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individually and on behalf of all others
similarly situated

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
CENTRAL DISTRICT — SPRING STREET COURTHOUSE

DMYTRO MARTYNIUK, individually, and
on behalf of all others similarly situated,

Plaintiff,

v.

USKO EXPRESS, INC., a California
Corporation; JS EXPRESS, LLC, a California
Limited Liability Company; and DOES 1
through 100, inclusive,

Defendants.

Case No. 20STCV07379

Complex Class Action

*[Assigned for all purposes to the Hon. Yvette
M. Palazuelos, Dept. 9]*

**DECLARATION OF GREG TAYLOR IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND PAGA REPRESENTATIVE ACTION
SETTLEMENT**

Date: January 11, 2023
Time: 10:00 a.m.
Place: Dept. 9, Spring Street Courthouse

*[Filed concurrently with Supplemental Brief in
Response to Court's Ruling of July 27, 2022,
Regarding Motion for Preliminary Approval]*

Action Filed: February 26, 2020
Trial Date: None Set

I, Greg Taylor, declare under penalty of perjury under the laws of the State of California and the
United States as follows:

1. I am a member in good standing of the State Bar of California and am one of the attorneys
for Plaintiff Dmytro Martyniuk ("Plaintiff") in this action. I make this Declaration on behalf of Plaintiff
and in support of the Motion for Preliminary Approval of Class and PAGA Representative Action
Settlement. If sworn as a witness, I could competently testify to each and every fact set forth herein from

1 my own personal knowledge.

2 2. This Declaration addresses the Court’s Final Rulings/Orders Re: Motion for Preliminary
3 Approval of Class Action Settlement, dated July 27, 2022, in which the Court provided an
4 addendum/checklist regarding what the court requires to grant a motion for preliminary approval (the
5 “Checklist”), and ordered that the parties address the items listed in the Checklist and file supplemental
6 papers by December 21, 2022. A true and correct copy of the Court’s Final Rulings/Orders dated July 27,
7 2022, and the Checklist is attached as **Exhibit 6**.

8 3. **Revised Settlement Agreement and Revised Class Notice.** The parties have revised the
9 proposed Settlement and Release Agreement (“Settlement”) and the Notice of Proposed Class Action
10 Settlement (“Class Notice”) pursuant to the Checklist. A true and correct copy of the fully executed
11 revised Settlement is attached hereto as **Exhibit 1**. A true and correct redlined copy of the revised
12 Settlement is attached hereto as **Exhibit 2**. A true and correct clean copy of the revised Class Notice is
13 attached hereto as **Exhibit 3**. A true and correct redlined copy of the revised Class Notice is attached
14 hereto as **Exhibit 4**.

15 4. **LWDA Submission.** Plaintiff has submitted to the LWDA the revised Settlement
16 Agreement, revised Class Notice, the concurrently filed Supplemental Brief, and this Declaration of Greg
17 Taylor in Support of Plaintiff’s Motion for Preliminary Approval. A true and correct copy of the LWDA
18 confirmation email will be attached as **Exhibit 5** after confirmation of submission is received.

19 5. **Checklist Items & Resolution:**

20 (1) **Checklist Item: Moving Papers, ¶ E, Miscellaneous.**

21 ☒ *If notice will be given in English only, explain why this is sufficient.*

22 **Resolution:**

23 Plaintiff respectfully notes this Checklist item was already complied with. As explained in the
24 moving papers, “The Parties have agreed to give Notice in both English and Russian, as a significant
25 portion of Class members are Russian speaking, according to counsel for Defendant. (Kick Decl. ¶ 22).”
26 (See Motion for Preliminary Approval of Class and PAGA Representative Action Settlement, § V.B.)
27
28

(2) Checklist Item: Settlement Agreement, ¶ A, The Basics, Class Definition

☒ *Class definition. If a PAGA representative action is settled with a proposed Class Settlement consider whether there should be separate definitions for Class Members and Aggrieved Employees.*

- *The Settlement Class definition at ¶1.21 is vague, and inconsistent with the more adequate definition provided at Notice pg. 1 (first bullet point paragraph, italicized language). Please resolve.*
- *Why is it proper that PAGA employees and the PAGA period are not defined separately? Furthermore, the term “PAGA Members” is used at ¶VIII.C.1. but not defined.*

Resolution:

The Settlement Agreement has been revised to add the full definition of the Settlement Class to ¶I.21 to match the more detailed definition on page 1 of the Class Notice. (See Ex. 2, Settlement, ¶ I.21; Ex. 4, Class Notice, pg. 1.)

The Settlement Agreement has also been revised to define the term “PAGA Period” in ¶ I.23 of the Settlement Agreement, as it is defined on pg. 1 of the Class Notice. (See Ex. 2, Settlement, ¶ I.23; Ex. 4, Class Notice, pg. 1.)

The Settlement Agreement has also been revised to clearly define the term “PAGA Members” and “PAGA employees” used in the Settlement Agreement and attached Notice. (See Ex. 2, Settlement, ¶ I.24.)

(3) Checklist Item: Settlement Agreement, ¶ A, The Basics, Class and Release Period

☒ ~~*Class and Release Period: If the class and release periods extend beyond the preliminary approval explain why this is appropriate.*~~

- *The Court would prefer a specific end date for the Class Period be provided rather than the reference to “90 days after full execution of the long-form settlement agreement.” See ¶ I.4.*

Resolution:

The Settlement Agreement has been revised to state a specific end date for the Class Period in ¶ I.4 as “May 23, 2022.” (See Ex. 2, Settlement, ¶ I.4.)

(4) Checklist Item: Settlement Agreement, ¶ B, Release of Claims, Scope

☒ *Scope: The scope of any release given by class members must be defined with precision and clarity. Any released claims not presented directly in the operative complaint should be based on the facts alleged in the operative complaint. (See Amaro v. Anaheim Arena Mgmt. (2021) 69 Cal. App. 5th 521, 537 and FN. 5; Uribe v. Crown Building Maintenance Co. 70 Cal. App. 5th 986, 1005.)*

- *Modify the release of claims (¶VI.1) to specify that Class Members will only release claims alleged in, or arising out of facts asserted in, the operative First Amended Complaint.*

Resolution:

Plaintiff respectfully notes that this Checklist item was already complied with, as the released claims are restricted to claims alleged in, or arising out of facts asserted in, the Action. (See Ex. 2, Settlement, ¶¶ II.A, VI.1.) Specifically, ¶ VI.1 defines the release of claims as “all claims, debts, liabilities, demands, obligations, penalties, interest, wages, compensation, premium pay, guarantees, costs, expenses, attorneys’ fees, damages, claims for equitable relief, actions or causes of action that arise, or could have arisen, from the Action (the “Released Claims”).” (*Id.*, at ¶ VI.1.) Moreover, it is undisputed that the First Amended Complaint (“FAC”) is the operative complaint in the Action. The FAC was filed on May 11, 2022, in order to add a cause of action for PAGA, and Defendant filed its Answer to the FAC on June 14, 2022. To the extent the Court wants further assurance as to the scope of the release, the Parties agree via this filing that only the claims alleged in, or arising out of facts asserted in, the FAC are being released.

(5) Checklist Item: Settlement Agreement, ¶ B, Release of Claims, PAGA Claim

☒ *Class cases which include a PAGA claim should have a separate release for the PAGA claim tied to the facts alleged in the notice given to the LWDA. Id.*

Resolution:

The Settlement Agreement has been revised to add a separate release for the PAGA claim tied to the facts alleged in the notice given to the LWDA. (See Ex. 2, Settlement, ¶ VI.4.)

(6) Checklist Item: Settlement Agreement, ¶ B, Release of Claims, PAGA and Class Settlement

☒ *If PAGA and Class Settlement: The Release should provide an explanation that released claims include all PAGA claims that could have been premised on the facts alleged in the Plaintiff’s Notice and aggrieved employees will release PAGA claims even if class members request exclusion from the class. See Robinson v. Southern Counties Oil Co. (2020) 53 Cal.App.5th 476.*

Resolution:

The Settlement Agreement has been revised to explain: “Released claims shall include all PAGA claims that could have been premised on the facts alleged in the Plaintiff’s Notice to the LWDA. PAGA

Members will release PAGA claims even if Class members request exclusion from the Class.” (See Ex. 2, Settlement, ¶ VI.4.)

(7) Checklist Item: Settlement Agreement, ¶ B, Release of Claims, Release Effective Date

☒ *Release Effective Date: Indicate the point in time at which the release will be deemed effective as to the absent class members. If the release will be effective before settlement funds are paid, explain why this is in the best interest of the class.*

- *Modify the effective date of the releases to be the date on which Defendant fully funds the settlement. See ¶¶ VI.1, VI.2.*

Resolution:

The Settlement Agreement has been revised to modify the effective date of the releases as requested. (See Ex. 2, Settlement, ¶¶ VI.1, VI.2.)

(8) Checklist Item: Settlement Agreement, ¶ B, Release of Claims, Class Data

☒ *Class Data: If there are confidentiality provisions, explain why they are in the best interest of the Class and whether they will impede Class Counsel’s ability to discharge fiduciary duties.*

- *See ¶ VII.C.*

Resolution:

The Settlement Agreement has been modified at ¶ VII.C to explain that keeping Class Data confidential serves the best interest of the Class by protecting their personal information, and does not impede Class Counsel’s ability to discharge fiduciary duties. (See Ex. 2, Settlement, ¶ VII.C.)

(9) Checklist Item: Settlement Agreement, ¶ C, Monetary Terms of Settlement

☒ *Deductions from the settlement fund: Indicate the amounts to be deducted from the gross settlement for attorneys’ fees and costs, plaintiff incentive awards, administrative costs, PAGA payment and allocation of award to LWDA and the parties, and any other existing deductions.*

- *Specific amounts for attorney’s fees, attorney’s costs, and settlement administration costs must be provided in the terms of the Settlement Agreement.*
- *All estimated deductions from the settlement fund must also be disclosed to the Class in the Notice.*

Resolution:

The Settlement Agreement has been modified to state specific amounts for attorneys’ fees,

litigation costs, and settlement administration costs. (See Ex. 2, Settlement, ¶¶ I.2, I.18, V.D.1.)

The Class Notice has also been modified to state specific amounts for attorneys' fees, attorneys' costs, and settlement administration costs on page 3 beneath the section heading "How will the lawyers be paid?" (See Ex. 4, Class Notice, pg. 3.)

(10) Checklist Item: Settlement Agreement, ¶ C, Monetary Terms of Settlement

☒ *Payment Formula: Amount and manner of distribution of the compensation to each class member, including the estimated amount each class member will receive and the timeline on which payments will be issued.*

- *Provide a separate payment formula for the calculation of PAGA penalties to be paid to PAGA Members, considering the PAGA statute's applicable statute of limitations.*

Resolution:

Currently, the Settlement Agreement specifies at ¶ VIII.C.1 that \$15,000 in PAGA Penalties shall be paid to PAGA Members on a *pro rata* basis, based on the total number of miles driven by each PAGA member during the PAGA Period. Moreover, the timeline for distribution of payments is specified in section VIII.E of the Settlement Agreement.

The Settlement Agreement has been modified in section VIII.C to clearly state this payment formula and the PAGA Period. (See Ex. 2, Settlement, ¶¶ VIII.C.1-5.)

(11) Checklist Item: Settlement Agreement, ¶ D, Notice Administration

☒ ~~Indicate the administrator for the settlement and why the bid for administration is fair.~~

Resolution:

The Settlement Agreement has been modified to explain why the bid for administration from Simpluris, Inc. is fair. (See Ex. 2, Settlement, ¶ V.D.1.)

(12) Checklist Item: Settlement Agreement, ¶ D, Notice Administration

☒ *Provide the qualifications and experience of the Administrator, including evidence that the settlement administrator has procedures in place to protect the security of class data and adequate insurance in the event of a data breach or defalcation of funds.*

Resolution:

The Settlement Agreement has been modified to provide the qualifications and experience of the Administrator. (See Ex. 2, Settlement, ¶ V.D.2.)

1 **(13) Checklist Item: Settlement Agreement, ¶ D, Notice Administration**

2 *☒ Ensure the content of the notice complies with California Rules of Court, rule 3.766(d).
3 In wage and hour cases the notice should indicate the specific amount the class member
4 will receive and how that amount was calculated. A separate breakdown for PAGA
5 payments should be provided. The terms of the release(s) should be reflected in the Notice.*

6 **Resolution:**

7 Plaintiff respectfully notes that this Checklist item was mostly complied with already, but to ensure
8 compliance, the Class Notice has been modified to clearly include separate breakdowns for Class and
9 PAGA payments. (See Ex. 4, Class Notice, pg. 1.)

10 The proposed Class Notice complies with CRC rule 3.766(d) as follows:

- 11 (1) A brief explanation of the case is stated on page 2 of the proposed Notice, including in the
12 sections titled “What is the Lawsuit about?” and “Why is there a settlement?”
- 13 (2) A statement that the court will exclude the member from the class if the member so requests
14 by a specified date is stated on page 3 of the proposed Notice, including in the section titled
15 “How can I opt out of this settlement?”
- 16 (3) A procedure for the member to follow in requesting exclusion from the class is also stated
17 on page 3 of the proposed Notice.
- 18 (4) A statement that the judgment, whether favorable or not, will bind all members who do not
19 request exclusion is provided in this way:
- 20 ▪ On page 3 of the proposed Notice in the section titled “What am I releasing?” where
21 it states that the Plaintiff and Class Members who have not effectively opted-out
22 will fully release all Released Claims.
- 23 ▪ On page 4 of the Notice in the section titled “What happens if I do nothing at all?”
24 class members are informed that by doing nothing, they “will be bound by the
25 release as set forth herein.”
- 26 (5) A statement that any member who does not request exclusion may, if the member so
27 desires, enter an appearance through counsel, is provided in this way:
- 28 ▪ Page 2 of the proposed Notice states, “You have the right to attend a fairness
 hearing that will be conducted by the Court” and “you may ask to speak about your

objection at the hearing.” Page 4 of the Notice also states, “You may appear yourself, and you may also hire your own lawyer to attend.”

- Page 3 of the proposed Notice states, “If you want to be represented by your own lawyer, you may hire one at your own expense.”

