v. Lawrence Service Co.*, No. LA- CV-12-6155-JAK(VBKx), 2013 WL 3907506 at *5, fn. 5 (C.D. Cal. July 23, 2013) (explaining that PAGA claim's success is determined by merits of underlying claims). Moreover, the PAGA grants courts discretion to reduce penalties (Labor Code § 2699(e)(2)), and DHE argues the Court would significantly reduce penalties based on its good-faith defenses to Plaintiffs' underlying claims.

52. Based on these risks, Plaintiffs discounted that maximal figure by 30% for a risk of losing on the merits and by an additional 30% for the risk of this Court reducing penalties, to arrive at an estimated total of \$289,639. (See *Fleming v. Covidien, Inc.* (C.D.Cal. Aug. 12, 2011, No. ED CV 10-01487 RGK (OPx)) 2011 WL 7563047 at *4 (reducing PAGA penalties by more than 82%).

53. Using these estimated figures, Plaintiffs predicted the realistic total recovery for Class Members on Plaintiffs' claims would be approximately \$1,057,531.60 (Falakassa Decl., ¶ 24.) The proposed settlement of \$800,000.00 therefore represents approximately 75% of Plaintiffs' reasonably forecasted recovery. Preliminary approval is appropriate since the settlement will provide significant monetary relief to the Class.

54. The Parties concluded that further litigation of the case would be protracted and expensive, and that it is desirable that the case be fully and finally settled in order to limit further risk, expense and protracted litigation.

1 55. The settlement was the product of extensive arm's length negotiations between
2 counsel and was facilitated by an experienced wage-and-hour class action mediator. Though
3 cordial and professional, the settlement negotiations were adversarial and non-collusive in nature.
4 The settlement reached is the product of substantial effort by the parties and their counsel.
5 Although Plaintiffs and counsel believed that there was a possibility of certifying the claims, they
6 recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable
7 decisions on class certification, summary judgment, at trial and/or on the damages awarded,
8 and/or on an appeal that can take several more years to litigate. In addition, if Defendant prevailed
9 on any of its defenses, the employees may have received little to monetary recovery.

10 56. The settlement will result in a fair payment to each class member based on the
11 number of weeks worked during the Class Period. As set forth hereinabove, Plaintiffs and their
12 counsel have diligently investigated the claims and defenses on behalf of the class members and
13 worked to achieve a resolution of the claims to maximize the recovery by avoiding further
14 expenditure of attorneys' fees and costs. After evaluating the significant risks attendant with
15 further litigation described above and weighing them against the benefits of a known compromise
16 and settlement as set forth in the Settlement Agreement, settlement on the terms agreed to is
17 believed to be in the best interest of Plaintiffs and the Class and is a fair and reasonable resolution
18 of the claims alleged.

19 57. Plaintiffs' counsels, which consists of my office, and the Bokhour Law Group
20 brought to bear a great deal of collective experience in negotiating the settlement of this case. As
21 detailed herein, Plaintiffs' counsels engaged in necessary discovery, investigation, sampling and
22 expert evaluation, making it possible to exercise informed judgment throughout the settlement
23 process, including significant document review (e.g. documents pertaining to Defendant's
24 policies and procedures, personnel documents, wage statements, time records, among others) and
25 conducted an extensive analysis and extrapolation of the sampling of class-wide data provided by
26 Defendant.

27 58. Based on my experience in other cases, including wage and hour matters, I believe
28 I am qualified to evaluate the class claims and viability of defenses in this class action. In this

1 case, the recovery for each class member is reasonable, fair and adequate, and a settlement at this
2 time is in the best interest of the class. The settlement provides each class member with
3 compensation for the alleged violations when viewed in relation to the costs and risks inherent in
4 obtaining class certification and proceeding to trial.

5 59. Plaintiffs' counsels, as well as Defendant's counsel, fully endorse the terms and
6 conditions of the settlement as set forth in the abovementioned Settlement Agreement.

7 60. Of course, the settlement amount represents a compromise figure, taking into
8 account the various risks surrounding class certification and the merits of Defendant's asserted
9 defenses. Nevertheless, the settlement provides for fair and adequate payments to the class
10 members, with no reversion to Defendant.

11 61. Plaintiffs seek enhancement payments of \$10,000 each, which I believe is fair and
12 warranted. Plaintiff Hoff and Plaintiff Kirk agreed to come forward in an effort to effectuate a
13 policy and practice change that benefitted all other class members, and to recover unpaid wages
14 and penalties. Plaintiffs assumed significant risk in bringing this litigation, namely, had they lost,
15 they would have been ordered to pay Defendant's costs.

16 62. Plaintiffs provided invaluable assistance to the investigation and prosecution of
17 this case, including: providing factual background for the PAGA Notice and Class Complaint;
18 reviewing the litigation documents; providing information and documentation about Defendant's
19 pay policies and practices; participating in phone calls to discuss litigation and settlement
20 strategy; and reviewing the settlement documents. Plaintiffs agreed to participate in this case with
21 no guarantee of personal benefit. At final approval, Plaintiffs will submit a comprehensive
22 declaration setting forth all of the reasons why they each believe that the service award should be
23 approved.

24 63. As set forth above, I have handled over 50 class and representative actions, have
25 been appointed as class counsel and have successfully resolved several class actions, and many
26 others remain pending.

27 64. When this case was taken on a contingency fee basis, with my co-counsel and my
28 firm agreeing to assume responsibility for all litigation costs, the ultimate result was far from

1 certain. In the course of this litigation we paid all costs including the filing fees, court costs,
2 research/database fees, mediation costs, and expert costs. There was never a guarantee that our
3 firms would recoup these expenditures.

4 65. It is my experience that attorneys' fee awards of one-third of a common fund
5 settlement are the standard in California. In this case, Plaintiffs' counsels agreed to seek one-third
6 of the Settlement Amount for attorneys' fees. Defendant does not oppose this fee request. The fee
7 is further warranted because it is within the range of reasonableness typically awarded in class
8 actions. My co-counsel and my firm's costs are collectively capped at \$15,000 and will be based
9 on the actual amount incurred at the time of final approval.

10 66. The parties request that the Court appoint Simpluris to serve as the Settlement
11 Administrator. Simpluris is experienced in administering class action settlements and will cost
12 less than \$10,000 to administer this class action settlement.

13 67. Plaintiffs have concurrently submitted the settlement to the LWDA in accordance
14 with Labor Code Section 2699(1)(2). The proof of submission is attached hereto as Exhibit C.

15 68. For the foregoing reasons, it is respectfully requested that the Court grant
16 preliminary approval of the settlement as being fair, reasonable, and in the best interests of the
17 class, as well as preliminarily approve the requested attorneys' fees, costs, and enhancement
18 payment to the Class Representatives.

19 I declare under penalty of perjury under the laws of the state of California that the
20 foregoing is true and correct this 6th day of April 2021, at Los Angeles, California.

21 /s/
22 By: _____
23 Joshua S. Falakassa, Esq.
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EXHIBIT “A”

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

RANDY L. HOFF, on behalf of himself and all
others similarly situated,

Plaintiffs,

vs.

DEPENDABLE HIGHWAY EXPRESS. INC.,
a California Corporation; and DOES 1-50,
inclusive.

Defendant.

CASE NO.: 34-2020-00272729-CU-OE-GDS

Assigned to the Hon. Richard K. Sueyoshi

**JOINT STIPULATION OF
SETTLEMENT AND RELEASE OF
CLASS AND REPRESENTATIVE
ACTION**

Action filed: January 7, 2020
FAC: July 17, 2020
Trial date: None Set

1 This Joint Stipulation of Settlement and Release of Class and Representative Action
2 (Stipulation) is made and entered into by Plaintiffs, Randy Hoff and Keisar Kirk, individually and
3 on behalf of others similarly situated, as defined below, on the one hand, and Defendant, Dependable
4 Highway Express, Inc., on the other hand.

5 This Stipulation is subject to the approval of the Court and is made for the sole purpose of
6 attempting to consummate settlement of certain claims in this class action on a classwide basis
7 subject to the following terms and conditions. As detailed below, in the event the Court does not
8 enter an order granting final approval of the Settlement or the conditions precedent are not met for
9 any reason, this Stipulation shall be null and void and shall be of no force or effect whatsoever.

10 **I. DEFINITIONS**

11 1. As used in this Stipulation, the following terms shall have the meanings specified
12 below. To the extent terms or phrases used in this Stipulation are not specifically defined below, but
13 are defined elsewhere in this Stipulation, they are incorporated by reference into this definition
14 section.

15 2. **Action.** “Action” shall mean the civil action filed on January 7, 2020, by Plaintiff,
16 Randy L. Hoff (and later joined by Plaintiff Keisar E. Kirk), against Dependable Highway Express,
17 Inc., pending in the California Superior Court, County of Sacramento, Case No.: 34-2020-
18 00272729-CU-OE-GDS.