Moreover, the Class Notice properly indicates the specific amount the class member will receive and how that amount was calculated. (See Ex. 4, Class Notice, pg. 1.) The Class Notice also properly indicates the terms of the release. These terms are explained on page 3 of the Notice. (See Ex. 4, Class Notice, pg. 3.)

(14) Checklist Item: Settlement Agreement, ¶ D, Notice Administration

☒ Ensure the notice accurately reflects the Court’s current social distancing procedures for attendance at hearings and review of court files. (Counsel should check the Court website for most current information.)

Resolution:

Class members are informed on page 4 of the Class Notice in the section titled “Do I have to come to the hearing?” that they can attend the fairness hearing remotely and are provided with a link to the Court’s website for “more information on how to appear remotely as well as the Court’s social distancing protocols.”

In addition, the Class Notice has been revised on page 4 to state the current protocol, which strongly recommends face masks inside all Los Angeles County courthouses in alignment with Los Angeles County Department of Public Health guidance. (See Ex. 4, Class Notice, pg. 4.)

(15) Checklist Item: Settlement Agreement, ¶ D, Notice Administration

☒ Explain how re-mailed notices, if any, will be handled. Will class members who receive re-mailed notices be given an extended deadline to respond (i.e., opt-out, object, and dispute workweeks)?

Resolution:

The Settlement Agreement has been revised to explain that if any Class Member’s Notice must be re-mailed, the deadline for that Class Member to submit a dispute, objection, or opt-out request will be extended by 14 days. (See Ex. 2, Settlement, ¶ VII.G.)

1 **(16) Checklist Item: Settlement Agreement, ¶ D, Notice Administration**

2 *☒ Explain how notice of final judgment will be given to the class. (Cal. Rules of Court, rule*
3 *3.771(b)) (e.g. Posted on claims administrator’s website.)*

4 **Resolution:**

5 Plaintiff respectfully notes this Checklist item was already complied with at ¶ X.C of Settlement
6 Agreement, which states, “The executed Final Order and Judgment shall be posted on the Settlement
7 Administrator’s website.” (See Ex. 2, Settlement, ¶ X.C.)

8 **(17) Checklist Item: Settlement Agreement, ¶ E, Responses to Notice**

9 *☒ Indicate the deadline to submit objections, requests for exclusion, claim forms (if*
10 *applicable), and/or disputes to workweeks. Confirm the deadline is reasonable and that*
11 *class members who receive re-mailed notices will be given an extension.*

- 12
 - 13 • *The deadline to submit requests for exclusion, written objections, and/or disputes to*
14 *workweeks should be a date 45 or more days from the date on which notice is*
15 *initially mailed. Also, the term “Response Deadline” is used at ¶VIII.D.6 but not*
16 *defined.*

17 **Resolution:**

18 The Settlement Agreement and Class Notice have been revised to make the deadline to submit
19 requests for exclusion, written objections, and/or disputes to workweeks 45 days from the date on which
20 notice is initially mailed. (See Ex. 2, Settlement, ¶¶ I.25, IX.A.1; See also Ex. 4, Class Notice, pgs. 3-4.)

21 The Settlement Agreement has also been modified to include a definition of the term “Response
22 Deadline”, which is used at ¶VIII.D.6. (See Ex. 2, Settlement, ¶ I.25.)

23 **(18) Checklist Item: Settlement Agreement, ¶ D, Notice Administration**

24 *☒ Do not include language indicating that class members may only be heard at final*
25 *approval if they have complied with all objection procedures or that they must use specific*
26 *language to request exclusion, or, if a specific procedure is sought, explain why it is*
27 *necessary. In general, the court will hear from any class member who attends the final*
28 *approval hearing and asks to speak regarding his or her objection.*

- 29
 - 30 • *Remove any requirement or implication that Class Members must use specific*
31 *language to request exclusion. See Notice pg. 3.*
 - 32 • *Make clear that the court will hear from any class member who attends the final*
33 *approval hearing and asks to speak regarding his or her objection, regardless of*
34 *whether a written objection was submitted.*

1 **Resolution:**

2 The Class Notice has been revised at page 3 to remove any requirement or implication that Class
3 Members must use specific language to request exclusion. (*See* Ex. 4, Class Notice, pg. 3.)

4 The Class Notice has also been revised in the table on page 2 to state: “The court will hear from
5 any class member who attends the final approval hearing and asks to speak regarding his or her objection,
6 regardless of whether a written objection was filed.” (*See* Ex. 4, Class Notice, pg. 2.)

7 **(19) Checklist Item: Settlement Agreement, ¶ F, Cy Pres Distribution**

8 ☒ *Explain why the cy pres distribution fills the purposes of the lawsuit or is otherwise*
9 *appropriate. (State of California v. Levi Strauss & Co. (1986) 41 Cal.3d 460, 472; In re*
10 *Microsoft I-V Cases (2006) 135 Cal.App.4th 706, 722; Nachshin v. AOL, Inc. (9th Cir.*
11 *2011) 663 F.3d 1034, 1038–1041; Dennis v. Kellogg Co. (9th Cir. 2012) 697 F.3d 858,*
12 *865; Code Civ. Proc., § 384.)*

13 **Resolution:**

14 The Settlement Agreement has been revised to explain why the proposed cy pres distribution to
15 Public Citizen Foundation, a section 501(c)(3) non-profit organization, is appropriate and fulfills the
16 purposes of the lawsuit. (*See* Ex. 2, Settlement, ¶ VIII.E.2.)

17 **(20) Checklist Item: Settlement Agreement, ¶ F, Cy Pres Distribution**

18 ☒ *Provide declarations disclosing the interest or involvement (or lack thereof) by any*
19 *counsel or party in the governance or work of the cy pres recipient.*

20 **Resolution:**

21 The Settlement Agreement has been revised at ¶ VIII.E.2 to reference the Declaration of Taras
22 Kick, filed in support of the Motion for Preliminary Approval, which attests at ¶ 24 to the lack of any
23 involvement in the governance of the cy pres recipient. (*See* Ex. 2, Settlement, ¶ VIII.E.2.)

24 **(21) Checklist Item: Settlement Agreement, ¶ G, Miscellaneous**

25 ☒ *Assure the Settlement Agreement and Notice are consistent and that the Settlement*
26 *Agreement has been signed by all parties and counsel. Carefully proofread both.*

27 **Resolution:**

28 The revised Settlement Agreement and Class Notice have been proofread and the Settlement
Agreement has been signed by all parties and counsel. (*See* Ex. 1, Signed Settlement.)

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- *This also applies to any further revised versions of the settlement agreement.*

Resolution:

Per the Court's instruction, Plaintiff is submitting to the LWDA the revised Settlement Agreement, revised Class Notice, the concurrently filed Supplemental Brief, and this Declaration of Greg Taylor in Support of Plaintiff's Motion for Preliminary Approval, and will attach submission proof as Ex. 5.

The foregoing facts are true and correct of my own personal knowledge.

Executed: This 21st day of December 2022, in the County of Los Angeles, State of California.


Greg Taylor

EXHIBIT 1

SETTLEMENT AND RELEASE AGREEMENT

Plaintiff Dmytro Martyniuk (“Plaintiff”), individually, and on behalf of all others similarly situated, and Defendant USKO Express, Inc. (“Defendant”) hereby enter into this Settlement and Release Agreement (the “Agreement”), as provided below.

I. DEFINITIONS

The terms of this Agreement are as follows:

1. “Action” refers to the lawsuit originally entitled *Hallowell, et al. v. USKO Express, Inc., et al.*, filed in the Superior Court of the State of California for the County of Los Angeles on February 26, 2020, Case No. 20STCV07379.
2. “Attorneys’ Fees and Costs” refers to the fees and litigation costs incurred by Class Counsel and means fees of \$516,666.67, or one-third (33-1/3%) of the Gross Settlement Amount, and reimbursement of all approved litigation costs, not to exceed \$25,000.00.
3. “Class Counsel” refers to The Kick Law Firm, APC.
4. “Class Period” refers to the period from February 26, 2016 through May 23, 2022.
5. “Class Representative” means the plaintiff Dmytro Martyniuk.
6. “Court” refers to the Los Angeles County Superior Court.
7. “Defense Counsel” refers to Alexander M. Medina of Medina McKelvey LLP.
8. “Effective Date” of the Settlement Agreement shall mean the date upon which both of the following have occurred: (i) final approval of the Settlement Agreement is granted by the Superior Court of California for the County of Los Angeles, or other court assuming jurisdiction of this matter, and (ii) the Court’s Judgment approving the Settlement Agreement becomes Final. Final shall mean the latest of: (i) if there is an appeal of the Court’s Judgment, the date the Judgment is affirmed on appeal, the date of dismissal of such appeal, or the expiration of the time to file a petition for review with the California Supreme Court; or, (ii) if a petition for review is filed, the date of denial of the petition, or the date the Judgment is affirmed pursuant to such petition; or (iii) if no appeal is filed, the expiration of the time for filing or noticing any appeal of the Judgment, as determined under Rule 8.104(a)(3) of the California Rules of Court.
9. “Fairness Hearing” refers to the hearing at which the Court will determine whether the terms of the Settlement are fair, reasonable, and adequate for the Class and meet all applicable requirements for Final Approval.
10. “Final Approval Order” refers to the order by the Court approving the Settlement Agreement following the Fairness Hearing and entering final judgment.

11. “Gross Settlement Amount” refers to the maximum settlement amount of One Million, Five Hundred and Fifty Thousand Dollars and Zero Cents (\$1,550,000.00) payable by Defendant.

12. “Individual Settlement Payment” shall mean the individual distribution from the Settlement Fund to each Participating Class Member, as defined in Section VIII(D), below.

13. “PAGA Award” means the amount allocated to penalties to settle claims alleged under the Private Attorneys General Act, which is \$60,000.

14. “Participating Class Members” refers to all members of the Settlement Class who do not timely and effectively opt out of the Settlement.

15. “Parties” collectively refers to Plaintiff and Defendant.

16. “Released Parties” refers to Defendant and all of its former or present parents, subsidiaries, successors, predecessors, affiliates, assigns, joint employers, officers, directors, employees, insurers, directors, executors, attorneys, shareholders, related corporations, profit sharing, savings, health, and other employee benefit plans of any nature, the successors of such plans, and those plans’ respective current or former trustees and administrators, agents, employees, fiduciaries, and the predecessors and successors, assigns, and legal representatives of all such entities and individuals.

17. “Service Award” means the \$10,000 paid to the Class Representative for his service to the Settlement Class.

18. “Settlement Administration Costs” refers to the costs and expenses incurred by the Settlement Administrator in the performance of its tasks and duties as provided by this Agreement. The Settlement Administrator has agreed to cap its expenses at \$10,900.00.

19. Gross Settlement Amount (“GSA”) is \$1,550,000.00.

20. “Settlement Administrator” means Simpluris, Inc., a reputable and experienced third-party administrator.

21. “Settlement Class” refers to the 623 current and former drivers to whom notice will be sent by the Claims Administrator, defined as follows:

“All current and former drivers, including but not limited to those misclassified as independent contractors or “owner operators,” who performed work for Defendant in the State of California or who were residents of the State of California and performed work for Defendant in any state at any time from February 26, 2016 through May 23, 2022.”

22. “Settlement Fund” refers to the net settlement amount, or the Gross Settlement Amount minus court-approved attorneys’ fees and costs, Settlement Administration costs, Plaintiff’s Service Award, and the PAGA Award.

23. “PAGA Period” refers to May 11, 2021 through May 23, 2022.

24. “PAGA Members” or “PAGA Employees” means all members of the Settlement Class who worked for Defendants within the PAGA Period.

25. “Response Deadline” shall mean the deadline to submit requests for exclusion, written objections, and/or miles disputes. The Response Deadline is 45 days from the date on which Notice is initially mailed. In the event that Notice must be re-mailed in order to reach a Class Member or PAGA Member, the Response Deadline for that individual will be extended by 14 days.

II. RECITALS

A. On February 26, 2020, Plaintiff filed a class action complaint against Defendant in Los Angeles County Superior Court, Case No. 20STCV07379 (the “Action”). The Action alleged that Defendant (1) failed to provide meal periods in violation of Labor Code sections 226.7, 510, 512, 1194, 1197, 1198, and IWC Wage Order No. 9-2001, section 11; (2) failed to provide rest periods in violation of Labor Code sections 226.7, 512, and IWC Wage Order No. 9-2001, section 12; (3) failed to pay minimum wages in violation of Labor Code sections 1194, 1197, and IWC Wage Order No. 9-2001, section 4; (4) failed to pay all wages due to discharged or quitting employees in violation of Labor Code sections 201–203; (5) failed to furnish accurate itemized wage statements in violation of Labor Code section 226, and IWC Wage Order No. 9-2001, section 7; (6) failed to indemnify employees for necessary expenditures incurred in discharge of duties in violation of Labor Code section 2802; (7) unlawfully deducted wages in violation of Labor Code sections 221, 223, 400–410, and IWC Wage Order No. 9-2001, section 8; and (8) conducted unfair and unlawful business practices in violation of Labor Code section 17200 *et. seq.*

B. The Parties agreed to mediate this matter and engaged in discovery to prepare for that mediation. This discovery process included Defendant’s providing a redacted class list with hire and termination dates, a sampling of time and payroll records and copies of Defendant’s written policies.

C. The Parties engaged in a mediation session with the Hon. Lisa Cole (Ret.) on November 12, 2021. Additional information was exchanged during the mediation. With the assistance of Judge Cole, the Parties reached a settlement, which included the material terms contained in this Agreement.

D. At or about the time of the filing of the Motion for Preliminary Approval, Plaintiff will file a Motion for Leave to add Plaintiff Dmytro Martyniuk as a named proposed class representative in this matter.

E. Based on their investigation and evaluation of this case, Class Counsel have concluded that the Settlement is fair, reasonable, and adequate and is in the best interest of the Settlement Class in light of all known facts and circumstances, defenses asserted by Defendant, adverse findings regarding liability, and potential appealable issues.

F. Neither this Agreement nor any document referred to or contemplated herein, nor any action taken to carry out the terms of the Agreement, is, may be construed as, or may be used

as an admission, concession, or indication by or against Defendant of evidence of any unlawful conduct, fault, wrongdoing, or liability with respect to the Action.

G. The Parties now desire to fully, finally, and forever settle, compromise, and discharge the claims released herein.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and conditions set forth, the Parties agree as follows:

III. NON-ADMISSION OF LIABILITY

A. By entering into this Agreement, Defendant, on behalf of itself and all Released Parties, deny any liability for any of the claims alleged in the Action or any potential or unknown claims based on wage and hour violations during the Class Period under state or federal law.

B. Defendant specifically denies that it or any of the Released Parties have engaged in any unlawful or wrongful conduct against Plaintiff or the Settlement Class.

C. Defendant contends further that, for purposes other than settlement, the Action is not appropriate for class action treatment.

IV. STIPULATION TO CONDITIONAL CLASS CERTIFICATION SOLELY FOR PURPOSES OF THE SETTLEMENT

A. Defendant agrees for settlement purposes only to certification of this matter pursuant to California Code of Civil Procedure Section 382. Defendant does not waive, and expressly reserves, its right to challenge the propriety of class or collective action certification, or any other representative treatment of Plaintiff's claims, for any other purpose, should the Court not certify the Settlement Class.

B. The Parties stipulate to class and conditional certification for purposes of the Settlement only.

C. Evidence of this stipulation for settlement purposes only will not be deemed admissible for any other purpose in this or any other proceeding.

V. TERMS OF SETTLEMENT

A. Gross Settlement Amount

1. Defendant shall fund the settlement with a payment of \$1,550,000. This Gross Settlement Amount shall include all payments made to Participating Class Members for wages, penalties, interest, and liquidated damages, attorneys' fees and costs, Settlement Administration Costs, and Service Awards to the Class Representatives. All legally required employer side payroll taxes (e.g., FICA, FUTA, etc.) shall be paid from outside, and in addition to, the Gross Settlement Amount. The Gross Settlement Amount, plus any applicable employer-side payroll taxes which shall be paid separately, shall be the maximum amount Defendant is

required to pay under the Settlement. The Settlement Administrator shall provide the calculations for employer-side payroll taxes.

2. The Gross Settlement Amount as defined is based on Defendant's representations that, during the Class Period, there were approximately 623 members of the Settlement Class.

B. Attorneys' Fees and Costs

1. Class Counsel shall request that the Court approve an award of attorneys' fees in an amount of one-third (33-1/3%) of the Gross Settlement Amount plus all reasonable litigation costs, subject to Court approval. Defendant will not oppose these requests. Attorneys' fees and costs shall be paid out of the Gross Settlement Amount.

2. The Court's approval of fees and costs requested by Class Counsel is not a material term of the Agreement. If the Court does not approve the amount requested by Class Counsel for attorneys' fees or costs, or approves a lesser amount, the remaining terms of the Agreement shall remain in force and effect. A denial by the Court of Class Counsel's request for attorneys' fees or costs shall not be construed as a basis from which to abrogate the Agreement.

C. Service Awards To Class Representative

1. Subject to Court approval, Defendant will not oppose the Class Representative's request for a Service Award in an amount of \$10,000, to be paid from the Gross Settlement Amount, for his service to the Settlement Class. Any such Service Award shall be separate from, and in addition to, any payment to which Plaintiff may otherwise be entitled as a Participating Class Member. The Service Award shall be allocated as 1099 income, which shall not be subject to payroll taxes and withholdings and will be reported on an IRS 1099 Form.

2. The Class Representative will be responsible for characterizing this compensation correctly for tax purposes and for paying any taxes owing on said amount.

D. Settlement Administration Costs

1. The Parties have selected Simpluris to be the third-party Settlement Administrator, which will disseminate the Notice of Class Action Settlement ("Class Notice"), an initial draft of which is attached hereto as "**Exhibit A**," and to perform the requisite tasks and duties, including, the formatting and printing of the Class Notice and other documents to be mailed to the Settlement Class (including Spanish translations thereof, if needed), processing and maintaining the Class Data, updating mailing addresses for members of the Settlement Class before the initial mailing of the Class Notice, calculating estimated Individual Settlement Payments, declarations regarding administration as may be required by the Court, providing weekly status reports, resolving disputed claims, issuing Individual Settlement Payment checks, tax reporting, calculating employer-side payroll taxes due, and managing uncashed checks. Simpluris has agreed to cap its Settlement Administration Costs at \$10,900.00. This bid amount is fair in light of the extensive work to be performed by Simpluris and comparable to current market rates for third-party settlement administrators of similar experience and qualifications.

2. Simpluris, Inc. (“Simpluris”), according to its website, has over 15 years of administration experience. Simpluris has administered approximately 8,000 class action cases and distributed approximately \$7 billion in settlement funds. Simpluris’ experience and qualifications as a class action settlement administrator are listed on its website: (<https://www.simpluris.com/class-action-administration/>)

E. Settlement Fund

After deducting the portion of the Court-approved amount for the Service Awards, Attorneys’ Fees and Costs, and Settlement Administration Costs from the Gross Settlement Amount, the remaining balance will be distributed to Participating Class Members pro rata based on the total number of miles each drove during the Class Period.

VI. CLAIMS RELEASED BY THIS SETTLEMENT AGREEMENT

1. Upon the date on which Defendant fully funds the Settlement, all members of the Settlement Class who do not timely and effectively opt out of the Settlement shall be deemed to have fully released the Released Parties from all claims, debts, liabilities, demands, obligations, penalties, interest, wages, compensation, premium pay, guarantees, costs, expenses, attorneys’ fees, damages, claims for equitable relief, actions or causes of action that arise, or could have arisen, from the Action (the “Released Claims”).

2. Upon the date on which Defendant fully funds the Settlement, all members of the Settlement Class who have not submitted a timely and effective request for exclusion shall be deemed to have fully released the Released Parties from the Released Claims.

3. The release shall cover Released Claims for the period of February 26, 2016, through May 23, 2022.

4. Released Claims shall include all PAGA claims that could have been premised on the facts alleged in the Plaintiff’s Notice to the LWDA. PAGA Members will release PAGA claims even if Class members request exclusion from the Class.

VII. NOTICE TO MEMBERS OF THE SETTLEMENT CLASS

A. Defendant shall provide the Settlement Administrator a spreadsheet of all 623 class members within 30 days of execution of this settlement agreement, to include all categories of information relating to the entire class of drivers as was previously provided on the sampling of drivers.

B. Defendant shall provide the Settlement Administrator within thirty (30) calendar days of preliminary approval with a list containing the 623 names, employee identification numbers, last known addresses, telephone numbers, email address, mileage driven by each employee, inclusive dates of active employment during the Class Period, and Social Security numbers (“Settlement Class Data”) for each of the members of the Settlement Class.

C. The Settlement Administrator will calculate the number of miles driven based upon the employment data provided. This information is being provided confidentially to the Settlement

Administrator only, and the Settlement Administrator shall treat the information as private and confidential and take all necessary precautions to maintain the confidentiality of the Settlement Class Data. The Settlement Administrator shall not share the Settlement Class Data with any other party or counsel for any of the Parties. This information is to be used only to carry out the Settlement Administrator's duties as specified in this Agreement. The purpose of treating the Class Data as private and confidential is to protect Class Members' personal information, which serves the best interest of the Class. This confidentiality will not impede Class Counsel's ability to discharge fiduciary duties because only the Settlement Administrator requires the confidential Class Data in order to calculate and issue to the *pro rata* distribution of Settlement Funds.

D. The Settlement Administrator will send a Class Notice to each member of the Settlement Class by First Class U.S. Mail within ten (10) calendar days of receipt of the Settlement Class Data.

E. No claim form is required to receive a proportionate share of the Settlement Fund. The Settlement Administrator will calculate and mail an Individual Settlement Payment to each Participating Class Member.

F. To provide the best notice practicable, any Class Notice returned to the Settlement Administrator as non-deliverable with an updated mailing address affixed shall be sent by First Class U.S. Mail to the forwarding address affixed thereto. If a Class Notice is returned as undeliverable without a forwarding address affixed thereto, the Settlement Administrator shall attempt to locate a current mailing address for the member of the Settlement Class by skip tracing and will mail the Class Notice to the updated address identified. If no current address can be located, the Class Notice for that individual will be deemed undeliverable.

G. On the remailing of Class Notices by the Settlement Administrator to an updated mailing address found through skip-tracing, provided by Class Counsel or as provided by the Settlement Class Member (on the submission of a Change of Address form), the Settlement Administrator shall keep a record of the postmark mailing dates for such re-mailed Class Notices, and record all undelivered Class Notices. If a Class Member's Notice must be re-mailed, that Class Member's deadline to submit a miles dispute, objection, or opt-out request will be extended by 14 days.

VIII. COMPUTATION AND DISTRIBUTION OF SETTLEMENT FUND AND ATTORNEYS' FEES AND COSTS

A. No Tax Advice & Circular 230 Disclaimer.

1. No provision of this Settlement Agreement or other communications or disclosures is, or was intended, to constitute tax advice within the meaning of United States Treasury Department Circular 230 (31 C.F.R., Subtitle A, Part 10, as amended). The Parties further represent they: (1) shall be solely responsible for reporting and paying any applicable federal, state and/or local income tax, employment tax or any other withholding on all taxable income or other benefit they individually receive as consideration exchanged pursuant to this Settlement Agreement; (2) have relied exclusively upon their own, independent legal and tax advisors for tax advice in connection with this Settlement Agreement; and (3) in keeping with

their individual rights to due process, shall not be entitled to rely upon any communication or disclosure by Plaintiffs, defendant or Parties' Counsel to avoid the payment of any assessment, penalty, tax, attorneys' fees, and/or other amounts based on the taxability of any consideration provided or exchanged pursuant to this Settlement Agreement.

2. The Long Form Class Notice will state that the Parties make no representations concerning the taxability, tax treatment, or legal effect of any tax laws on any consideration provided or exchanged pursuant to the Settlement Agreement including any Individual Settlement Payments or any Individual PAGA Payments and that Class Members should consult with their own tax advisors concerning the tax consequences of their receipt of any payment under the Settlement Agreement.

3. The Settlement Administrator will form a Qualified Settlement Fund, and the Parties understand and agree that the Settlement Fund will qualify and be characterized as a Qualified Settlement Fund ("QSF") under the provisions of the U.S. Treasury Regulations 1.468B-1 and 1.468B-5, and the QSF will be taxed as a separate entity for purposes of all federal, state, and local taxes, and further agree to treat the QSF on a basis consistent therewith, that the QSF will be characterized as the employer of all Final Settlement Class Members for purposes of determining all tax obligations associated with any and all payments under this Settlement Agreement. The QSF will bear full responsibility for all taxes associated with the QSF and individual settlement payments under this Settlement Agreement, with the exception of employer-side taxes, which shall be paid by Defendants. The Settlement Administrator shall be responsible for ensuring that all taxes associated with the Settlement are timely paid to the appropriate authorities. The Settlement Administrator's responsibilities include the following: (1) filing all federal, state, and/or local employment tax returns, income tax returns, and other tax returns associated with the taxes; (2) timely and proper filing of all required federal, state, and/or local information returns (e.g., 1099s, W-2s, etc.) with the appropriate taxing authorities, (3) informing Defendants of their obligations to pay employer-side taxes on the Settlement Payments; and (4) completion of any other steps necessary for compliance with any tax obligations of the QSF under federal, state, and/or local law. In addition, the Settlement Administrator shall timely make such elections as necessary or advisable to carry out the provisions of this section. Such elections shall be made in compliance with the procedures and requirements contained in the QSF regulations. It shall be the responsibility of the Settlement Administrator to timely and properly prepare and deliver all necessary documentation for signature as may be required, and thereafter to cause the appropriate filing of such documentation to occur. To the extent that, for any period of time, the QSF is not treated as a "qualified settlement fund" within the meaning of the U.S. Treasury Regulations 1.468B-1 and 1.468B-5, the Settlement Administrator shall promptly notify Class Counsel and Defendants' Counsel of such event. Defendant is not responsible for any interest payments on the QSF.

B. Deposit of Gross Settlement Amount

1. The Settlement Administrator shall establish a Settlement Fund for purposes of administering the Settlement. The Settlement Administrator shall furnish the Settlement Fund with its own Employer ID Number and calculate all settlement checks and payroll deductions and withholdings required under law based on information that will be confidentially furnished by Defendant.

2. Within twenty-one (21) calendar days following the Effective Date, Defendant will deposit the Settlement Payment equal to the Gross Settlement Amount into the QSF account established by the Settlement Administrator. At no time prior to the Effective Date shall Defendant be required to escrow any portion of the Settlement Amount. Defendant is not responsible for paying any interest on the amount deposited and it is the responsibility of the Settlement Administrator to select and administer the interest-bearing account.

C. PAGA Penalties and Formula for Payments to PAGA Members

1. The Parties agree to allocate Sixty Thousand Dollars (\$60,000) of the Gross Settlement Amount as PAGA Penalties. 75% of the PAGA Penalties (i.e., \$45,000) shall be paid directly to the LWDA. The remaining 25% the PAGA Penalties (i.e., \$15,000) shall be paid to PAGA Members on a *pro rata* basis, based on the total number of miles driven by each PAGA member during the PAGA Period, which is May 11, 2021 through May 23, 2022.

2. The class notice sent to each PAGA Member will state the number of miles driven by the PAGA Member for purposes of calculating the PAGA Member's individual PAGA payment.

3. The sum of the number of miles driven during the PAGA Period by all PAGA Members will be referred to as the "Total PAGA Miles."

4. Each PAGA Member's share of the \$15,000 in PAGA Penalties will be calculated by dividing the number of miles driven by the PAGA Member by the Total PAGA Miles.

5. The number of miles driven by PAGA Members will be based on Defendant's employment records, and absent evidence to the contrary, Defendant's employment records shall be assumed correct for purposes of this payment calculation.

D. Formula For Calculating Individual Settlement Payments

The portion of the Settlement Fund to pay Individual Settlement Payments to Participating Class Members shall be determined as follows:

1. The payment to each Participating Class Member will be based on the total number of miles each drove during the Class Period based on Defendant's records. Absent evidence to the contrary, Defendant's employment records shall be assumed correct for purposes of calculating the number of miles driven by each Settlement Class Member and any payments made pursuant to the Agreement.

2. The sum of the number of miles driven during the Class Period by Participating Class Members will be referred to as the "Total Miles."

3. The class notice sent to each class member will state the number of miles driven by the class member for purposes of calculating the class member's Individual Settlement Payment, and the Total Miles.