19 3. **Administrative Expenses.** “Administrative Expenses” shall mean (i) all Court-
20 approved attorney fees not to exceed one-third of the Gross Settlement Amount as well as litigation
21 costs and expenses, not to exceed \$15,000, (ii) a Court-approved Service Award of up to \$10,000
22 for each named Plaintiff, (iii) a payment to the California Labor and Workforce Development
23 Agency (LWDA) of \$20,000 for civil penalties due to the LWDA under the California Private
24 Attorneys General Act of 2004, Cal. Lab. Code § 2698, *et seq.* (PAGA), (iv) any Court-approved
25 administrative costs necessary to effectuate the terms of this Stipulation, including any costs
26 incurred in connection with engaging the Settlement Administrator, (v) Defendant’s share of any
27 payroll taxes related to Individual Settlement Amounts, and (vi) any other obligations of Defendant
28 under the Settlement Agreement.

1 4. **Claims.** “Claims” shall mean the claims for relief asserted in the Complaint,
2 including, but not limited to, claims for (1) minimum wage violations, (2) meal period violations,
3 (3) rest period violations, (4) failure to indemnify all necessary business expenditures, (5) wage
4 statement violations, (6) waiting time penalties, (7) unfair competition, and (8) penalties under
5 PAGA as alleged in the Complaint.

6 5. **Class.** “Class” shall mean all current and former drivers employed by Defendant in
7 the Harbor division or the Truckload division who were paid compensation on a piece-rate basis at
8 any point since January 7, 2016 until the Preliminary Approval Date.

9 6. **Class Counsel.** “Class Counsel” shall mean Mehrdad Bokhour of Bokhour Law
10 Group, P.C., 1901 Avenue of the Stars, Suite 450, Los Angeles, CA 90067, and Joshua Falakassa
11 of Falakassa Law, P.C., 1901 Avenue of the Stars, Suite 450, Los Angeles, CA 90067.

12 7. **Class Member.** “Class Member” shall mean any person who is a member of the
13 Class, or, if such person is incompetent or deceased, the person's legal guardian, executor, heir or
14 successor-in-interest.

15 8. **Class Notice.** “Class Notice” shall mean the Notice of Proposed Class Action
16 Settlement and Hearing Date for Court Approval, as set forth in the form of *Exhibit A* attached
17 hereto, or as otherwise approved by the Court, which is to be mailed to Class Members.

18 9. **Class Period.** “Class Period” shall mean January 7, 2016 through the Preliminary
19 Approval Date.

20 10. **Complaint.** “Complaint” shall mean the First Amended Class and Representative
21 Action Complaint filed on or about January 7, 2020 and as amended on or about July 20, 2020, in
22 this Action.

23 11. **Court.** “Court” shall mean the California Superior Court, County of Sacramento.

24 12. **Defendant.** “Defendant” shall mean Dependable Highway Express, Inc.

25 13. **Defense Counsel.** “Defense Counsel” shall mean Timothy M. Fisher of Scopelitis,
26 Garvin, Light, Hanson & Feary, LLP, 2 North Lake Ave., Ste. 560, Pasadena, CA 91101.

27 14. **Effective Date.** “Effective Date” shall be the date when all of the following events
28 have occurred: (a) this Stipulation has been executed by all Parties and by Class Counsel and

1 Defense Counsel; (b) the Court has given preliminary approval to the Settlement; (c) notice has been
2 given to the Class Members providing them with an opportunity to opt-out of the Settlement; (d) the
3 Court has held a Final Approval and Fairness Hearing and entered a final order and judgment
4 certifying the Class and approving this Stipulation; and (e) in the event there are written objections
5 filed prior to the Final Approval and Fairness Hearing that are not later withdrawn, the later of the
6 following events: when the period for filing any appeal, writ, or other appellate proceeding opposing
7 the Settlement has elapsed without any appeal, writ or other appellate proceeding having been filed;
8 or any appeal, writ, or other appellate proceeding opposing the Settlement has been dismissed finally
9 and conclusively with no right to pursue further remedies or relief; or any appeal, writ, or other
10 appellate proceeding has upheld the Court's final order with no right to pursue further remedies or
11 relief. In this regard, it is the intention of the Parties that the Settlement shall not become effective
12 until the Court's order approving the Settlement is completely final and there is no further recourse
13 by an appellant or objector who seeks to contest the Settlement. In the event that no objections are
14 filed, the Effective Date shall be after steps (a) through (d) have been completed.

15 **15. Final Approval and Fairness Hearing.** "Final Approval and Fairness Hearing"
16 shall mean the final hearing held to ascertain the fairness, reasonableness, and adequacy of the
17 Settlement.

18 **16. Gross Settlement Amount.** "Gross Settlement Amount" shall mean \$800,000,
19 which will be paid by Defendant in full settlement of the Released Claims, as defined below, and
20 shall include the Administrative Expenses.

21 **17. Hearing on Preliminary Approval.** "Hearing on Preliminary Approval" shall mean
22 the hearing held on the motion for preliminary approval of the Settlement.

23 **18. Individual Settlement Amount.** "Individual Settlement Amount" shall mean the
24 amount which is ultimately distributed to each Settlement Class Member.

25 **19. Net Settlement Amount.** "Net Settlement Amount" shall mean the Gross Settlement
26 Amount less the Administrative Expenses.

27 **20. Opt-Out(s).** "Opt-Out(s)" shall mean any and all Class Members who timely and
28 validly request exclusion from the Class in accordance with the terms of the Class Notice.

1 **21. Opt-Out Request.** “Opt-Out Request” shall mean a timely and valid request for
2 exclusion from the Class in accordance with the terms of the Class Notice in the form attached
3 hereto as *Exhibit A*, or as otherwise approved by the Court.

4 **22. PAGA Payment.** “PAGA Payment” shall mean \$15,000, which represents 75% of
5 the \$20,000 allocated from the Gross Settlement Amount to pay the portion of the penalties due to
6 the LWDA.

7 **23. Parties.** “Parties” shall mean the Plaintiffs and the Defendant.

8 **24. Plaintiffs.** “Plaintiffs” shall mean Plaintiffs, Randy L. Hoff and Keisar E. Kirk.

9 **25. Preliminary Approval Date.** “Preliminary Approval Date” shall mean the date upon
10 which the Court enters an order preliminarily approving this Stipulation.

11 **26. Released Claims.** “Released Claims” shall mean any and all claims, demands,
12 causes of action, charges, and grievances, of whatever kind or nature, whether known or unknown,
13 suspected or unsuspected, which Plaintiffs and the Settlement Class Members now own or hold or
14 have at any time before this date owned or held against Defendant or any of the Released Parties
15 and which arose out of, are in any way connected to, or that were made or could have been made
16 based on the facts, theories, and claims pled in the Complaint, including, but not limited to, all wage
17 and hour claims, whether known or unknown, at law or in equity, which Plaintiffs and the Settlement
18 Class Members may now have or may have as of the execution of this Stipulation under the wage
19 orders of the California Industrial Welfare Commission, or other federal, state, or local law, claims
20 for penalties under PAGA, all claims for minimum wage violations, meal period violations, rest
21 period violations, failure to indemnify for necessary business expenses, failure to provide accurate
22 itemized wage statements, waiting time penalties, unfair competition under the California Business
23 and Professions Code, and PAGA penalties.

24 **27. Released Parties.** “Released Parties” shall mean Defendant, and its present and
25 former officers, directors, shareholders, agents, employees, representatives, attorneys, parent
26 companies, subsidiaries, divisions, affiliates, related companies, successors, and assigns.

27 **28. Service Award.** “Service Award” shall mean any additional monetary payment
28 provided to Plaintiffs for their efforts on behalf of the Class in this Action. Defendant shall not

1 object to Plaintiffs requesting an award of up to \$10,000 each for a Service Award.

2 **29. Settlement.** “Settlement” shall mean the class and representative action settlement
3 embodied in this Stipulation, which is subject to Court approval.

4 **30. Settlement Administrator.** “Settlement Administrator” shall mean Simpluris, Inc.,
5 which the Parties have agreed will be responsible for administration of the Settlement and related
6 matters, or another neutral administrator mutually agreed to by the Parties.

7 **31. Settlement Class Members.** “Settlement Class Members” shall mean any and all
8 Class Members who do not submit a timely opt-out request in the form attached hereto as *Exhibit B*
9 (the Opt-Out Request) as provided herein.

10 **32. Stipulation.** “Stipulation” shall mean this Joint Stipulation of Settlement and
11 Release of Class Action and Representative Action, including any attached exhibits.