4. Defendant's payroll records for each Participating Class Member shall be determinative for purposes of calculating the Total Miles and each Individual Settlement Payment, absent proof to the contrary as presented through dispute process for challenging the number of miles assigned to the class member.

5. The amount to be paid per mile driven by a Participating Class Member will be calculated by dividing the value of the Settlement Fund by the Total Miles.

6. The Class Notice will provide that Class Members who wish to dispute the number of miles credited to them must send a timely and valid Miles Dispute to the Settlement Administrator postmarked no later than the Response Deadline. The Settlement Administrator shall determine whether a Miles Dispute is timely based on the postmarked date on the mailing envelope. To be valid, a Miles Dispute must be in writing and must include: (1) the Class Member's full name; (2) the Class Member's current physical or mailing address; (3) the Class Member's current telephone number and email address; (4) a statement indicating that the Class Member disputes the number of miles credited to the Class Member and the number of miles that the Class Member contends should be credited to him or her; and (5) any documentation showing the affected Class Member should be credited with additional miles.

7. Within five (5) days after receipt of a Class Member's Miles Dispute, Notice of Objection, or Opt-Out Request, the Settlement Administrator shall send Parties' Counsel notice, via electronic mail, of its receipt of said submission, which will include the identity of the affected Class Member and may also include any additional relevant information. The Settlement Administrator may request additional information from Defendant for the resolution of any Miles Dispute. Within five (5) days after receiving the Settlement Administrator's written request for a response and additional information relating to any Miles Dispute, Defendant's Counsel shall send the Settlement Administrator, via electronic mail, a response to the Settlement Administrator's request including copies of any documents or other information regarding the merits of the dispute.

8. Within five (5) calendar days after receiving Defendant's response and additional information, the Settlement Administrator shall send further notice or a final written decision to the affected Class Member concerning the affected Class Member's Miles Dispute, which shall indicate the amount of Miles that the Settlement Administrator presently intends to credit the affected Class Member including the number of additional miles, if any, along with any revised estimated Individual Settlement Payment and/or Individual PAGA Payment amount. Prior to making a final written decision, the Settlement Administrator shall inform Parties' Counsel of its contemplated decision, so that the Parties may assess how the total miles contemplated under the Settlement are being impacted.

E. Distribution of the Settlement Fund to Participating Class Members

1. The Settlement Administrator shall distribute the Individual Settlement Payments by check within seven (7) calendar days after the funding of the QSF or within twenty-eight (28) calendar days of the Effective Date, whichever is sooner.

2. If any check remains uncashed after one hundred eighty (180) days from the date the check is issued, such check(s) will be voided by the Settlement Administrator. The Parties agree that the Settlement Fund is non-reversionary, and 100% of the funds from the uncashed or undeliverable checks shall be distributed to the proposed recipient that receives Court approval, without further amendment to this Agreement. Accordingly, the funds represented by any uncashed or undeliverable checks shall be distributed to the *cy pres* recipient Public Citizen Foundation, a section 501(c)(3) non-profit organization, subject to approval by the Court. Such distribution is appropriate and fulfills the purposes of this wage and hour class action because Public Citizen is an organization that substantially advocates on behalf of workers and consumers. Class Counsel are not involved in any governance work of the proposed *cy pres* recipient, nor on its Board of Directors, although The Kick Law Firm contains a member of Public Citizen. This lack of interest was attested to by Class Counsel in the Declaration of Taras Kick, filed in support of the Motion for Preliminary Approval of Class and PAGA Representative Action Settlement.

3. The Settlement Administrator shall furnish its own Employer Identification Number and calculate all Individual Settlement Payments and any payroll deductions based on confidential information that will be furnished by Defendant. The Settlement Administrator will prepare all necessary tax reporting and documentation with respect to payments made pursuant to this Agreement. The Settlement Administrator will provide the requisite IRS Forms 1099 and W2 to Participating Class Members with each Individual Settlement Payment. The tax documents shall reflect payment for the year in which payment is made pursuant to this Agreement.

4. Participating Class Members' individual settlement payments will be designated as 20% wages, 40% interest, and 40% penalties. The amounts paid as wages shall be subject to all tax withholdings customarily made from the employee's wages and all other authorized and required withholdings. The amounts paid as penalties and interest shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages. The Settlement Administrator will be responsible for issuing to Participating Class Members a form W-2 for amounts deemed "wages" and an IRS Form 1099 for the amounts deemed penalties and interest. For the portion of the Individual Settlement Payment allocated to wages, the Settlement Administrator shall be responsible for calculating and submitting the appropriate amount of the employees' share of payroll taxes and withholdings to the appropriate state and federal tax authorities.

5. The Settlement Administrator shall distribute the Service Award to the Class Representative within twenty (20) business days after the Effective Date.

6. None of the payments made pursuant to this Agreement will be considered for purposes of determining eligibility for, vesting or participation in, calculation of, or contributions to any welfare or benefit plans, including, without limitation, all plans, subject to ERISA. The Parties agree that these payments do not represent any modification of any employee's

previously-credited hours of service or other eligibility criteria under any employee pension benefit plan, employee welfare benefit plan, or other program or policy. These payments also will not be considered wages, compensation, or annual earnings for benefits in any year for purposes of determining eligibility for, or benefit accrual within, any employee pension benefit plan, employee welfare benefit plan, or other program or policy.

F. Settlement Administration Costs

Within twenty-eight (28) calendar days after the Effective Date, the Settlement Administrator shall deduct the Court-approved sum for payment of its fee and costs for administering the Settlement pursuant to its terms.

IX. OBJECTIONS TO AND OPTING OUT OF THE SETTLEMENT

A. Objections To The Settlement

1. Settlement Class Members who object to the Agreement should submit written objections using the procedures set forth in the Class Notice, postmarked no later than the Response Deadline (i.e., 45 days from initial mailing of Notice, and 14 more days if re-mailing was needed).

2. Participating Class Members may also appear at the Fairness Hearing to present any objections.

B. Exclusion From The Settlement

1. Members of the Settlement Class who wish to exclude themselves from the Settlement (“opt-out”) may use the procedure set forth in the Class Notice. A request to opt-out of the Settlement will be deemed timely if postmarked no later than the Response Deadline.

2. Members of the Settlement Class who timely opt-out may not submit an objection to the Agreement, as the Settlement no longer affects them.

3. In the event that five percent (5%) or more of the Class Members exercise their right to exclude themselves and opt out of the Settlement, Defendant retains the exclusive right, but not the obligation, to withdraw from and terminate the Settlement and return all parties back to their same position before the Settlement was reached and the Settlement Agreement was entered into. In the event that Defendant exercises such rights under this paragraph, Plaintiff and Defendant shall resume the Litigation through and until there is a final resolution of the Litigation. Defendant must notify Class Counsel and the Court in writing of such a decision to withdraw and terminate the Settlement no later than five (5) days prior to the date of the Final Approval Hearing. In the event of Defendant’s withdrawal, no party may use the fact that the Parties agreed to the Settlement for any reason, and Defendant shall pay all administration expenses incurred through the date of its termination of the Settlement.

X. SCHEDULE FOR PRELIMINARY AND FINAL APPROVAL

The following procedures for obtaining the Court's approval shall be implemented with respect to the Settlement, notice to the Settlement Class, and all benefits provided under this Agreement:

A. Stay Of All Litigation

As of the filing of the Motion for Preliminary Approval, and pending preliminary and final approval of the Settlement, the Parties agree that there will be a stay of all litigation activity not reasonably necessary for approval by the Court of this Agreement and all terms herein.

B. Request For Approval By The Court

Class Counsel will prepare a motion for preliminary approval and a motion for final approval, which Class Counsel will file with the Court. Class Counsel will file the Motion for Final Approval approximately fifteen days after the Settlement Administrator sends class notice, unless ordered otherwise by the Court.

Prior to the Final Approval Hearing, the Settlement Administrator shall provide written reports or declarations to the Parties and Parties' Counsel describing, among other things, the process and results of the settlement administration process, the total number of Opt-Out Requests received (both timely and valid or otherwise), the total number of Notices of Objection received (both timely and complete or otherwise), the total number of Miles Disputes received (both timely and valid or otherwise), and the actual or projected costs of the Settlement Administration to date, which report or declarations Plaintiffs may file with the Court prior to the Final Approval Hearing.

C. Duties of the Parties Following Final Court Approval

Following final approval of the Settlement, Class Counsel will submit a mutually agreeable Final Order and Judgment approving the Agreement, adjudicating the terms thereof to be fair, reasonable, and adequate, directing consummation of all terms and provisions, and, without affecting the finality of the Order Granting Final Approval and Judgment, allowing the Court to retain jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation, and enforcement of the Final Approval Order and the Agreement. The executed Final Order and Judgment shall be posted on the Settlement Administrator's website.

XI. MISCELLANEOUS PROVISIONS

A. Mutual Full Cooperation

The Class Representative, Defendant, Class Counsel, and Defense Counsel agree to cooperate fully with each other to accomplish the terms of this Agreement, including execution of necessary documents and other such other action as may reasonably be necessary to implement the terms herein.

B. Parties' Authority

The signatories hereto represent that they are fully authorized to enter into this Agreement and bind the Class Representative, the Settlement Class, and Defendant to all terms stated herein.

C. Binding Nature of the Agreement

1. This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Released Parties. The Class Representative represents, covenants, and warrants that he has not directly or indirectly, assigned, transferred, encumbered, any of the Released Claims.

2. This Agreement shall be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding the mediation confidentiality provisions that otherwise might apply under federal or state law. Notwithstanding the foregoing, this Agreement may not be admitted into evidence or used in any proceeding except an action, motion or proceeding to approve, interpret, or enforce the terms of this Agreement.

3. Material amendments to this Agreement may be made only by a written instrument signed by Class Counsel, the Class Representatives, Defense Counsel, and Defendant. The Class Representatives and Defendant authorize their respective counsel to make any ministerial amendments or modifications to this Agreement, including formatting changes, typographic corrections, and any necessary revisions to the draft Class Notice documents attached hereto, by way of written instrument signed by Class Counsel and Defense Counsel on their respective clients' behalf. No rights under this Agreement may be waived except in writing.

D. Joint Drafting of Settlement Documents

1. Class Counsel and Defense Counsel have arrived at this Agreement through a series of informed and arm's-length negotiations, including mediation, and taking into account all relevant factors, present and potential.

2. This Agreement has been drafted jointly by Class Counsel and Defense Counsel and, therefore, in any construction or interpretation of this Agreement, the same shall not be construed against any of the Parties.

E. Confidentiality of Documents

After the expiration of any appeals period, Plaintiff, the Settlement Administrator, and Class Counsel shall maintain the confidentiality of all documents, deposition transcripts, declarations and other information obtained in the Litigation, unless necessary for appeal or such documents are ordered to be disclosed by the Court or by a subpoena.

F. Execution of the Agreement

This Agreement may be executed in one or more counterparts and by facsimile. All executed copies of this Agreement, and photocopies thereof, shall have the same force and effect and shall be as legally binding and enforceable as the original.

G. No Third-Party Beneficiaries

Plaintiff, Settlement Class Members, and Defendant are direct beneficiaries of this Agreement, but there are no third-party beneficiaries.

H. Continuing Jurisdiction

The Court shall retain jurisdiction over the implementation of this Agreement and all matters arising out of, or related to, its implementation. The Court shall not have jurisdiction to modify the terms of the Agreement without the consent of all Parties in writing.

I. Severability

In the event that any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall in no way effect any other provision if Defendant's Counsel and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

J. Disputes

Any dispute arising out of or relating to this Agreement that cannot be resolved by the Parties, other than a Miles Dispute by a class member, will be submitted to the Hon. Lisa Cole (Ret.) for resolution, including potential further mediation. If they cannot reach agreement, the Parties agree that Judge Cole is authorized to make a final and binding decision to resolve any dispute. The Parties will split the mediator's costs, and all Parties will bear their own attorneys' fees and other costs incurred. Nothing in this provision shall limit Class Counsel's ability to seek any such attorneys' fees and other costs incurred as part of the Gross Settlement Amount.

[Signatures On Next Page]

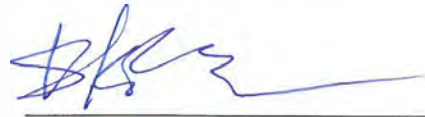
Dated: 10/21/2022

CLASS REPRESENTATIVE

By: 
Dmytro Martyniuk

Dated: 9/27/2022

USKO EXPRESS, INC.

By: 
Vlad Skots
President of USKO Express, Inc.

Dated: _____

THE KICK LAW FIRM, APC

By: _____
Taras P. Kick
Greg Taylor
Attorneys for Plaintiff

Dated: September 27, 2022

MEDINA MCKELVEY LLP

By: 
Alexander M. Medina
Kyle W. Owen
Attorneys for Defendant

Dated: _____

CLASS REPRESENTATIVE

By: _____
Dmytro Martyniuk

Dated: _____

USKO EXPRESS, INC.

By: _____
Vlad Skots
President of USKO Express, Inc.

Dated: 9/14/2022

THE KICK LAW FIRM, APC

By:  _____
DocuSigned by:
Taras P. Kick
6DE1B9718B564B2...
Taras P. Kick
Greg Taylor
Attorneys for Plaintiff

Dated: _____

MEDINA MCKELVEY LLP

By: _____
Alexander M. Medina
Kyle W. Owen
Attorneys for Defendant

EXHIBIT 2

SETTLEMENT AND RELEASE AGREEMENT

Plaintiff Dmytro Martyniuk (“Plaintiff”), individually, and on behalf of all others similarly situated, and Defendant USKO Express, Inc. (“Defendant”) hereby enter into this Settlement and Release Agreement (the “Agreement”), as provided below.

I. DEFINITIONS

The terms of this Agreement are as follows:

1. “Action” refers to the lawsuit originally entitled *Hallowell, et al. v. USKO Express, Inc., et al.*, filed in the Superior Court of the State of California for the County of Los Angeles on February 26, 2020, Case No. 20STCV07379.

2. “Attorneys’ Fees and Costs” refers to the fees and litigation costs incurred by Class Counsel and means fees of \$516,666.67, or one-third (33-1/3%) of the Gross Settlement Amount, and reimbursement of all approved litigation costs, not to exceed \$25,000.00.

3. “Class Counsel” refers to The Kick Law Firm, APC.