12 **II. FACTUAL AND PROCEDURAL BACKGROUND OF ACTION**

13 **1. Plaintiffs’ Claims.** On January 7, 2020, Plaintiff Hoff filed his original Complaint
14 in the Superior Court, County of Sacramento, under Case No.: 34-2020-00272729. On July 15,
15 2020, Plaintiffs filed their First Amended Class and Representative Action Complaint, adding
16 Keiser Kirk as a Plaintiff and alleging claims under California law for (1) minimum wage violations,
17 (2) meal period violations, (3) rest period violations, (4) failure to indemnify all necessary business
18 expenditures, (5) wage statement violations, (6) waiting time penalties, (7) unfair competition, and
19 (8) penalties under PAGA. The Parties participated in a mediation on February 23, 2021, with
20 mediator Jeffrey Krivis.

21 Defendant has denied and continues to deny any liability to the Plaintiffs and the Class and
22 has raised various defenses to the Claims.

23 **2. Discovery, Investigation, and Research.** Class Counsel has conducted discovery
24 and investigation relating to the Claims during the prosecution of the Action. This discovery,
25 investigation, and prosecution has included, among other things: (a) multiple meetings and
26 conferences with the Plaintiffs; (b) issuing formal discovery requests to Defendant; (b) inspection
27 and analysis of documents and data produced by the Plaintiffs and/or Defendant; (c) analysis of the
28 legal positions taken by Defendant; (d) investigation into the viability of class treatment of the

1 claims asserted in the Action; (e) analysis of potential classwide damages; (f) reviewing documents
2 and information provided by Defendant in advance of mediation, and (g) assembling of data for
3 calculating damages.

4 Class Counsel and Plaintiffs have vigorously prosecuted this case, and Defendant has
5 vigorously contested it. The Parties have engaged in sufficient investigation and informal discovery
6 to assess the relative merits of the claims of Plaintiffs and of Defendant's defenses to them.

7 **3. Allegations of Plaintiffs and Benefits of Settlement.** The extensive discovery
8 conducted in this matter, both formal and informal, as well as discussions between Class Counsel
9 and Defense Counsel, have been adequate to give Plaintiffs and Class Counsel a sound
10 understanding of the merits of their positions and to evaluate the worth of the Claims of the Class.
11 This Settlement was reached with the assistance of an experienced mediator, Jeffrey Krivis, after
12 arm's-length negotiations by the Parties during a full-day mediation session and subsequent
13 settlement discussions. The informal discovery conducted in this Action and the information
14 exchanged by the Parties through mediation are sufficient to reliably assess the merits of the Parties'
15 respective positions and to compromise the issues on a fair and equitable basis.

16 Plaintiffs and Class Counsel believe that the Claims have merit. However, Plaintiffs and
17 Class Counsel recognize and acknowledge the expense and delay of continued lengthy proceedings
18 necessary to prosecute the Claims in this Action against Defendant through trial and through
19 appeals. Class Counsel has taken into account the uncertain outcome and the risk of any litigation,
20 the risk of continued litigation in complex actions such as this, as well as the difficulties and delays
21 inherent in such litigation, and the potential difficulty of maintaining the Action as a class and/or
22 representative action. Class Counsel is mindful of the inherent problems of proof under, and possible
23 defenses to, the Claims. Class Counsel believes that the Settlement set forth in this Stipulation
24 confers substantial benefits upon Plaintiffs and the Class and that an independent review of this
25 Stipulation by the Court in the approval process will confirm this conclusion. Based on their own
26 independent investigation and evaluation, Class Counsel has determined that the Settlement set forth
27 in the Stipulation is in the best interests of Plaintiffs and the Class.

1 **4. Defendant's Denials of Wrongdoing and Liability.** Defendant has denied and
2 continues to deny each and every one of the claims and contentions alleged by Plaintiffs in the
3 Action. Defendant has expressly denied and continues to deny all charges of wrongdoing or liability
4 against it arising out of any of the conduct, statements, acts or omissions alleged, or that could have
5 been alleged, in the Action. Defendant contends that it complied in good faith with all applicable
6 provisions of California law cited in the Complaint. Defendant further denies that, for any purpose
7 other than settling this Action, the Claims are appropriate for class or representative treatment.
8 Nonetheless, Defendant has concluded that further litigation relating to the Claims would be
9 protracted and expensive and that it is desirable that the Claims be fully and finally settled in the
10 manner and upon the terms and conditions set forth in this Stipulation in order to limit further
11 expense, inconvenience and distraction, to dispose of burdensome and protracted litigation, and to
12 permit the operation of Defendant's business without further expensive litigation and the distraction
13 and diversion of its personnel with respect to matters at issue in the Action. Defendant has also taken
14 into account the uncertainty and risks inherent in any litigation, especially in complex cases such as
15 the Action. Defendant has, therefore, determined that it is desirable and beneficial that the Claims
16 be settled in the manner and upon the terms and conditions set forth in this Stipulation.

17 **5. Intent of the Settlement.** The Settlement set forth herein intends to achieve the
18 following: (1) entry of an order approving the Settlement and granting the monetary and other relief
19 set forth in this Stipulation to the Settlement Class Members; (2) entry of judgment and dismissal
20 with prejudice of the Claims; (3) discharge of Released Parties from liability for any and all of the
21 Released Claims as to the Settlement Class Members; and (4) discharge of the Released Parties from
22 liability to the Plaintiffs in the form of a general release.

23 **III. CONDITIONAL CLASS CERTIFICATION AND APPOINTMENT OF CLASS**
24 **COUNSEL**

25 **1. The Class.** For the purposes of this Stipulation and the Settlement of this Action
26 only, the Parties stipulate to conditional class certification of the Class pursuant to Cal. Code Civ.
27 Proc. § 382.

2. **Appointment of Class Counsel.** For purposes of this Stipulation and subject to the Court's approval, the Parties hereby stipulate to the appointment of Class Counsel as counsel for the Class and the effectuation of the Settlement pursuant to this Stipulation.

IV. **SETTLEMENT CONSIDERATION**

1. **Gross Settlement Amount.** The Gross Settlement Amount shall not exceed the aggregate sum of \$800,000 in full settlement of the Released Claims and shall include the Administrative Expenses. The Gross Settlement Amount shall constitute adequate consideration for the Settlement and will be made in full and final settlement of: (a) the Released Claims, (b) a general release of all claims by the Plaintiffs, (c) the Administrative Expenses, including Class Counsel's claims for attorney fees, costs, and expenses, (d) Service Awards to the Plaintiffs, (e) Defendant's share of any payroll taxes related to Individual Settlement Amounts and (f) any other obligation of Defendant under this Stipulation.

2. **Service Awards for Plaintiffs.** Plaintiffs will request a Service Award, subject to Court approval, in an amount up to \$10,000 each for their efforts on behalf of the Class in this Action, including assisting in investigation and consulting with Class Counsel. Defendant shall not oppose any request by Plaintiffs for the Service Awards, provided that, in exchange for receipt of the Service Awards, Plaintiffs execute the release provided for in this Stipulation, which release will be effective upon the Effective Date. Any Service Awards approved by the Court shall be paid to Plaintiffs from the Gross Settlement Amount and shall be in addition to any distribution to which Plaintiffs may otherwise be entitled as Settlement Class Members. The Settlement Administrator will report the Service Awards paid to Plaintiffs on an IRS Form 1099. Plaintiffs shall be responsible for the payment of any and all taxes with respect to their Service Awards and shall hold Defendant harmless from any and all liability with regard thereto.

3. **Payment to Settlement Class Members.** Each Settlement Class Member shall receive payment of an Individual Settlement Amount, which shall be calculated in accordance with Article VIII, Section 2.

4. **Tax Treatment of Payments.** The Parties agree that any Individual Settlement Amount paid to Settlement Class Members will be allocated as follows: forty percent (40%) will

1 be allocated for the settlement of wage claims subject to payroll withholdings and deductions and
2 the remaining sixty percent (60%) will be allocated to the settlement of claims for interest and
3 statutory penalties and will not be subject to payroll withholdings and deductions. The portion
4 allocated to wages in each Individual Settlement Amount will be reported on an IRS Form W-2 and
5 the portion allocated to interest and penalties will be reported on an IRS Form 1099. Further, the
6 attorney fees, costs, and expenses separately paid to Plaintiffs' counsel will also be reported on an
7 IRS Form 1099. The Settlement Administrator will also report the Service Awards paid to Plaintiffs
8 on an IRS Form 1099. In the event any portion of the Individual Settlement Amounts paid to
9 Plaintiffs or the Settlement Class Members are ultimately construed by the IRS or any other taxing
10 authority to be incorrectly allocated such that additional taxes should have been withheld, Plaintiffs
11 and the Settlement Class Members shall pay any and all such taxes, interest, and penalties on the
12 Individual Settlement Amounts they receive.

13 The Settlement Administrator will be responsible for issuing to Plaintiffs, Settlement Class
14 Members, and Class Counsel any W-2, 1099, or other tax forms as may be required by law for all
15 amounts paid pursuant to this Settlement Agreement. The Settlement Administrator will also be
16 responsible for forwarding all payroll taxes and other legally required withholdings to the
17 appropriate government authorities.

18 **V. ATTORNEY FEES, COSTS, AND EXPENSES OF CLASS COUNSEL**

19 1. **Class Counsel Attorney Fees, Costs, and Expenses.** As part of the motion for final
20 approval of the Settlement, Class Counsel may submit an application for an award of attorney fees
21 not to exceed one-third of the Gross Settlement Amount and reimbursement of litigation costs and
22 expenses, not to exceed \$15,000, which will be heard by the Court at the Final Approval and Fairness
23 Hearing. Defendant agrees not to object to any such fee, cost or expense application as described
24 above. As a condition of this Settlement, Class Counsel has agreed to pursue their attorney fees,
25 costs, and expenses with respect to the Claims only in the manner reflected by this Section. Any
26 attorney fees, costs, and expenses awarded by the Court shall be paid from the Gross Settlement
27 Amount and shall not constitute payment to any Class Members. The Settlement is not conditioned
28 on the Court's approval of Plaintiffs' counsel's petition for attorney fees, costs, and expenses, and

1 any amounts that are not approved for attorney fees, costs, and expenses shall remain part of the Net
2 Settlement Amount.

3 The attorney fees, costs, and expenses approved by the Court shall encompass, with respect
4 to the Claims: (a) fees for all work performed and costs and expenses incurred by, or at the direction
5 of, any attorney purporting to represent Plaintiffs or the Class through the date of this Stipulation;
6 (b) fees for all work to be performed and costs and expenses to be incurred in connection with
7 approval by the Court of the Settlement; and (c) fees for all work to be performed and costs and
8 expenses, if any, incurred in connection with administering the Settlement through final approval of
9 the Settlement and dismissal of the Action, with prejudice.

10 2. **Payment of Attorney Fees, Costs, and Expenses.** Class Counsel's attorney fees,
11 costs, and expenses as awarded by the Court shall be paid by the Settlement Administrator within
12 28 days of the Effective Date out of the Gross Settlement Amount in accordance with Article VIII,
13 Section 3 of this Stipulation.

14 **VI. CLAIMS ADMINISTRATION COSTS AND EXPENSES**

15 1. **The Settlement Administrator's Costs and Expenses.** All costs and expenses due
16 the Settlement Administrator in connection with its administration of the Settlement, including, but
17 not limited to, providing the Class Notice, locating Class Members, processing Opt-Out Requests,
18 calculating, administering, and distributing Individual Settlement Amounts to the Settlement Class
19 Members, tax reporting, providing necessary certification of completion of notice, reports and
20 declarations, calculating the employer's share of payroll taxes on the wage portion of the Individual
21 Settlement Amounts, paying said payroll taxes on Defendant's behalf from the Gross Settlement
22 Amount, and other responsibilities as requested by the Parties, shall be paid from the Gross
23 Settlement Amount and shall not exceed \$10,000.

24 2. **Payment by Defendant of Gross Settlement Amount.** Within 14 days after the
25 Effective Date, Defendant will remit the Gross Settlement Amount to the Administrator by wire
26 transfer.

1 **VII. NOTICE TO CLASS MEMBERS AND CLAIMS ADMINISTRATION PROCESS**

2 1. **The Settlement Administrator.** The Settlement Administrator will be responsible
3 for locating correct Class Members' addresses, mailing the Class Notice to Class Members, handling
4 inquiries from Class Members concerning the Class Notice or any other issue, preparing,
5 administrating and distributing settlement checks to Settlement Class Members, and performing
6 such other duties as the Parties may direct.

7 On a weekly basis, the Settlement Administrator will provide reports to Class Counsel and
8 Defense Counsel updating them as to the number of validated and timely received Opt-Out Requests
9 as well as any objections submitted by Class Members. The Settlement Administrator will serve on
10 Class Counsel and Defense Counsel via e-mail date-stamped copies of the original Opt-Out
11 Requests, challenges, objections, rescissions of Opt-Out Requests and withdrawal of objections no
12 later than seven days after their receipt. The Settlement Administrator will provide Class Counsel
13 with a declaration of due diligence and proof of mailing of the Class Notice and the Opt-Out
14 Request, which Class Counsel will file, under seal, with the Court no later than seven days prior to
15 the Court's Final Approval and Fairness Hearing. No later than seven days prior to the Final
16 Approval and Fairness Hearing, the Settlement Administrator will compile and deliver to Class
17 Counsel and Defense Counsel a final report with information regarding (a) the final Individual
18 Settlement Amount for each Settlement Class Member and (b) the final number of Opt-Outs.

19 All costs and expenses of the Settlement Administrator for administration of the Settlement
20 shall be paid from the Gross Settlement Amount as part of the Administrative Expenses.

21 2. **Notice to Class Members.** Notice shall be provided to Class Members in the
22 following manner: Within 21 days of the Preliminary Approval Date, Defendant shall provide the
23 Settlement Administrator and Class Counsel with an updated list containing names, Social Security
24 numbers, dates of employment, last-known addresses and phone numbers, and weeks worked since
25 January 7, 2016, in which the Class Member received some form of piece-rate compensation, for
26 each Class Member (the Class Information). The list shall be marked "Confidential – Attorney's
27 and Settlement Administrator's Eyes Only." Class Counsel represents, warrants, covenants and
28 agrees (a) Class Counsel shall hold the Class Information, including any copies thereof, in strictest

1 confidence and shall not disclose or divulge its contents to any Class Member, including Plaintiffs,
2 or to any third party; (b) the list shall be kept in secure facilities; and (c) the contents of the list shall
3 be used exclusively for administration of the Settlement pursuant to this Stipulation and for no other
4 purpose, including, but not limited to, fact-gathering, discovery, or communication with individuals
5 contained in the Class Information for any purpose, other than administration of the Settlement
6 pursuant to this Stipulation. Within 35 days of the Preliminary Approval Date, the Settlement
7 Administrator shall send each Class Member the Class Notice via first-class, United States mail.
8 The Opt-Out Request shall also be included with the Class Notice. The Class Notice shall also
9 contain an easily understood statement alerting the Class Members that, by participating in the
10 Settlement, the Class Member is releasing and waiving all Released Claims against Defendant.

11 **3. Opt-Out Procedure.** Class Members need not submit claims in order to receive a
12 settlement payment. In order for a Class Member to opt-out of the Settlement, the Opt-Out Requests
13 must be received by the Settlement Administrator within 45 days of being mailed by the Settlement
14 Administrator (Opt-Out Deadline). Any Opt-Out Requests received after the Opt-Out Deadline will
15 be invalid. Any returned envelopes containing the Class Notice from this mailing with forwarding
16 addresses will be used by the Settlement Administrator to locate Class Members. In the event that,
17 prior to the deadline for submission of the Opt-Out Deadline, any Class Notice mailed to a Class
18 Member is returned to the Settlement Administrator as having been undelivered by the U.S. Postal
19 Service, the Settlement Administrator shall perform a skip trace search and seek an address
20 correction for such Class Member(s), and a second Class Notice will be sent to any new or different
21 address obtained. Such Class Member(s) shall have an additional 14 days after the Opt-Out Deadline
22 in which to return Opt-Out Request(s).

23 It will be conclusively presumed that, if an envelope containing the Class Notice has not
24 been returned within 28 days of the mailing, the Class Member received the Class Notice. At least
25 seven days prior to the Final Approval and Fairness Hearing, the Settlement Administrator shall
26 provide Class Counsel and Defense Counsel with a Declaration of Due Diligence and Proof of
27 Mailing (Declaration) with regard to the mailing of the Class Notice and its attempts to locate Class
28 Members. The Declaration shall specify the number of Class Members to whom Class Notices were

1 sent and the number of Class Members to whom Class Notices were not delivered. Class Counsel
2 shall file this Declaration with the Court.

3 **4. Objections.** The Class Notice shall inform the Class Members of their right to object
4 to the Settlement. Any Class Member who wishes to object to the Settlement must file and deliver
5 a written objection with the Court and serve copies of the written objection to Class Counsel and
6 Defense Counsel no later than the Opt-Out Deadline. The date of delivery of the written objection
7 is deemed to be the date the objection is deposited in the U.S. mail, postage prepaid, as evidenced
8 by the postmark. The objection must include the case name and number and must set forth, in clear
9 and concise terms, a statement of the reasons why the objector believes that the Court should find
10 that the Settlement is not in the best interest of the Class Members and the reasons why the
11 Settlement should not be approved, including the legal and factual arguments supporting the
12 objection. If an objector also wishes to appear at the Final Approval and Fairness Hearing, in person
13 or through an attorney, he or she must also file a notice of their intention to appear at the same time
14 as the objection is filed. Copies of any objection or notice of intention to appear must be
15 simultaneously served on Class Counsel and Defense Counsel. Unless otherwise ordered by the
16 Court, Class Members shall not be entitled to speak at the Final Approval and Fairness Hearing
17 unless they have submitted a timely written objection and notice of intention to appear pursuant to
18 this Section. Class Members who have properly and timely submitted objections may appear at the
19 Final Approval and Fairness Hearing, either in person or through a lawyer retained at their own
20 expense.