4. “Class Period” refers to the period from February 26, 2016 through May 23, 2022~~the sooner of the court granting preliminary approval of this proposed settlement or 90 days after full execution of the long form settlement agreement.~~

5. “Class Representative” means the plaintiff Dmytro Martyniuk.

6. “Court” refers to the Los Angeles County Superior Court.

7. “Defense Counsel” refers to Alexander M. Medina of Medina McKelvey LLP.

8. “Effective Date” of the Settlement Agreement shall mean the date upon which both of the following have occurred: (i) final approval of the Settlement Agreement is granted by the Superior Court of California for the County of Los Angeles, or other court assuming jurisdiction of this matter, and (ii) the Court’s Judgment approving the Settlement Agreement becomes Final. Final shall mean the latest of: (i) if there is an appeal of the Court’s Judgment, the date the Judgment is affirmed on appeal, the date of dismissal of such appeal, or the expiration of the time to file a petition for review with the California Supreme Court; or, (ii) if a petition for review is filed, the date of denial of the petition, or the date the Judgment is affirmed pursuant to such petition; or (iii) if no appeal is filed, the expiration of the time for filing or noticing any appeal of the Judgment, as determined under Rule 8.104(a)(3) of the California Rules of Court.

9. “Fairness Hearing” refers to the hearing at which the Court will determine whether the terms of the Settlement are fair, reasonable, and adequate for the Class and meet all applicable requirements for Final Approval.

10. “Final Approval Order” refers to the order by the Court approving the Settlement Agreement following the Fairness Hearing and entering final judgment.

11. “Gross Settlement Amount” refers to the maximum settlement amount of One Million, Five Hundred and Fifty Thousand Dollars and Zero Cents (\$1,550,000.00) payable by Defendant.

12. “Individual Settlement Payment” shall mean the individual distribution from the Settlement Fund to each Participating Class Member, as defined in Section VIII(D), below.

13. “PAGA Award” means the amount allocated to penalties to settle claims alleged under the Private Attorneys General Act, which is \$60,000.

14. “Participating Class Members” refers to all members of the Settlement Class who do not timely and effectively opt out of the Settlement.

15. “Parties” collectively refers to Plaintiff and Defendant.

16. “Released Parties” refers to Defendant and all of its former or present parents, subsidiaries, successors, predecessors, affiliates, assigns, joint employers, officers, directors, employees, insurers, directors, executors, attorneys, shareholders, related corporations, profit sharing, savings, health, and other employee benefit plans of any nature, the successors of such plans, and those plans’ respective current or former trustees and administrators, agents, employees, fiduciaries, and the predecessors and successors, assigns, and legal representatives of all such entities and individuals.

17. “Service Award” means the \$10,000 paid to the Class Representative for his service to the Settlement Class.

18. “Settlement Administration Costs” refers to the costs and expenses incurred by the Settlement Administrator in the performance of its tasks and duties as provided by this Agreement. [The Settlement Administrator has agreed to cap its expenses at \\$10,900.00.](#)

19. Gross Settlement Amount (“GSA”) is \$1,550,000.00.

20. “Settlement Administrator” means Simpluris, [Inc., a reputable and experienced third-party administrator.](#)

[21.](#) “Settlement Class” refers to the 623 current and former drivers to whom notice will be sent by the Claims Administrator, [defined as follows:](#)

[“All current and former drivers, including but not limited to those misclassified as independent contractors or “owner operators,” who performed work for Defendant in the State of California or who were residents of the State of California and performed work for Defendant in any state at any time from February 26, 2016 through May 23, 2022.”](#)

[22.](#) “Settlement Fund” refers to the net settlement amount, or the Gross Settlement Amount minus court-approved attorneys’ fees and costs, Settlement Administration costs, Plaintiff’s Service Award, and the PAGA Award.

23. “PAGA Period” refers to May 11, 2021 through May 23, 2022.

24. “PAGA Members” or “PAGA Employees” means all members of the Settlement Class who worked for Defendants within the PAGA Period.

25. “Response Deadline” shall mean the deadline to submit requests for exclusion, written objections, and/or miles disputes. The Response Deadline is 45 days from the date on which Notice is initially mailed. In the event that Notice must be re-mailed in order to reach a Class Member or PAGA Member, the Response Deadline for that individual will be extended by 14 days.

II. RECITALS

A. On February 26, 2020, Plaintiff filed a class action complaint against Defendant in Los Angeles County Superior Court, Case No. 20STCV07379 (the “Action”). The Action alleged that Defendant (1) failed to provide meal periods in violation of Labor Code sections 226.7, 510, 512, 1194, 1197, 1198, and IWC Wage Order No. 9-2001, section 11; (2) failed to provide rest periods in violation of Labor Code sections 226.7, 512, and IWC Wage Order No. 9-2001, section 12; (3) failed to pay minimum wages in violation of Labor Code sections 1194, 1197, and IWC Wage Order No. 9-2001, section 4; (4) failed to pay all wages due to discharged or quitting employees in violation of Labor Code sections 201–203; (5) failed to furnish accurate itemized wage statements in violation of Labor Code section 226, and IWC Wage Order No. 9-2001, section 7; (6) failed to indemnify employees for necessary expenditures incurred in discharge of duties in violation of Labor Code section 2802; (7) unlawfully deducted wages in violation of Labor Code sections 221, 223, 400–410, and IWC Wage Order No. 9-2001, section 8; and (8) conducted unfair and unlawful business practices in violation of Labor Code section 17200 *et. seq.*

B. The Parties agreed to mediate this matter and engaged in discovery to prepare for that mediation. This discovery process included Defendant’s providing a redacted class list with hire and termination dates, a sampling of time and payroll records and copies of Defendant’s written policies.

C. The Parties engaged in a mediation session with the Hon. Lisa Cole (Ret.) on November 12, 2021. Additional information was exchanged during the mediation. With the assistance of Judge Cole, the Parties reached a settlement, which included the material terms contained in this Agreement.

D. At or about the time of the filing of the Motion for Preliminary Approval, Plaintiff will file a Motion for Leave to add Plaintiff Dmytro Martyniuk as a named proposed class representative in this matter.

E. Based on their investigation and evaluation of this case, Class Counsel have concluded that the Settlement is fair, reasonable, and adequate and is in the best interest of the Settlement Class in light of all known facts and circumstances, defenses asserted by Defendant, adverse findings regarding liability, and potential appealable issues.

F. Neither this Agreement nor any document referred to or contemplated herein, nor any action taken to carry out the terms of the Agreement, is, may be construed as, or may be used

as an admission, concession, or indication by or against Defendant of evidence of any unlawful conduct, fault, wrongdoing, or liability with respect to the Action.

G. The Parties now desire to fully, finally, and forever settle, compromise, and discharge the claims released herein.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and conditions set forth, the Parties agree as follows:

III. NON-ADMISSION OF LIABILITY

A. By entering into this Agreement, Defendant, on behalf of itself and all Released Parties, deny any liability for any of the claims alleged in the Action or any potential or unknown claims based on wage and hour violations during the Class Period under state or federal law.

B. Defendant specifically denies that it or any of the Released Parties have engaged in any unlawful or wrongful conduct against Plaintiff or the Settlement Class.

C. Defendant contends further that, for purposes other than settlement, the Action is not appropriate for class action treatment.

IV. STIPULATION TO CONDITIONAL CLASS CERTIFICATION SOLELY FOR PURPOSES OF THE SETTLEMENT

A. Defendant agrees for settlement purposes only to certification of this matter pursuant to California Code of Civil Procedure Section 382. Defendant does not waive, and expressly reserves, its right to challenge the propriety of class or collective action certification, or any other representative treatment of Plaintiff's claims, for any other purpose, should the Court not certify the Settlement Class.

B. The Parties stipulate to class and conditional certification for purposes of the Settlement only.

C. Evidence of this stipulation for settlement purposes only will not be deemed admissible for any other purpose in this or any other proceeding.

V. TERMS OF SETTLEMENT

A. Gross Settlement Amount

1. Defendant shall fund the settlement with a payment of \$1,550,000. This Gross Settlement Amount shall include all payments made to Participating Class Members for wages, penalties, interest, and liquidated damages, attorneys' fees and costs, Settlement Administration Costs, and Service Awards to the Class Representatives. All legally required employer side payroll taxes (e.g., FICA, FUTA, etc.) shall be paid from outside, and in addition to, the Gross Settlement Amount. The Gross Settlement Amount, plus any applicable employer-side payroll taxes which shall be paid separately, shall be the maximum amount Defendant is

required to pay under the Settlement. The Settlement Administrator shall provide the calculations for employer-side payroll taxes.

2. The Gross Settlement Amount as defined is based on Defendant's representations that, during the Class Period, there were approximately 623 members of the Settlement Class.

B. Attorneys' Fees and Costs

1. Class Counsel shall request that the Court approve an award of attorneys' fees in an amount of one-third (33-1/3%) of the Gross Settlement Amount plus all reasonable litigation costs, subject to Court approval. Defendant will not oppose these requests. Attorneys' fees and costs shall be paid out of the Gross Settlement Amount.

2. The Court's approval of fees and costs requested by Class Counsel is not a material term of the Agreement. If the Court does not approve the amount requested by Class Counsel for attorneys' fees or costs, or approves a lesser amount, the remaining terms of the Agreement shall remain in force and effect. A denial by the Court of Class Counsel's request for attorneys' fees or costs shall not be construed as a basis from which to abrogate the Agreement.

C. Service Awards To Class Representative

1. Subject to Court approval, Defendant will not oppose the Class Representative's request for a Service Award in an amount of \$10,000, to be paid from the Gross Settlement Amount, for his service to the Settlement Class. Any such Service Award shall be separate from, and in addition to, any payment to which Plaintiff may otherwise be entitled as a Participating Class Member. The Service Award shall be allocated as 1099 income, which shall not be subject to payroll taxes and withholdings and will be reported on an IRS 1099 Form.

2. The Class Representative will be responsible for characterizing this compensation correctly for tax purposes and for paying any taxes owing on said amount.

D. Settlement Administration Costs

1. The Parties have selected Simpluris to be the third-party Settlement Administrator, which will disseminate the Notice of Class Action Settlement ("Class Notice"), an initial draft of which is attached hereto as "**Exhibit A**," and to perform the requisite tasks and duties, including, the formatting and printing of the Class Notice and other documents to be mailed to the Settlement Class (including Spanish translations thereof, if needed), processing and maintaining the Class Data, updating mailing addresses for members of the Settlement Class before the initial mailing of the Class Notice, calculating estimated Individual Settlement Payments, declarations regarding administration as may be required by the Court, providing weekly status reports, resolving disputed claims, issuing Individual Settlement Payment checks, tax reporting, calculating employer-side payroll taxes due, and managing uncashed checks. Simpluris has agreed to cap its Settlement Administration Costs at \$10,900.00. This bid amount is fair in light of the extensive work to be performed by Simpluris and comparable to current market rates for third-party settlement administrators of similar experience and qualifications.

2. Simpluris, Inc. (“Simpluris”), according to its website, has over 15 years of administration experience. Simpluris has administered approximately 8,000 class action cases and distributed approximately \$7 billion in settlement funds. Simpluris’ experience and qualifications as a class action settlement administrator are listed on its website: (<https://www.simpluris.com/class-action-administration/>)

E. Settlement Fund

After deducting the portion of the Court-approved amount for the Service Awards, Attorneys’ Fees and Costs, and Settlement Administration Costs from the Gross Settlement Amount, the remaining balance will be distributed to Participating Class Members pro rata based on the total number of miles each drove during the Class Period.

VI. CLAIMS RELEASED BY THIS SETTLEMENT AGREEMENT

1. Upon ~~the final approval by the Court of this Agreement, and except as to the right to enforce the terms and conditions of this Agreement~~the date on which Defendant fully funds the Settlement, all members of the Settlement Class who do not timely and effectively opt out of the Settlement shall be deemed to have fully released the Released Parties from all claims, debts, liabilities, demands, obligations, penalties, interest, wages, compensation, premium pay, guarantees, costs, expenses, attorneys’ fees, damages, claims for equitable relief, actions or causes of action that arise, or could have arisen, from the Action (the “Released Claims”).

2. Upon ~~the date on which Defendant fully funds the Settlement~~the final approval by the Court of the Settlement, and except as to the right to enforce the terms and conditions this Agreement, all members of the Settlement Class who have not submitted a timely and effective request for exclusion shall be deemed to have fully released the Released Parties from the Released Claims.

3. The release shall cover Released Claims for the period of February 26, 2016, through May 23, 2022~~the sooner of the court granting preliminary approval of the proposed settlement or ninety (90) days after execution of this Long Form Settlement Agreement.~~

4. Released Claims shall include all PAGA claims that could have been premised on the facts alleged in the Plaintiff’s Notice to the LWDA. PAGA Members will release PAGA claims even if Class members request exclusion from the Class.

VII. NOTICE TO MEMBERS OF THE SETTLEMENT CLASS

A. Defendant shall provide the Settlement Administrator a spreadsheet of all 623 class members within 30 days of execution of this settlement agreement, to include all categories of information relating to the entire class of drivers as was previously provided on the sampling of drivers.

B. Defendant shall provide the Settlement Administrator within thirty (30) calendar days of preliminary approval with a list containing the 623 names, employee identification numbers, last known addresses, telephone numbers, email address, mileage driven by each

employee, inclusive dates of active employment during the Class Period, and Social Security numbers (“Settlement Class Data”) for each of the members of the Settlement Class.

C. The Settlement Administrator will calculate the number of miles driven based upon the employment data provided. This information is being provided confidentially to the Settlement Administrator only, and the Settlement Administrator shall treat the information as private and confidential and take all necessary precautions to maintain the confidentiality of the Settlement Class Data. The Settlement Administrator shall not share the Settlement Class Data with any other party or counsel for any of the Parties. This information is to be used only to carry out the Settlement Administrator’s duties as specified in this Agreement. The purpose of treating the Class Data as private and confidential is to protect Class Members’ personal information, which serves the best interest of the Class. This confidentiality will not impede Class Counsel’s ability to discharge fiduciary duties because only the Settlement Administrator requires the confidential Class Data in order to calculate and issue to the *pro rata* distribution of Settlement Funds.

D. The Settlement Administrator will send a Class Notice to each member of the Settlement Class by First Class U.S. Mail within ten (10) calendar days of receipt of the Settlement Class Data.