21 **VIII. SETTLEMENT DISTRIBUTION**

22 **1. Allocation of the Gross Settlement Amount.** The claims of all Class Members are
23 settled for the Gross Settlement Amount of \$800,000, which will be allocated as follows:

- 24 **a.** The Administrative Expenses; and
25 **b.** The Net Settlement Amount, which shall be allocated and distributed among the
26 Settlement Class Members.

27 **2. Calculation of the Individual Settlement Amounts.** Individual Settlement
28 Amounts to be paid to Settlement Class Members shall be paid from the Net Settlement Amount.

1 The Settlement Administrator shall divide the Net Settlement Amount by the total amount of weeks
2 worked since January 7, 2016, for all Settlement Class Members, in which the Settlement Class
3 Members received some form of piece-rate compensation. This calculation will yield the "Amount
4 Per Workweek." The Individual Settlement Amount for each Settlement Class Member will be
5 calculated by multiplying the Settlement Class Member's total amount of weeks worked since
6 January 7, 2016, in which the Settlement Class Member received some form of piece-rate
7 compensation, by the Amount Per Workweek.

8 **3. Time for Payment of Attorney Fees, Costs, and Expenses to Class Counsel.** The
9 Settlement Administrator shall make every effort to mail, by first-class U.S. mail to the last-known
10 address, any attorney fees, costs, and expenses awarded to Class Counsel no later than 28 days after
11 the Effective Date.

12 **4. Time for Payment of Service Fee Award to Plaintiffs.** The Settlement
13 Administrator shall make every effort to mail, by first-class U.S. mail to the last-known address, the
14 Service Fee Awards to Plaintiffs no later than 28 days after the Effective Date.

15 **5. Time for Payment to the Settlement Administrator.** The Settlement Administrator
16 shall pay itself all costs and expenses pursuant to Article VI, Section 1 of this Stipulation within 28
17 days of the Effective Date or the completion of its duties under this Stipulation, whichever is later.

18 **6. Time for Payment of Individual Settlement Amounts.** The Settlement
19 Administrator shall make every effort to mail, by first-class U.S. mail to the last-known address,
20 payment of the Individual Settlement Amounts to each Settlement Class Member no later than 28
21 days after the Effective Date.

22 If the Settlement Administrator is unable to mail the Individual Settlement Amounts to
23 Settlement Class Members within the time period set forth above, it shall so inform Class Counsel
24 and Defense Counsel and provide an approximate date by which the Individual Settlement Amounts
25 will be mailed. Under no circumstances shall the Settlement Administrator distribute checks to
26 Settlement Class Members until all Individual Settlement Amounts have been considered,
27 calculated, and accounted for, and the obligations set forth in Sections 3, 4, and 5 have been satisfied.
28 In the event that any Settlement Class Member is incompetent or deceased, payment shall be made

1 payable to the Settlement Class Member's legal guardian, executor, heir or successor-in-interest.

2 Within 14 days of mailing the Individual Settlement Amounts to Settlement Class Members,
3 the Settlement Administrator shall file with the Court and provide to Class Counsel a declaration of
4 payment.

5 7. **Non-Cashed Settlement Checks.** This is a "non-reversionary" settlement. Under no
6 circumstances will any portion of the Settlement Amount revert to Defendant. Each Settlement Class
7 Member must cash or deposit such checks within 180 days after the checks are mailed to them, and
8 the Settlement Administrator shall handle any unclaimed funds as a result of a Settlement Class
9 Member not cashing an Individual Settlement Amounts by the check cashing deadline and send
10 uncashed checks to the State of California Unclaimed Property Fund, subject to Court approval.
11 Any tax forms issued to class members in connection with the proceeds from any uncashed checks
12 will be withdrawn and voided by the Settlement Administrator, with all applicable employer payroll
13 taxes refunded to Defendant. In such event, the Settlement Class Member will remain bound by the
14 Settlement. If a check is returned to the Settlement Administrator, the Settlement Administrator will
15 make all reasonable efforts to re-mail it to the Settlement Class Member at his or her correct address.

16 8. **Extension of Time to Pay and/or Process Individual Settlement Amounts.**
17 Should the Settlement Administrator need more time than is provided under this Stipulation to
18 complete any of its obligations, the Settlement Administrator may request, in writing, such
19 additional time (including an explanation of the need for additional time) from Class Counsel and
20 Defense Counsel. If Class Counsel and/or Defense Counsel do not agree, in writing, to the
21 Settlement Administrator's request for additional time, the Settlement Administrator may seek such
22 additional time from the Court.

23 **IX. NULLIFICATION OF THIS STIPULATION AND CLASS CERTIFICATION**

24 1. **Non-Approval of the Stipulation.** If (a) the Court should for any reason fail to
25 approve this Stipulation in the form agreed to by the Parties, or (b) the Court should for any reason
26 fail to enter a judgment and dismissal with prejudice of the Claims, or (c) the judgment and dismissal
27 is reversed, modified or declared or rendered void, then the Settlement and class certification shall
28 be considered null and void, and neither the Settlement, class certification, nor any of the related

1 negotiations or proceedings, shall be of any force or effect, and all parties to the Settlement shall
2 stand in the same position, without prejudice, as if the Settlement had been neither entered into nor
3 filed with the Court. Notwithstanding the foregoing, the Parties may attempt in good faith to cure
4 any perceived defects in the Stipulation to facilitate approval.

5 2. **Defendant's Right to Void Settlement.** Defendant shall have the option to terminate
6 the Settlement if 5% or more of the Class Members opt-out of the Settlement. If Defendant decides
7 to void the Settlement, then the Settlement and class certification shall be considered null and void,
8 neither the Settlement, class certification, nor any of the related negotiations or proceedings, shall
9 be of any force or effect, and the Parties shall stand in the same position, without prejudice, as if
10 this Stipulation had been neither entered into nor filed with the Court.

11 3. **Invalidation.** Invalidation of any material portion of the Settlement shall invalidate
12 the Settlement in its entirety, unless the Parties shall subsequently agree in writing that the remaining
13 provisions of the Settlement are to remain in full force and effect.

14 4. **Stay upon Appeal.** In the event of a timely appeal from the judgment and dismissal,
15 the judgment shall be stayed, and none of the Gross Settlement Amount shall be distributed to Class
16 Members, Plaintiffs, or Class Counsel, and the actions required by this Stipulation shall not take
17 place until all appeal rights have been exhausted by operation of law.

18 **X. MOTION FOR COURT APPROVAL**

19 1. **Preliminary Approval.** Class Counsel will submit this Stipulation to the Court and
20 request preliminary approval of the Settlement. If this Settlement is not approved by the Court, the
21 Action will proceed as if the parties had not entered into this Stipulation.

22 2. **Final Approval.** The Final Approval and Fairness Hearing shall be held before the
23 Court approximately 90 days after the Preliminary Approval Date, on a date to be determined by
24 the Court.

25 3. **Dismissal with Prejudice of the Action and Entering Judgment.** The Claims shall
26 be dismissed with prejudice as part of the consideration for the Settlement. Notwithstanding the
27 dismissal of the Claims with prejudice the Court shall retain jurisdiction to interpret and enforce this
28 Stipulation.

At the Final Approval and Fairness Hearing, Class Counsel and Defense Counsel shall jointly request the Court for the entry of the final order certifying the Class for settlement purposes only, approving the Settlement pursuant to the requirements of Cal. Code Civ. Proc. § 382, and for the entry of a final judgment of dismissal with prejudice of the Claims consistent with the terms of the Settlement. Class Counsel and Defense Counsel shall submit to the Court such pleadings and/or evidence as may be required for the Court's determination.

XI. RELEASES AND WAIVERS

1. Release of Claims by Class. Upon the Effective Date, the Settlement Class Members and Plaintiffs each release the Released Parties, and each of them, of and from any and all of the Released Claims.

It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge the disputes and claims relating to the Released Claims asserted in this Action against Defendant, whether known or unknown, liquidated or unliquidated. All Settlement Class Members expressly waive, as to only the Released Claims, running through the date of Preliminary Approval, the provisions, rights, and benefits of California Civil Code § 1542, 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.

As such, the Settlement Class Members understand and agree that they are providing the Released Parties with a full and complete release with respect to the Released Claims.