E. No claim form is required to receive a proportionate share of the Settlement Fund. The Settlement Administrator will calculate and mail an Individual Settlement Payment to each Participating Class Member.

F. To provide the best notice practicable, any Class Notice returned to the Settlement Administrator as non-deliverable with an updated mailing address affixed shall be sent by First Class U.S. Mail to the forwarding address affixed thereto. If a Class Notice is returned as undeliverable without a forwarding address affixed thereto, the Settlement Administrator shall attempt to locate a current mailing address for the member of the Settlement Class by skip tracing and will mail the Class Notice to the updated address identified. If no current address can be located, the Class Notice for that individual will be deemed undeliverable.

G. On the remailing of Class Notices by the Settlement Administrator to an updated mailing address found through skip-tracing, provided by Class Counsel or as provided by the Settlement Class Member (on the submission of a Change of Address form), the Settlement Administrator shall keep a record of the postmark mailing dates for such re-mailed Class Notices, and record all undelivered Class Notices. If a Class Member’s Notice must be re-mailed, that Class Member’s deadline to submit a miles dispute, objection, or opt-out request will be extended by 14 days.

VIII. COMPUTATION AND DISTRIBUTION OF SETTLEMENT FUND AND ATTORNEYS’ FEES AND COSTS

A. No Tax Advice & Circular 230 Disclaimer.

1. No provision of this Settlement Agreement or other communications or disclosures is, or was intended, to constitute tax advice within the meaning of United States Treasury Department Circular 230 (31 C.F.R., Subtitle A, Part 10, as amended). The Parties further represent they: (1) shall be solely responsible for reporting and paying any applicable

federal, state and/or local income tax, employment tax or any other withholding on all taxable income or other benefit they individually receive as consideration exchanged pursuant to this Settlement Agreement; (2) have relied exclusively upon their own, independent legal and tax advisors for tax advice in connection with this Settlement Agreement; and (3) in keeping with their individual rights to due process, shall not be entitled to rely upon any communication or disclosure by Plaintiffs, defendant or Parties' Counsel to avoid the payment of any assessment, penalty, tax, attorneys' fees, and/or other amounts based on the taxability of any consideration provided or exchanged pursuant to this Settlement Agreement.

2. The Long Form Class Notice will state that the Parties make no representations concerning the taxability, tax treatment, or legal effect of any tax laws on any consideration provided or exchanged pursuant to the Settlement Agreement including any Individual Settlement Payments or any Individual PAGA Payments and that Class Members should consult with their own tax advisors concerning the tax consequences of their receipt of any payment under the Settlement Agreement.

3. The Settlement Administrator will form a Qualified Settlement Fund, and the Parties understand and agree that the Settlement Fund will qualify and be characterized as a Qualified Settlement Fund ("QSF") under the provisions of the U.S. Treasury Regulations 1.468B-1 and 1.468B-5, and the QSF will be taxed as a separate entity for purposes of all federal, state, and local taxes, and further agree to treat the QSF on a basis consistent therewith, that the QSF will be characterized as the employer of all Final Settlement Class Members for purposes of determining all tax obligations associated with any and all payments under this Settlement Agreement. The QSF will bear full responsibility for all taxes associated with the QSF and individual settlement payments under this Settlement Agreement, with the exception of employer-side taxes, which shall be paid by Defendants. The Settlement Administrator shall be responsible for ensuring that all taxes associated with the Settlement are timely paid to the appropriate authorities. The Settlement Administrator's responsibilities include the following: (1) filing all federal, state, and/or local employment tax returns, income tax returns, and other tax returns associated with the taxes; (2) timely and proper filing of all required federal, state, and/or local information returns (e.g., 1099s, W-2s, etc.) with the appropriate taxing authorities, (3) informing Defendants of their obligations to pay employer-side taxes on the Settlement Payments; and (4) completion of any other steps necessary for compliance with any tax obligations of the QSF under federal, state, and/or local law. In addition, the Settlement Administrator shall timely make such elections as necessary or advisable to carry out the provisions of this section. Such elections shall be made in compliance with the procedures and requirements contained in the QSF regulations. It shall be the responsibility of the Settlement Administrator to timely and properly prepare and deliver all necessary documentation for signature as may be required, and thereafter to cause the appropriate filing of such documentation to occur. To the extent that, for any period of time, the QSF is not treated as a "qualified settlement fund" within the meaning of the U.S. Treasury Regulations 1.468B-1 and 1.468B-5, the Settlement Administrator shall promptly notify Class Counsel and Defendants' Counsel of such event. Defendant is not responsible for any interest payments on the QSF.

B. Deposit of Gross Settlement Amount

1. The Settlement Administrator shall establish a Settlement Fund for purposes of administering the Settlement. The Settlement Administrator shall furnish the Settlement Fund with its own Employer ID Number and calculate all settlement checks and payroll deductions and withholdings required under law based on information that will be confidentially furnished by Defendant.

2. Within twenty-one (21) calendar days following the Effective Date, Defendant will deposit the Settlement Payment equal to the Gross Settlement Amount into the QSF account established by the Settlement Administrator. At no time prior to the Effective Date shall Defendant be required to escrow any portion of the Settlement Amount. Defendant is not responsible for paying any interest on the amount deposited and it is the responsibility of the Settlement Administrator to select and administer the interest-bearing account.

C. PAGA Penalties and Formula for Payments to PAGA Members

1. The Parties agree to allocate Sixty Thousand Dollars (\$60,000) of the Gross Settlement Amount as PAGA Penalties. 75% of the PAGA Penalties (i.e., \$45,000) shall be paid directly to the LWDA. The remaining 25% the PAGA Penalties (i.e., \$15,000) shall be paid to PAGA Members on a *pro rata* basis, based on the total number of miles driven by each PAGA member during the PAGA Period, which is May 11, 2021 through May 23, 2022.

2. The class notice sent to each PAGA Member will state the number of miles driven by the PAGA Member for purposes of calculating the PAGA Member's individual PAGA payment.

3. The sum of the number of miles driven during the PAGA Period by all PAGA Members will be referred to as the "Total PAGA Miles."

4. Each PAGA Member's share of the \$15,000 in PAGA Penalties will be calculated by dividing the number of miles driven by the PAGA Member by the Total PAGA Miles.

5. The number of miles driven by PAGA Members will be based on Defendant's employment records, and absent evidence to the contrary, Defendant's employment records shall be assumed correct for purposes of this payment calculation.

D. Formula For Calculating Individual Settlement Payments

The portion of the Settlement Fund to pay Individual Settlement Payments to Participating Class Members shall be determined as follows:

1. The payment to each Participating Class Member will be based on the total number of miles each drove during the Class Period based on Defendant's records. Absent evidence to the contrary, Defendant's employment records shall be assumed correct for purposes

of calculating the number of miles driven by each Settlement Class Member and any payments made pursuant to the Agreement.

2. The sum of the number of miles driven during the Class Period by Participating Class Members will be referred to as the “Total Miles.”

3. The class notice sent to each class member will state the number of miles driven by the class member for purposes of calculating the class member’s Individual Settlement Payment, and the Total Miles.

4. Defendant’s payroll records for each Participating Class Member shall be determinative for purposes of calculating the Total Miles and each Individual Settlement Payment, absent proof to the contrary as presented through dispute process for challenging the number of miles assigned to the class member.

5. The amount to be paid per mile driven by a Participating Class Member will be calculated by dividing the value of the Settlement Fund by the Total Miles.

6. The Class Notice will provide that Class Members who wish to dispute the number of miles credited to them must send a timely and valid Miles Dispute to the Settlement Administrator postmarked no later than the Response Deadline. The Settlement Administrator shall determine whether a Miles Dispute is timely based on the postmarked date on the mailing envelope. To be valid, a Miles Dispute must be in writing and must include: (1) the Class Member’s full name; (2) the Class Member’s current physical or mailing address; (3) the Class Member’s current telephone number and email address; (4) a statement indicating that the Class Member disputes the number of miles credited to the Class Member and the number of miles that the Class Member contends should be credited to him or her; and (5) any documentation showing the affected Class Member should be credited with additional miles.

7. Within five (5) days after receipt of a Class Member’s Miles Dispute, Notice of Objection, or Opt-Out Request, the Settlement Administrator shall send Parties’ Counsel notice, via electronic mail, of its receipt of said submission, which will include the identity of the affected Class Member and may also include any additional relevant information. The Settlement Administrator may request additional information from Defendant for the resolution of any Miles Dispute. Within five (5) days after receiving the Settlement Administrator’s written request for a response and additional information relating to any Miles Dispute, Defendant’s Counsel shall send the Settlement Administrator, via electronic mail, a response to the Settlement Administrator’s request including copies of any documents or other information regarding the merits of the dispute.

8. Within five (5) calendar days after receiving Defendant’s response and additional information, the Settlement Administrator shall send further notice or a final written decision to the affected Class Member concerning the affected Class Member’s Miles Dispute, which shall indicate the amount of Miles that the Settlement Administrator presently intends to credit the affected Class Member including the number of additional miles, if any, along with any revised estimated Individual Settlement Payment and/or Individual PAGA Payment amount. Prior to making a final written decision, the Settlement Administrator shall inform Parties’ Counsel of

its contemplated decision, so that the Parties may assess how the total miles contemplated under the Settlement are being impacted.

E. Distribution of the Settlement Fund to Participating Class Members

1. The Settlement Administrator shall distribute the Individual Settlement Payments by check within seven (7) calendar days after the funding of the QSF or within twenty-eight (28) calendar days of the Effective Date, whichever is sooner.

2. If any check remains uncashed after one hundred eighty (180) days from the date the check is issued, such check(s) will be voided by the Settlement Administrator. The Parties agree that the Settlement Fund is non-reversionary, and 100% of the funds from the uncashed or undeliverable checks shall be distributed to the proposed recipient that receives Court approval, without further amendment to this Agreement. Accordingly, the funds represented by any uncashed or undeliverable checks shall be distributed to the *cy pres* recipient Public Citizen Foundation, a section 501(c)(3) non-profit organization, subject to approval by the Court. [Such distribution is appropriate and fulfills the purposes of this wage and hour class action because Public Citizen is an organization that substantially advocates on behalf of workers and consumers. Class Counsel are not involved in any governance work of the proposed *cy pres* recipient, nor on its Board of Directors, although The Kick Law Firm contains a member of Public Citizen. This lack of interest was attested to by Class Counsel in the Declaration of Taras Kick, filed in support of the Motion for Preliminary Approval of Class and PAGA Representative Action Settlement.](#)

3. The Settlement Administrator shall furnish its own Employer Identification Number and calculate all Individual Settlement Payments and any payroll deductions based on confidential information that will be furnished by Defendant. The Settlement Administrator will prepare all necessary tax reporting and documentation with respect to payments made pursuant to this Agreement. The Settlement Administrator will provide the requisite IRS Forms 1099 and W2 to Participating Class Members with each Individual Settlement Payment. The tax documents shall reflect payment for the year in which payment is made pursuant to this Agreement.

4. Participating Class Members' individual settlement payments will be designated as 20% wages, 40% interest, and 40% penalties. The amounts paid as wages shall be subject to all tax withholdings customarily made from the employee's wages and all other authorized and required withholdings. The amounts paid as penalties and interest shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages. The Settlement Administrator will be responsible for issuing to Participating Class Members a form W-2 for amounts deemed "wages" and an IRS Form 1099 for the amounts deemed penalties and interest. For the portion of the Individual Settlement Payment allocated to wages, the Settlement Administrator shall be responsible for calculating and submitting the appropriate amount of the employees' share of payroll taxes and withholdings to the appropriate state and federal tax authorities.

5. The Settlement Administrator shall distribute the Service Award to the Class Representative within twenty (20) business days after the Effective Date.

6. None of the payments made pursuant to this Agreement will be considered for purposes of determining eligibility for, vesting or participation in, calculation of, or contributions to any welfare or benefit plans, including, without limitation, all plans, subject to ERISA. The Parties agree that these payments do not represent any modification of any employee's previously-credited hours of service or other eligibility criteria under any employee pension benefit plan, employee welfare benefit plan, or other program or policy. These payments also will not be considered wages, compensation, or annual earnings for benefits in any year for purposes of determining eligibility for, or benefit accrual within, any employee pension benefit plan, employee welfare benefit plan, or other program or policy.

F. Settlement Administration Costs

Within twenty-eight (28) calendar days after the Effective Date, the Settlement Administrator shall deduct the Court-approved sum for payment of its fee and costs for administering the Settlement pursuant to its terms.

IX. OBJECTIONS TO AND OPTING OUT OF THE SETTLEMENT

A. Objections To The Settlement

1. Settlement Class Members who object to the Agreement should submit written objections using the procedures set forth in the Class Notice, postmarked no later than the Response Deadline (i.e., 45 days from initial mailing of Notice, and 14 more days if re-mailing was needed).

2. Participating Class Members may also appear at the Fairness Hearing to present any objections.

B. Exclusion From The Settlement

1. Members of the Settlement Class who wish to exclude themselves from the Settlement ("opt-out") may use the procedure set forth in the Class Notice. A request to opt-out of the Settlement will be deemed timely if postmarked on or before the thirtieth (30th) day after the initial mailing of the Class Notice by no later than the Response Deadline.

2. Members of the Settlement Class who timely opt-out may not submit an objection to the Agreement, as the Settlement no longer affects them.

3. In the event that five percent (5%) or more of the Class Members exercise their right to exclude themselves and opt out of the Settlement, Defendant retains the exclusive right, but not the obligation, to withdraw from and terminate the Settlement and return all parties back to their same position before the Settlement was reached and the Settlement Agreement was entered into. In the event that Defendant exercises such rights under this paragraph, Plaintiff and Defendant shall resume the Litigation through and until there is a final resolution of the Litigation. Defendant must notify Class Counsel and the Court in writing of such a decision to withdraw and terminate the Settlement no later than five (5) days prior to the date of the Final Approval Hearing. In the event of Defendant's withdrawal, no party may use the fact that the Parties agreed to the

Settlement for any reason, and Defendant shall pay all administration expenses incurred through the date of its termination of the Settlement.