It is hereby stipulated that this Stipulation is intended to include within its effect any and all claims, damages, causes of action, and claims for attorney fees, costs, and expenses relating to the Released Claims asserted in the Action, and that, subject to the terms and conditions of this Stipulation and upon Final Approval of this Stipulation, all such claims, damages, causes of action, and claims for attorney fees, costs, and expenses that were asserted in the Action are deemed to be fully and finally resolved and are to be dismissed, with prejudice, as to each and every Settlement Class Member.

1 Each Settlement Class Member will be bound to the release of the Released Claims as a
2 result of the Settlement and to the dismissal of the Claims, with prejudice. Settlement Class
3 Members will release the Released Claims through the Preliminary Approval Date.

4 2. **Release of Claims by Plaintiffs.** Plaintiffs, in exchange for receipt of a Service
5 Award, on behalf of themselves and their heirs, executors, administrators, and representatives, shall
6 and do hereby forever release, discharge and agree to hold harmless the Released Parties from any
7 and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies,
8 damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses
9 (including attorney fees, costs, and expenses), known or unknown, at law or in equity, which they
10 may now have or may have at any time prior to the Preliminary Approval Date, against Defendant,
11 including claims alleged in the Action, and any and all transactions, occurrences, or matters between
12 the Parties occurring prior to the date of this Stipulation. Without limiting the generality of the
13 foregoing, this release shall include, but not be limited to, any and all claims under the (a) Americans
14 With Disabilities Act, as amended; (b) Title VII of the Civil Rights Act of 1964, as amended; (c)
15 the Civil Rights Act of 1991; (d) 42 U.S.C. § 1981, as amended; (e) the Age Discrimination in
16 Employment Act, as amended; (f) the Equal Pay Act; (g) the Employee Retirement Income Security
17 Act, as amended; (h) the Consolidated Omnibus Budget Reconciliation Act; (i) the Rehabilitation
18 Act of 1973; (j) the Family and Medical Leave Act; (k) the Civil Rights Act of 1966; (l) the
19 California Fair Employment and Housing Act; (m) the California Constitution; (n) the California
20 Labor Code; (o) the California Government Code; (p) the California Civil Code; (q) the California
21 Business and Professions Code; (r) the California Franchise Investment Code; (s) the California
22 Corporations Code; and (t) any and all other federal, state and local statutes, ordinances, regulations,
23 rules and other laws, and any and all claims based on constitutional, statutory, common law or
24 regulatory grounds as well as any other claims based on theories of wrongful or constructive
25 discharge, breach of contract or implied contract, fraud, misrepresentation, promissory estoppel or
26 intentional and/or negligent infliction of emotional distress, or damages under any other federal,
27 state or local statutes, ordinances, regulations, rules or laws. This release is for any and all relief, no
28 matter how denominated, including, but not limited to, back pay, front pay, vacation pay, bonuses,

1 compensatory damages, tortious damages, liquidated damages, punitive damages, damages for pain
2 and suffering, and attorney fees, costs, and expenses, and Plaintiffs hereby forever release, discharge
3 and agree to hold harmless Defendant and the Released Parties from any and all claims for attorney
4 fees, costs, and expenses arising out of the matters released in this Agreement.

5 Plaintiffs specifically acknowledges that they are aware of and familiar with the provisions
6 of Section 1542, which provides as follows:

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

11 Plaintiffs, being aware of Section 1542, hereby expressly waive and relinquish all rights and
12 benefits they may have under Section 1542 as well as any other statutes or common law principles
13 of a similar effect. Plaintiffs may hereafter discover facts in addition to or different from those which
14 they now know or believe to be true with respect to the subject matter of the Released Claims and
15 all the claims referenced herein, but stipulate and agree that, upon the Effective Date, Plaintiffs shall
16 and hereby do fully, finally and forever settle and release any and all claims against Defendant and
17 the Released Parties, known or unknown, suspected or unsuspected, contingent or non-contingent,
18 which now exist or heretofore may have existed upon any theory of law or equity without regard to
19 the subsequent discovery of existence of such different or additional facts.

20 Plaintiffs also agree that, to the extent permitted by law, if a claim is prosecuted in either of
21 their names against any of the Released Parties before any court or administrative agency, they
22 waive, and agree not to take, any award of money or other damages from such proceeding. Plaintiffs
23 agree that, unless otherwise compelled by law, if a claim is prosecuted in either of their names
24 against any of the Released Parties, they will immediately request in writing that the claim be
25 withdrawn.

26 **XII. DUTIES OF THE PARTIES**

27 **1. Mutual Full Cooperation.** The Parties agree to cooperate fully with one another to
28 accomplish and implement the terms of this Stipulation. Such cooperation shall include, but not be

1 limited to, execution of such other documents and the taking of such other actions as may reasonably
2 be necessary to fulfill the terms of this Settlement. The Parties shall use their best efforts, including
3 all efforts contemplated by this Stipulation and any other efforts that may become necessary by court
4 order, or otherwise, to effectuate this Stipulation and the terms set forth herein. As soon as
5 practicable after execution of this Stipulation, Class Counsel, with the cooperation of Defendant and
6 Defense Counsel, shall take all necessary and reasonable steps to secure the Court's final approval
7 of this Stipulation.

8 2. **Duty to Support and Defend the Settlement.** The Parties hereto agree to abide by
9 all of the terms of the Settlement in good faith and to support the Settlement fully and to use their
10 best efforts to defend this Settlement from any legal challenge, whether by appeal or collateral
11 attack.

12 3. **Duties Prior to Court Approval.** Class Counsel shall, within the time required by
13 the California Code of Civil Procedure based upon the date set for the preliminary approval hearing,
14 submit this Stipulation to the Court for preliminary approval and determination by the Court as to
15 its fairness, adequacy, and reasonableness. Promptly upon execution of this Stipulation, Class
16 Counsel shall apply to the Court for the entry of a preliminary order scheduling a hearing on the
17 question of whether the proposed Settlement should be approved as fair, reasonable, and adequate
18 as to the Class Members, approving as to form and content the proposed Class Notice attached
19 hereto as *Exhibit A*, and directing the mailing of the Class Notice to Class Members. Defense
20 Counsel shall file a notice of non-opposition to the motion for preliminary approval or join in the
21 motion.

22 **XIII. MISCELLANEOUS PROVISIONS**

23 1. **Different Facts.** The Parties acknowledge that, except for matters expressly
24 represented herein, the facts in relation to the dispute and all claims released by the terms of this
25 Stipulation may turn out to be other than or different from the facts now known by each party and/or
26 its counsel, or believed by such party or counsel to be true, and each party therefore expressly
27 assumes the risk of the existence of different or presently unknown facts, and agrees that this
28 Stipulation shall be in all respects effective and binding despite such difference.

1 2. **No Prior Assignments.** The Parties represent, covenant, and warrant that they have
2 not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
3 encumber to any person or entity any portion of any liability, claim, demand, action, cause of action,
4 or right herein released and discharged except as set forth herein.

5 3. **Non-Admission.** Nothing in this Stipulation shall be construed to be or deemed an
6 admission by Defendant of any liability, culpability, negligence, or wrongdoing toward Plaintiffs,
7 the Class Members, or any other person, and Defendant specifically disclaims any liability,
8 culpability, negligence, or wrongdoing toward Plaintiffs, the Class Members, or any other person.
9 Each of the Parties has entered into this Stipulation with the intention to avoid further disputes and
10 litigation with the attendant inconvenience, expenses, and contingencies. Nothing herein shall
11 constitute any admission by Defendant of wrongdoing or liability, or of the truth of any factual
12 allegations in the Action. Nothing herein shall constitute an admission by Defendant that the Action
13 was properly brought as a class or representative action other than for settlement purposes. To the
14 contrary, Defendant has denied and continues to deny each and every material factual allegation and
15 alleged claim asserted in the Action. To this end, the Settlement of the Action, the negotiation and
16 execution of this Stipulation, and all acts performed or documents executed pursuant to or in
17 furtherance of this Stipulation or the Settlement are not, shall not be deemed to be, and may not be
18 used as, an admission or evidence of any wrongdoing or liability on the part of Defendant or of the
19 truth of any of the factual allegations in the Complaint in the Action; and are not, shall not be deemed
20 to be, and may not be used as, an admission or evidence of any fault or omission on the part of
21 Defendant in any civil, criminal or administrative proceeding in any court, administrative agency,
22 or other tribunal.