X. SCHEDULE FOR PRELIMINARY AND FINAL APPROVAL

The following procedures for obtaining the Court's approval shall be implemented with respect to the Settlement, notice to the Settlement Class, and all benefits provided under this Agreement:

A. Stay Of All Litigation

As of the filing of the Motion for Preliminary Approval, and pending preliminary and final approval of the Settlement, the Parties agree that there will be a stay of all litigation activity not reasonably necessary for approval by the Court of this Agreement and all terms herein.

B. Request For Approval By The Court

Class Counsel will prepare a motion for preliminary approval and a motion for final approval, which Class Counsel will file with the Court. Class Counsel will file the Motion for Final Approval approximately fifteen days after the Settlement Administrator sends class notice, unless ordered otherwise by the Court.

Prior to the Final Approval Hearing, the Settlement Administrator shall provide written reports or declarations to the Parties and Parties' Counsel describing, among other things, the process and results of the settlement administration process, the total number of Opt-Out Requests received (both timely and valid or otherwise), the total number of Notices of Objection received (both timely and complete or otherwise), the total number of Miles Disputes received (both timely and valid or otherwise), and the actual or projected costs of the Settlement Administration to date, which report or declarations Plaintiffs may file with the Court prior to the Final Approval Hearing.

C. Duties of the Parties Following Final Court Approval

Following final approval of the Settlement, Class Counsel will submit a mutually agreeable Final Order and Judgment approving the Agreement, adjudicating the terms thereof to be fair, reasonable, and adequate, directing consummation of all terms and provisions, and, without affecting the finality of the Order Granting Final Approval and Judgment, allowing the Court to retain jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation, and enforcement of the Final Approval Order and the Agreement. The executed Final Order and Judgment shall be posted on the Settlement Administrator's website.

XI. MISCELLANEOUS PROVISIONS

A. Mutual Full Cooperation

The Class Representative, Defendant, Class Counsel, and Defense Counsel agree to cooperate fully with each other to accomplish the terms of this Agreement, including execution of necessary documents and other such other action as may reasonably be necessary to implement the terms herein.

B. Parties' Authority

The signatories hereto represent that they are fully authorized to enter into this Agreement and bind the Class Representative, the Settlement Class, and Defendant to all terms stated herein.

C. Binding Nature of the Agreement

1. This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Released Parties. The Class Representative represents, covenants, and warrants that he has not directly or indirectly, assigned, transferred, encumbered, any of the Released Claims.

2. This Agreement shall be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding the mediation confidentiality provisions that otherwise might apply under federal or state law. Notwithstanding the foregoing, this Agreement may not be admitted into evidence or used in any proceeding except an action, motion or proceeding to approve, interpret, or enforce the terms of this Agreement.

3. Material amendments to this Agreement may be made only by a written instrument signed by Class Counsel, the Class Representatives, Defense Counsel, and Defendant. The Class Representatives and Defendant authorize their respective counsel to make any ministerial amendments or modifications to this Agreement, including formatting changes, typographic corrections, and any necessary revisions to the draft Class Notice documents attached hereto, by way of written instrument signed by Class Counsel and Defense Counsel on their respective clients' behalf. No rights under this Agreement may be waived except in writing.

D. Joint Drafting of Settlement Documents

1. Class Counsel and Defense Counsel have arrived at this Agreement through a series of informed and arm's-length negotiations, including mediation, and taking into account all relevant factors, present and potential.

2. This Agreement has been drafted jointly by Class Counsel and Defense Counsel and, therefore, in any construction or interpretation of this Agreement, the same shall not be construed against any of the Parties.

E. Confidentiality of Documents

After the expiration of any appeals period, Plaintiff, the Settlement Administrator, and Class Counsel shall maintain the confidentiality of all documents, deposition transcripts, declarations and other information obtained in the Litigation, unless necessary for appeal or such documents are ordered to be disclosed by the Court or by a subpoena.

F. Execution of the Agreement

This Agreement may be executed in one or more counterparts and by facsimile. All executed copies of this Agreement, and photocopies thereof, shall have the same force and effect and shall be as legally binding and enforceable as the original.

G. No Third-Party Beneficiaries

Plaintiff, Settlement Class Members, and Defendant are direct beneficiaries of this Agreement, but there are no third-party beneficiaries.

H. Continuing Jurisdiction

The Court shall retain jurisdiction over the implementation of this Agreement and all matters arising out of, or related to, its implementation. The Court shall not have jurisdiction to modify the terms of the Agreement without the consent of all Parties in writing.

I. Severability

In the event that any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall in no way effect any other provision if Defendant's Counsel and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

J. Disputes

Any dispute arising out of or relating to this Agreement that cannot be resolved by the Parties, other than a Miles Dispute by a class member, will be submitted to the Hon. Lisa Cole (Ret.) for resolution, including potential further mediation. If they cannot reach agreement, the Parties agree that Judge Cole is authorized to make a final and binding decision to resolve any dispute. The Parties will split the mediator's costs, and all Parties will bear their own attorneys' fees and other costs incurred. Nothing in this provision shall limit Class Counsel's ability to seek any such attorneys' fees and other costs incurred as part of the Gross Settlement Amount.

[Signatures On Next Page]

Dated: ~~February~~ July ___, 2022

CLASS REPRESENTATIVE

By: _____
Dmytro Martyniuk

Dated: July ~~February~~ ___, 2022

USKO EXPRESS, INC.

By: _____
Vlad Skots
President of USKO Express, Inc.

Dated: July ~~February~~ ___, 2022

THE KICK LAW FIRM, APC

By: _____
Taras P. Kick
~~Jeffrey C. Bills~~ Greg Taylor
Attorneys for Plaintiff

Dated: July ~~February~~ ___, 2022

MEDINA MCKELVEY LLP

By: _____
Alexander M. Medina
Kyle W. Owen
Attorneys for Defendant

EXHIBIT 3

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

DMYTRO MARTYNIUK, et al. vs. USKO EXPRESS, INC., et al.
Los Angeles County Superior Court, Case No. 20STCV07379

Admin ID: <<Admin ID>>

<<Name>>

<<Address1>>

<<Address2>>

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

Please provide current address (if different) here:

As a current or former California driver for USKO EXPRESS, INC. who worked in California from February 26, 2016 to May 23, 2022, you may be entitled to receive money from a class action settlement.

This is a Court-Ordered Notice. This is not a solicitation from a lawyer. You are receiving this Notice because you drove for USKO EXPRESS, INC. ("Defendant"), and a class action settlement has been reached on your behalf. The following summarizes the Settlement:

- A proposed settlement of \$1,550,000.00 (the "Gross Settlement Amount") will be used to pay claims to: *all current and former drivers, including but not limited to those misclassified as independent contractors or "owner operators," who performed work for Defendant in the State of California or who were residents of the State of California and performed work for Defendant in any state at any time from February 26, 2016 through May 23, 2022.*
- The settlement resolves a lawsuit entitled *DMYTRO MARTYNIUK, et al. vs. USKO EXPRESS, INC., et al.*, Los Angeles County Superior Court, Case No. 20STCV07379 (the "Lawsuit") over whether the Defendant misclassified drivers and other legal consequences that would follow from not doing so, including paying for all hours worked, providing accurate wage statements and paid all wages upon termination. This settlement avoids the costs and risks from continuing the Lawsuit, pays money to persons like you, and releases the Defendant.
- The Court has not made a determination of the validity of the claims in the Lawsuit. Defendant denies any and all liability arising from any of the claims and contends that at all relevant times it properly compensated all employees and fully complied with all applicable laws.
- Class Members will receive a payment based on the number of miles driven during the Class Period.

PLEASE READ THIS CLASS NOTICE CAREFULLY. YOUR LEGAL RIGHTS ARE AFFECTED BY IT.

YOUR ESTIMATED SETTLEMENT SHARE

According to Defendant's records, you drove a total number of <<Miles>> during the Class Period, which is from February 26, 2016 through May 23, 2022.

It is expected that your gross settlement payment before payroll taxes will be approximately <<EstISP>>

<<Because you drove a total number of <<Miles>> for Defendant during the PAGA Period from May 11, 2021 to May 23, 2022, you are also entitled to a PAGA Payment of approximately <<EstPP>>. >>

Your share(s) were calculated by dividing the number of miles you drove during the Class and/or PAGA periods and dividing it by the total number of miles driven by all participating drivers during those period(s).

Each settlement payment will be allocated as follows for tax purposes: 20% wages, 40% interest, and 40% penalties.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	If you do not do anything, you will receive a payment and give up your legal rights to pursue claims released by the settlement of the Lawsuit. If the Court grants final approval of the Settlement, the Administrator will mail your check to the address on file for you. You will have 180 days to cash the check. If you do not cash the check, the money will go to a non-profit organization approved by the Court.
OPT OUT	If you opt out, you will not receive any payment and will retain your legal rights to sue the Defendant for claims that would otherwise be released by the settlement of the Lawsuit. You may opt out by following the procedures set forth below.
OBJECT TO THE SETTLEMENT	If you do not opt out, you may write to the Settlement Administrator about why you do not like the settlement and they will forward your concerns to counsel which will then be provided to the Court. You may object by following the procedures set forth below.
DISPUTE THE WORK DAY CALCULATION	If you believe that you worked a different amount of work days in California than identified above, you may dispute that calculation by following the procedures set forth below.
ATTEND A HEARING	You have the right to attend a fairness hearing that will be conducted by the Court, but you are not required to attend. The court will hear from any class member who attends the final approval hearing and asks to speak regarding his or her objection, regardless of whether a written objection was filed. You can also send a letter to the Settlement Administrator, providing notice of your intention to appear and speak at the hearing.

IMPORTANT INFORMATION ABOUT THE PROPOSED SETTLEMENT

Why did I get this Class Notice?

You were sent this Class Notice because you have a right to know about the proposed settlement in the Lawsuit and about all of your options before the Court rules on whether to finally approve the settlement. If the Court approves the settlement, and after any objections and appeals are resolved, a “Settlement Administrator” appointed by the Court will make the payments that the settlement allows. This Class Notice explains the Lawsuit, the proposed settlement, your legal rights, and what benefits are available and how to receive them.

The Court in charge of this case is the Los Angeles County Superior Court. The person who sued is called “Plaintiff” and the organization he sued is called “Defendant.”

What is the Lawsuit about?

The Representative Plaintiff sued Defendant on behalf of all Class Members, alleging claims for (1) Failure to Provide Required Meal Periods; (2) Failure to Provide Required Rest Periods; (3) Failure to Pay Minimum Wage; (4) Failure to Pay All Wages Due to Discharged or Quitting Employees; (5) Failure to Furnish Accurate Itemized Wage Statements; (6) Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties; (7) Unlawful Deductions from Wages; and (8) Unfair and Unlawful Business Practices.

Why is there a settlement?

The parties disagree on the probable outcome of the case with respect to liability, damages, and how much money could be recovered if the Representative Plaintiff won at trial. There has been no trial in this case and the Court has not decided in favor of the Representative Plaintiff or the Defendant. Instead, both sides recognize the risks, expenses, and disruption associated with continued litigation and they have therefore chosen to resolve their differences by entering into a settlement. By doing so, the parties can avoid the risks and costs associated with continuing to fight the case. The parties entered into this settlement after arms-length negotiations while using the services of an experienced and neutral mediator. The Representative Plaintiff and Class Counsel believe that the proposed settlement is fair and reasonable and is in the best interest of the Class Members.

What should I do?

You can do nothing, and if you are entitled to a payment you will be paid. Be mindful, however, that if this Class Notice reaches you and the address where you now live is different, you need to contact the Settlement Administrator and provide updated information so that any future correspondence or the settlement check itself reaches you and is not returned as an address unknown. You also have the additional options listed below.

When would I get my payment?

The Court will hold a hearing on <<DATE AND TIME>> to decide whether to approve the proposed settlement. If the Court approves the settlement and anyone objects, there may be appeals. It is always uncertain when these objections and appeals can be resolved, and resolving them can take time. To check on the progress of the settlement, call the Settlement Administrator at <<XXX-XXX-XXXX>>, or contact Class Counsel (see below for Class Counsel's contact information.). *Please be patient.*

What am I releasing?

Upon the Court's final approval of the settlement, and except as to such rights or claims as may be created by the settlement, Plaintiff and Class Members who have not effectively opted-out of the settlement as described below, will fully release USKO Express, Inc. and all of its former or present parents, subsidiaries, successors, predecessors, affiliates, assigns, joint employers, officers, directors, employees, insurers, directors, executors, attorneys, shareholders, related corporations, profit sharing, savings, health, and other employee benefit plans of any nature, the successors of such plans, and those plans' respective current or former trustees and administrators, agents, employees, fiduciaries, and the predecessors and successors, assigns, and legal representatives of all such entities and individuals ("Released Parties") from all claims, debts, liabilities, demands, obligations, penalties, interest, wages, compensation, premium pay, guarantees, costs, expenses, attorneys' fees, damages, claims for equitable relief, actions or causes of action that arise, or could have arisen from the Lawsuit ("Released Claims"). The period of the Release shall extend to the limits of the Class Period. The *res judicata* effect of the Judgment will be the same as that of the Release.

Released Claims include all PAGA claims that could have been premised on the facts alleged in the Plaintiff's Notice to the LWDA. PAGA Members will release PAGA claims even if Class members request exclusion from the Class.

How can I opt out of this settlement?

You can opt out of this settlement and retain your rights. If you do so, you will not receive any money from the settlement, unless you are a PAGA Member. You will have 45 days from the date of initial mailing of this Class Notice to opt out of this settlement. <<If this Class Notice was re-mailed in order to reach you, you will have an additional 14 days.>> To do so, you must submit a signed letter to the Settlement Administrator, postmarked no later than <<Date>>. The Request for Exclusion must contain your name, address, telephone number, and signature. The request should indicate that you wish to opt out or be excluded from the settlement. You do not need to use any specific words to request exclusion. Mail the letter to the Settlement Administrator at [REDACTED]. Note that if you are a PAGA Member, you cannot opt out of the PAGA Portion of the settlement.

Do I have a lawyer in this case?

The Court has appointed Taras Kick and Greg Taylor of THE KICK LAW FIRM, APC., 815 Moraga Drive, Los Angeles, California 90049, to represent you and other Class Members in the Lawsuit. These lawyers are called Class Counsel. They will be compensated from the Total Settlement Amount as discussed in this Class Notice. If you want to be represented by your own lawyer, you may hire one at your own expense.

How will the lawyers be paid?