23 4. **Confidentiality.** Neither Plaintiffs nor Class Counsel shall issue any press release
24 related to the Settlement. Plaintiffs and Class Counsel agree that, prior to the Preliminary Approval
25 Date, they will keep the terms of the Settlement confidential except for purposes of communicating
26 with Plaintiffs only. Plaintiffs shall also be informed that the Settlement is confidential and shall be
27 advised to keep the Settlement confidential. After the Preliminary Approval Date, Plaintiffs and
28 Plaintiffs' counsel may: (i) as required by law; (ii) as required under the terms of the Settlement; or

(iii) as required under Class Counsel's duties and responsibilities, comment regarding the specific terms of the Settlement. In all other cases, Plaintiffs and Plaintiffs' counsel agree to limit their statements regarding the terms of the Settlement, whether oral, written or electronic (including the worldwide web), to say the Action has been resolved and that Plaintiffs and Plaintiffs' counsel are satisfied with the Settlement terms.

5. **Non-Retaliation.** Defendant understands and acknowledges that it has a legal obligation not to retaliate against any Settlement Class Member or Class Member. Defendant will refer any inquiries regarding this Settlement to the Settlement Administrator or Class Counsel and will not discourage Class Members, directly or indirectly, from participating in, opting out, or objecting to the Settlement.

6. **Construction.** The Parties hereto agree that the terms and conditions of this Stipulation are the result of lengthy, intensive, arms-length negotiations between the Parties and that this Stipulation is not to be construed in favor of or against any party by reason of the extent to which any party or his or its counsel participated in the drafting of this Stipulation.

7. **Governing Law.** This Stipulation is intended to and shall be governed by the laws of the State of California, without regard to conflict of law principles, in all respects, including execution, interpretation, performance, and enforcement.

8. **Notices.** Except for Class Member notices required to be made by the Settlement Administrator, any and all notices or other communications required or permitted under this Stipulation shall be in writing and shall be sufficiently given if delivered in person to the party or their counsel or if sent to the party without counsel by U.S. certified mail, postage prepaid, e-mail, facsimile, or overnight delivery addressed to the address of the party appearing in this Stipulation.

9. **Captions and Interpretations.** Section titles or captions contained herein are inserted as a matter of convenience and for reference only and in no way define, limit, extend, or describe the scope of this Stipulation or any provision thereof.

10. **Modification.** This Stipulation may not be changed, altered, or modified, except in writing signed by the Parties and approved by the Court. This Stipulation may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties.

1 **11. Integration Clause.** This Stipulation contains the entire agreement between the
2 Parties relating to the Settlement of the Action and the transactions contemplated thereby, and all
3 prior or contemporaneous agreements, understandings, representations, and statements, whether
4 oral or written, and whether by a party or such party's legal counsel, are hereby superseded.

5 **12. Successors and Assigns.** This Stipulation shall be binding upon and inure to the
6 benefit of the Parties and their respective present and former heirs, trustees, executors,
7 administrators, representatives, officers, directors, shareholders, agents, employees, insurers,
8 attorneys, accountants, auditors, advisors, consultants, pension and welfare benefit plans,
9 fiduciaries, parent companies, subsidiaries, affiliates, related companies, joint ventures,
10 predecessors, successors, and assigns.

11 **13. Class Counsel Signatories.** Because the Class Members are so numerous, the Parties
12 agree that it is impossible or impractical to have each Class Member sign this Stipulation. It is agreed
13 that, for purposes of seeking approval of the Settlement, this Stipulation may be executed on behalf
14 of the Class Members by Class Counsel and Plaintiffs.

15 **14. Corporate Signatories.** Any person executing this Stipulation or any such related
16 document on behalf of a corporate signatory hereby warrants and promises, for the benefit of all
17 Parties hereto, that such person has been duly authorized by such corporation to execute this
18 Stipulation or any such related document.

19 **15. Execution in Counterparts.** This Stipulation shall become effective upon its
20 execution by all of the undersigned. The Parties may execute this Stipulation in counterparts, and
21 execution of counterparts shall have the same force and effect as if all Parties had signed the same
22 instrument.

23 **16. Attorney Fees, Costs, and Expenses.** Except as otherwise specifically provided for
24 herein, each party shall bear his or its own attorney fees, costs, and expenses, taxable or otherwise,
25 incurred by them with respect to the Claims in the Action and shall not seek reimbursement thereof
26 from any other party to this Stipulation.

27 **17. Action to Enforce Agreement.** In any suit or court action to enforce the terms of
28 this Agreement, the prevailing party shall be entitled to recover attorney fees, costs, and expenses.

IN WITNESS WHEREOF, the Parties and their counsel have executed this Stipulation on the date below their signatures or the signature of their representatives. The date of the Stipulation shall be the date of the latest signature.

4/6/2021

Dated: _____, 2021

DocuSigned by:

Randy Hoff

CB5E7D83B1344A7...

Plaintiff, Randy Hoff
or Authorized Representative

4/6/2021

Dated: _____, 2021

DocuSigned by:

Keiser Kirk

BB3401AE183741B...

Plaintiff, Keiser Kirk
or Authorized Representative

4/6/2021

Dated: _____, 2021

DocuSigned by:

Mehrdad Bokhour

D8D3643F271940F...

By: _____
Mehrdad Bokhour, Esq.

4/6/2021

Dated: _____, 2021

DocuSigned by:

Joshua Falakassa

15A628B2C5A149C...

FALAKASSA LAW, P.C.
By: _____
Joshua Falakassa, Esq.

Dated: 4/5, 2021

Defendant, Dependable Highway Express, Inc.

By: _____

Printed Name: MICHAEL DOUGAN

Title: CEO

SCOPELITIS, GARVIN, LIGHT, HANSON &
FEARY, LLC

Dated: April 5, 2021

By: _____

Timothy M. Fisher, Esq.

Attorney for Dependable Highway Express, Inc.

EXHIBIT “B”

NOTICE OF PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT

Randy L. Hoff and Keisar E. Kirk v. Dependable Highway Express, Inc.
(Case No. 34-2020-00272729-CU-OE-GDS)
(California Superior Court, County of Sacramento)

TO: ALL CURRENT AND FORMER DRIVERS EMPLOYED BY DEPENDABLE HIGHWAY EXPRESS IN THE HARBOR DIVISION OR THE TRUCKLOAD DIVISION WHO WERE PAID COMPENSATION ON A PIECE-RATE BASIS AT ANY POINT SINCE JANUARY 7, 2016.

The California Superior Court for the County of Sacramento preliminarily approved a settlement (Settlement) of the lawsuit against Dependable Highway Express, Inc. (Defendant). You received this Notice because Defendant's records indicate you are a member of the group defined above (Class Member). This Notice describes the claims, the Settlement, and your rights as a Class Member.

A. DESCRIPTION OF LAWSUIT:

On January 7, 2020, Plaintiff Hoff filed his original Complaint in the Superior Court, County of Sacramento, under Case No.: 34-2020-00272729. On July 15, 2020, Plaintiffs, Randy Hoff and Keiser Kirk, filed their First Amended Class and Representative Action Complaint, adding Keiser Kirk as a Plaintiff and alleging claims under California law for (1) minimum wage violations, (2) meal period violations, (3) rest period violations, (4) failure to indemnify all necessary business expenditures, (5) wage statement violations, (6) waiting time penalties, (7) unfair competition, and (8) penalties under the California Private Attorneys General Act (PAGA).

Defendant denies liability or wrongdoing of any kind associated with this lawsuit.

Unless you exclude yourself from the Settlement (described below), you will become what this Notice will refer to as a "Settlement Class Member." You do not need to do anything to be a Settlement Class Member and receive money under the Settlement.

The Court has certified the "Class" defined above for purposes of this Settlement only. Defendant denies that Plaintiffs' claims are suitable for treatment as a class and/or collective action.

B. ATTORNEYS FOR THE PARTIES

Attorneys for Plaintiffs and the Class:

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Attorneys for Defendant:

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Facsimile: 317-687-2414

C. SUMMARY OF SETTLEMENT:

1. Defendant will pay Eight Hundred Thousand Dollars (\$800,000.00) to settle this matter (Gross Settlement Amount). Such payment includes Class Counsel's attorney fees not to exceed one-third of the Gross Settlement Amount and reasonable costs and expenses not to exceed \$15,000, a payment of \$15,000, which represents 75% of the \$20,000 allocated to penalties due to the California Labor and Workforce Development Agency under PAGA (PAGA Payment), a Court-approved Service Award of up to \$10,000 for each named Plaintiff, any Court-approved administrative costs necessary to effectuate the terms of the Settlement Agreement, including any costs incurred in connection with engaging the Settlement Administrator, and Defendant's share of any payroll taxes related to Individual Settlement Amounts. The Net Settlement Amount is the Gross Settlement Amount minus the attorney fees, costs and expenses, PAGA Payment, Service Awards, payroll taxes, and administrative costs described above. The Net Settlement Amount will be paid to the Settlement Class Members.

YOUR ESTIMATED INDIVIDUAL SETTLEMENT AMOUNT IS LISTED ON THE DOCUMENT BELOW ENTITLED "PROJECTED INDIVIDUAL SETTLEMENT AMOUNT"

2. As part of the Settlement, you are entitled to an Individual Settlement Amount. If you wish to participate in the Settlement as a Settlement Class Member, you do not have to do anything. You will automatically become a Settlement Class Member and will receive an Individual Settlement Amount, the amount of which is projected below on the Projected Individual Settlement Amount document. As a Settlement Class Member, you will fully and forever waive, release, and discharge the Released Parties from all Released Claims, as defined in Section D below. You may review the full contents of the release in the Joint Stipulation of Settlement and Release of Class and Representative Action (Stipulation) (available online at [\[REDACTED\]](#)).

The amount of your Individual Settlement Amount will be based on how many workweeks you drove in Defendant's Harbor or Truckload Division and received some form of incentive-based or piece-rate compensation (Piece-Rate Pay). That number of workweeks is listed below on the Projected Individual Settlement Amount document. Please be aware that this is a projection because it may change depending on

the final number of Settlement Class Members. In order to calculate the Individual Settlement Amounts, the Settlement Administrator will divide the Net Settlement Amount by the total amount of weeks worked since January 7, 2016, for all Settlement Class Members, in which the Settlement Class Members received Piece-Rate Pay. This calculation will yield the “Amount Per Workweek.” The Individual Settlement Amount for each Settlement Class Member will be calculated by multiplying the Settlement Class Member’s total amount of weeks worked since January 7, 2016, in which the Settlement Class Member received Piece-Rate Pay by the Amount Per Workweek.

Your other options with respect to the Settlement (exclusion and objection) are discussed in Section C.3 and C.4 below.

3. You may exclude yourself from the Settlement by following the instructions below:

If you do not want to participate in the Settlement, and do not want to release the Released Claims (defined in Section D), you must complete the Opt-Out Request that was provided with this Notice. The Opt-Out Request must be signed, dated, and returned to the Settlement Administrator at [INSERT SETTLEMENT ADMINISTRATOR ADDRESS], postmarked no later than [INSERT OPT-OUT DEADLINE]). If you exclude yourself, you will not be eligible to receive an Individual Settlement Amount, but will not release the Released Claims against the Released Parties, as described below.

4. If you think the Settlement should not be approved, you can object by submitting a written objection.

You cannot ask the Court to order a larger settlement; the Court can only approve or deny the Settlement. If the Court denies approval of the Settlement, no Individual Settlement Amounts will be sent out and the lawsuit will continue. If that is what you want to happen, you must object. To object, you must file and deliver a written objection with the Court and serve copies of the written objection to Class Counsel and Defense Counsel no later than INSERT OPT-OUT DEADLINE. The date of delivery of the written objection is deemed to be the date the objection is deposited in the U.S. mail, postage prepaid, as evidenced by the postmark. The objection must include the case name and number and must set forth, in clear and concise terms, a statement of the reasons why you believe that the Court should find that the Settlement is not in the best interest of the Class Members and the reasons why the Settlement should not be approved, including the legal and factual arguments supporting the objection. In addition to serving the objection on all counsel listed above, you must file the objection by sending the objection to the Court clerk at the following address: Judge Richard K. Sueyoshi, Department 40, 720 9th Street, Sacramento, California 95814.

If you also wish to appear at the Final Approval and Fairness Hearing, in person or through an attorney, you must also file a notice of your intention to appear at the same time that you file the objection. Copies of your objection or notice of intention to appear must be simultaneously served on all counsel above. If you have properly and timely submitted an objection and a notice of intention to appear, you may appear at the Final Approval and Fairness Hearing, either in person or through a lawyer retained at your own expense.

D. RELEASED CLAIMS:

- a) “**Released Claims**” means any and all claims, demands, causes of action, charges, and grievances, of whatever kind or nature, whether known or unknown, suspected or unsuspected, which Plaintiffs and the Settlement Class Members now own or hold or have at any time before this date owned or held against Defendant or any of the Released Parties and which arose out of, are in any way connected to, or that were made or could have been made based on the facts, theories, and claims pled in the First Amended Class and Representative Action Complaint, including, but not limited to, all wage and hour

claims, whether known or unknown, at law or in equity, which Plaintiffs and the Class Members may now have or may have as of the execution of this Stipulation under the wage orders of the California Industrial Welfare Commission, or other federal, state, or local law, claims for penalties under PAGA, all claims for failure to pay minimum wage under California law, all claims for meal period violations or rest period violations under California law, all claims for failure to indemnify for necessary business expenses under California Labor Code § 2802, all claims for failure to provide accurate itemized wage statements under California Labor Code § 226, waiting time penalties under California Labor Code §§ 201-204, unfair competition under the California Business and Professions Code §§ 17200, *et. seq.*, and all claims for PAGA penalties. All Settlement Class Members expressly waive, as to only the Released Claims only, running through the date of Preliminary Approval, the provisions, rights, and benefits of California Civil Code § 1542, 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.

As such, the Settlement Class Members understand and agree that they are providing the Released Parties with a full and complete release with respect to the Released Claims.

- b) “**Released Parties**” means Defendant, and its present and former officers, directors, shareholders, agents, employees, representatives, attorneys, parent companies, subsidiaries, divisions, affiliates, related companies, successors, and assigns.

E. FINAL APPROVAL HEARING ON SETTLEMENT:

The Final Approval Hearing will be held on [REDACTED], at [REDACTED] in Department 40 at the Superior Court for the State of California, County of Sacramento, located on the 5th Floor at 720 9th Street, Sacramento, California 95814.

F. ADDITIONAL INFORMATION:

This notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see the Stipulation, available online at [www.\[REDACTED\].com](http://www.[REDACTED].com). You may also contact Plaintiffs’ counsel at the address listed above or contact the Settlement Administrator at [SETTLEMENT ADMINISTRATOR ADDRESS AND PHONE]. If your address changes or is different from the address on the envelope enclosing this Notice, please promptly notify the Settlement Administrator. **PLEASE DO NOT CALL OR WRITE THE COURT OR CLERK’S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT.**

Please note: Defendant is prohibited from retaliating against any class members for exercising the rights described in this Notice, this lawsuit, and/or Settlement.

PROJECTED INDIVIDUAL SETTLEMENT AMOUNT

Randy L. Hoff and Keisar E. Kirk v. Dependable Highway Express, Inc.
(Case No. 34-2020-00272729-CU-OE-GDS)
(California Superior Court, County of Sacramento)

THIS DOCUMENT ADVISES YOU OF THE PROJECTED INDIVIDUAL SETTLEMENT AMOUNT YOU WILL RECEIVE IF THE COURT GRANTS FINAL APPROVAL OF THE SETTLEMENT.

IMPORTANT:

TO PARTICIPATE IN THE CLASS YOU DO NOT NEED TO TAKE ANY ACTION. YOU DO NOT NEED TO SEND IN A CLAIM FORM. IF THE SETTLEMENT IS APPROVED AND YOU DID NOT EXCLUDE YOURSELF, YOU WILL RECEIVE YOUR INDIVIDUAL SETTLEMENT AMOUNT.

YOUR INDIVIDUAL SETTLEMENT AMOUNT CALCULATION

According to Defendant's records, there were a total of **INSERT WORKWEEKS** workweeks since January 7, 2016, in which you worked in either Defendant's Harbor or Truckload divisions *and* received some form of piece-rate pay. This number is based off Defendant's payroll records for you.

Based on the number of workweeks listed above, your projected Individual Settlement Amount is:

\$ _____ (Estimated Individual Settlement Amount)

This is an estimate and you may, in fact, receive a different amount based on the total number of Settlement Class Members.

If you have questions, you may contact the Settlement Administrator, at **SETTLEMENT ADMINISTRATOR ADDRESS AND PHONE**

OPT-OUT REQUEST FORM

Randy L. Hoff and Keisar E. Kirk v. Dependable Highway Express, Inc.
(Case No. 34-2020-00272729-CU-OE-GDS)
(California Superior Court, County of Sacramento)

SUBMIT THIS FORM ONLY IF YOU WISH TO BE EXCLUDED FROM PARTICIPATING IN THE SETTLEMENT

By signing and returning this form, I represent that it is my desire to exclude myself from participating in the Settlement of the Class Action entitled *Randy L. Hoff and Keisar E. Kirk v. Dependable Highway Express, Inc.* (Case No. 34-2020-00272729-CU-OE-GDS) (California Superior Court, County of Sacramento).

Please note: Any person who submits this form will not receive payment of an Individual Settlement Amount.

Name (Please Print): _____
(First) (Middle) (Last)

Address: _____
(Street)

(City) (State) (Zip)

Telephone No.: _____

Dated: _____ Signature: _____

TO BE VALID, THIS FORM MUST BE POST-MARKED NO LATER THAN **OPT-OUT DEADLINE, AND MAILED TO THE SETTLEMENT ADMINISTRATOR AT:**

SETTLEMENT ADMINISTRATOR INFORMATION