Class Counsel will ask the Court to award them fees in the amount of \$516,666.67, or up to approximately 1/3 of the Gross Settlement Amount. Class Counsel will also ask the Court to award them costs incurred in connection with the Lawsuit. The Court may choose to award less than the amount requested by Class Counsel. Other amounts to be deducted from the Gross Settlement Amount are the approved litigation costs (not to exceed \$25,000), Class Representative Service Award (\$10,000), Settlement Administration Costs (\$10,900), and PAGA Penalties (\$45,000 to LWDA and \$15,000 to PAGA Members).

How do I tell the Court that I do not like the settlement?

You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies the settlement, no settlement payments will be sent out and the Lawsuit will continue. If that is what you want to happen, you must object. You may object to the proposed settlement in writing. You will have 45 days from the date of initial mailing of this Class Notice to object to the settlement in writing. <<If this Class Notice was re-mailed in order to reach you, you will have an additional 14 days.>> The Motion will be posted on the following website: <<URL>>. To do so, you should mail a written and signed objection letter, postmarked on or before [ENTER DATE]. You must also state your reasons for objecting to the settlement. Mail your objection to the Settlement Administrator, [REDACTED]. You may also appear at the Final Approval Hearing (see info below), either in person or through your own attorney. If you appear through your own attorney, you are responsible for any costs associated with hiring your own attorney.

How do I dispute my mileage calculation?

If you believe that the number of miles you drove for Defendant as listed on the first page of this Notice is inaccurate, then you may file a dispute by must mailing a letter to the Settlement Administrator, [REDACTED], postmarked on or before [ENTER DATE], providing your name, address, and the basis for the dispute. You should include evidence showing that such information is inaccurate. Defendant may respond with any additional information or records. The Settlement Administrator may rely on Defendant's records without further foundation to perform its calculus but must give fair weight to records provided by you. The Settlement Administrator will make a recommendation and you may either accept it or reject it.

When and where will the Court decide whether to approve the settlement?

The Court will hold a fairness hearing on [ENTER DATE AND TIME] at the Los Angeles Superior Court, Spring Street Courthouse, Department 9, 312 N Spring St, Los Angeles, CA 90012. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections and they have been properly lodged, the Court will consider them. The Court will also listen to people who have asked to speak at the hearing. The Court may also decide how much to pay to Class Counsel. At or after the hearing, the Court will decide whether to approve the settlement. We do not know how long this decision will take.

Do I have to come to the hearing?

No. Class Counsel will answer any questions that the Court may have. But, you are welcome to come at your own expense. If you sent an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may appear yourself, and you may also hire your own lawyer to attend, but it is not required. You or your attorney may also appear remotely. The current COVID-19 Courthouse Protocol as of at least December 21, 2022, is as follows: face masks are strongly recommended inside all LA County courthouses in alignment with LA County Department of Public Health guidance. You can find more information on how to appear remotely as well as the Court's social distancing protocols at <https://www.lacourt.org/>. You can also find any updates on future hearing dates for this case by visiting <https://www.lacourt.org/casesummary/ui/> and typing in the case number at the top of the first page of this notice.

What happens if I do nothing at all?

You will participate in the settlement and receive payment. You will be bound by the release as set forth herein.

GETTING MORE INFORMATION

This Class Notice summarizes the proposed settlement. You may call or contact Class Counsel or the Settlement Administrator if you would like more information about the case. You may call 1-XXX-XXX-XXXX or write the Settlement Administrator, [REDACTED].

You can also access the Los Angeles Superior Court Online Case Information at <https://www.lacourt.org>.

The Settlement Administrator has also set up a website which has links to this Class Notice and other documents related to the proposed settlement, including the Settlement Agreement. The website is: [ENTER WEBSITE URL].

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

EXHIBIT 4

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

DMYTRO MARTYNIUK, et al. vs. USKO EXPRESS, INC., et al.
Los Angeles County Superior Court, Case No. 20STCV07379

Admin ID: <<Admin ID>>

<<Name>>

<<Address1>>

<<Address2>>

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

Please provide current address (if different) here:

As a current or former California driver for USKO EXPRESS, INC. who worked in California from February 26, 2016 to <<PA-Date>> May 23, 2022, you may be entitled to receive money from a class action settlement.

This is a Court-Ordered Notice. This is not a solicitation from a lawyer. You are receiving this Notice because you drove for USKO EXPRESS, INC. ("Defendant"), and a class action settlement has been reached on your behalf. The following summarizes the Settlement:

- A proposed settlement of \$1,550,000.00 (the "Gross Settlement Amount") will be used to pay claims to: *all current and former drivers, including but not limited to those misclassified as independent contractors or "owner operators," who performed work for Defendant in the State of California or who were residents of the State of California and performed work for Defendant~~s~~ in any state at any time from February 26, 2016 through May 23, 2022<<PA-Date>>.*
- The settlement resolves a lawsuit entitled *DMYTRO MARTYNIUK, et al. vs. USKO EXPRESS, INC., et al.*, Los Angeles County Superior Court, Case No. 20STCV07379 (the "Lawsuit") over whether the Defendant misclassified drivers and other legal consequences that would follow from not doing so, including paying for all hours worked, providing accurate wage statements and paid all wages upon termination. This settlement avoids the costs and risks from continuing the Lawsuit, pays money to persons like you, and releases the Defendant.
- The Court has not made a determination of the validity of the claims in the Lawsuit. Defendant denies any and all liability arising from any of the claims and contends that at all relevant times it properly compensated all employees and fully complied with all applicable laws.
- Class Members will receive a payment based on the number of miles driven during the Class Period.

PLEASE READ THIS CLASS NOTICE CAREFULLY. YOUR LEGAL RIGHTS ARE AFFECTED BY IT.

YOUR ESTIMATED SETTLEMENT SHARE

According to Defendant's records, you drove a total number of <<Miles>> during the Class Period, which is from February 26, 2016 through May 23, 2022.

It is expected that your gross settlement payment before payroll taxes will be approximately <<EstlSP>>

<<Because you drove a total number of <<Miles>> for Defendant during the PAGA Period from <<PAGA start>> May 11, 2021 to May 23, 2022<<PAGA end>>, you are also entitled to a PAGA Payment of approximately <<EstPP>>. >>

Your share(s) were calculated by dividing the number of miles you drove during the Class and/or PAGA periods and dividing it by the total number of miles driven by all participating drivers during those period(s).

Each settlement payment will be allocated as follows for tax purposes: 20% wages, 40% interest, and 40% penalties.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	If you do not do anything, you will receive a payment and give up your legal rights to pursue claims released by the settlement of the Lawsuit. If the Court grants final approval of the Settlement, the Administrator will mail your check to the address on file for you. You will have 180 days to cash the check. If you do not cash the check, the money will go to a non-profit organization approved by the Court.
OPT OUT	If you opt out, you will not receive any payment and will retain your legal rights to sue the Defendant for claims that would otherwise be released by the settlement of the Lawsuit. You may opt out by following the procedures set forth below.
OBJECT TO THE SETTLEMENT	If you do not opt out, you may write to the Settlement Administrator about why you do not like the settlement and they will forward your concerns to counsel which will then be provided to the Court. You may object by following the procedures set forth below.
DISPUTE THE WORK DAY CALCULATION	If you believe that you worked a different amount of work days in California than identified above, you may dispute that calculation by following the procedures set forth below.
ATTEND A HEARING	You have the right to attend a fairness hearing that will be conducted by the Court, but you are not required to attend. <u>The court will hear from any class member who attends the final approval hearing and asks to speak regarding his or her objection, regardless of whether a written objection was filed.</u> Regardless of whether you timely file and serve a written objection, you may ask to speak about your objection at the hearing. You can also send a letter to the Settlement Administrator, providing notice of your intention to appear and speak at the hearing.

IMPORTANT INFORMATION ABOUT THE PROPOSED SETTLEMENT

Why did I get this Class Notice?

You were sent this Class Notice because you have a right to know about the proposed settlement in the Lawsuit and about all of your options before the Court rules on whether to finally approve the settlement. If the Court approves the settlement, and after any objections and appeals are resolved, a “Settlement Administrator” appointed by the Court will make the payments that the settlement allows. This Class Notice explains the Lawsuit, the proposed settlement, your legal rights, and what benefits are available and how to receive them.

The Court in charge of this case is the Los Angeles County Superior Court. The person who sued is called “Plaintiff” and the organization he sued is called “Defendant.”

What is the Lawsuit about?

The Representative Plaintiff sued Defendant on behalf of all Class Members, alleging claims for (1) Failure to Provide Required Meal Periods; (2) Failure to Provide Required Rest Periods; (3) Failure to Pay Minimum Wage; (4) Failure to Pay All Wages Due to Discharged or Quitting Employees; (5) Failure to Furnish Accurate Itemized Wage Statements; (6) Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties; (7) Unlawful Deductions from Wages; and (8) Unfair and Unlawful Business Practices.

Why is there a settlement?

The parties disagree on the probable outcome of the case with respect to liability, damages, and how much money could be recovered if the Representative Plaintiff won at trial. There has been no trial in this case and the Court has not decided in favor of the Representative Plaintiff or the Defendant. Instead, both sides recognize the risks, expenses, and disruption associated with continued litigation and they have therefore chosen to resolve their differences by entering into a settlement. By doing so, the parties can avoid the risks and costs associated with continuing to fight the case. The parties entered into this settlement after arms-length negotiations while using the services of an experienced and neutral mediator. The Representative Plaintiff and Class Counsel believe that the proposed settlement is fair and reasonable and is in the best interest of the Class Members.

What should I do?

You can do nothing, and if you are entitled to a payment you will be paid. Be mindful, however, that if this Class Notice reaches

you and the address where you now live is different, you need to contact the Settlement Administrator and provide updated information so that any future correspondence or the settlement check itself reaches you and is not returned as an address unknown. You also have the additional options listed below.

When would I get my payment?

The Court will hold a hearing on <<DATE AND TIME>> to decide whether to approve the proposed settlement. If the Court approves the settlement and anyone objects, there may be appeals. It is always uncertain when these objections and appeals can be resolved, and resolving them can take time. To check on the progress of the settlement, call the Settlement Administrator at <<XXX-XXX-XXXX>>, or contact Class Counsel (see below for Class Counsel's contact information.). *Please be patient.*

What am I releasing?

Upon the Court's final approval of the settlement, and except as to such rights or claims as may be created by the settlement, Plaintiff and Class Members who have not effectively opted-out of the settlement as described below, will fully release USKO Express, Inc. and all of its former or present parents, subsidiaries, successors, predecessors, affiliates, assigns, joint employers, officers, directors, employees, insurers, directors, executors, attorneys, shareholders, related corporations, profit sharing, savings, health, and other employee benefit plans of any nature, the successors of such plans, and those plans' respective current or former trustees and administrators, agents, employees, fiduciaries, and the predecessors and successors, assigns, and legal representatives of all such entities and individuals ("Released Parties") from all claims, debts, liabilities, demands, obligations, penalties, interest, wages, compensation, premium pay, guarantees, costs, expenses, attorneys' fees, damages, claims for equitable relief, actions or causes of action that arise, or could have arisen from the Lawsuit ("Released Claims"). The period of the Release shall extend to the limits of the Class Period. The *res judicata* effect of the Judgment will be the same as that of the Release.

Released Claims include all PAGA claims that could have been premised on the facts alleged in the Plaintiff's Notice to the LWDA. PAGA Members will release PAGA claims even if Class members request exclusion from the Class.

How can I opt out of this settlement?

You can opt out of this settlement and retain your rights. If you do so, you will not receive any money from the settlement, unless you are a PAGA Member. You will have 30-45 days from the date of initial mailing of this Class Notice to opt out of this settlement. <<If this Class Notice was re-mailed in order to reach you, you will have an additional 14 days.>> To do so, you must submit a signed letter to the Settlement Administrator, postmarked no later than <<Date>>. The Request for Exclusion must contain your name, address, telephone number, and signature. The request should indicate that you wish to opt out or be excluded from the settlement. You do not need to use any specific words to request exclusion. state to the effect of: "I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE VARIAN V. AFC TRANSPORT LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT, I WILL NOT RECEIVE ANY MONEY FROM THE CLASS SETTLEMENT OF THIS LAWSUIT AND WILL NOT BE RELEASING ANY CLAIMS I MIGHT HAVE." Mail the letter to the Settlement Administrator at [REDACTED]. Note that if you are a PAGA Member, you cannot opt out of the PAGA Portion of the settlement.

Do I have a lawyer in this case?

The Court has appointed Taras Kick ~~and Karen Wallace, and Sam Vahedi~~ Greg Taylor of THE KICK LAW FIRM, APC., 815 Moraga Drive, Los Angeles, California 90049, ~~telephone (310) 395-2988~~ to represent you and other Class Members in the Lawsuit. These lawyers are called Class Counsel. They will be compensated from the Total Settlement Amount as discussed in this Class Notice. If you want to be represented by your own lawyer, you may hire one at your own expense.

How will the lawyers be paid?

Class Counsel will ask the Court to award them fees in the amount of \$516,666.67, or up to approximately 1/3 of the Gross Settlement Amount. Class Counsel will also ask the Court to award them costs incurred in connection with the Lawsuit. The Court may choose to award less than the amount requested by Class Counsel. Other amounts to be deducted from the Gross Settlement Amount are the approved litigation costs (not to exceed \$25,000), Class Representative Service Award (\$10,000), Settlement Administration Costs (\$10,900), and PAGA Penalties (\$45,000 to LWDA and \$15,000 to PAGA Members).

How do I tell the Court that I do not like the settlement?

You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies the settlement, no settlement payments will be sent out and the Lawsuit will continue. If that is what you want to happen, you must object. You may object to the proposed settlement in writing.

You will have ~~15-45~~ days from the date of initial mailing of this Class Notice ~~Plaintiff files a Motion for Final Approval of the settlement~~ to object to the settlement in writing. <<If this Class Notice was re-mailed in order to reach you, you will have an additional 14 days.>> The Motion will be posted on the following website: <<URL>>. To do so, you should mail a written and signed objection letter, postmarked on or before **[ENTER DATE]**. You must also state your reasons for objecting to the settlement. Mail your objection to the Settlement Administrator, **[REDACTED]**. You may also appear at the Final Approval Hearing (see info below), either in person or through your own attorney. If you appear through your own attorney, you are responsible for any costs associated with hiring your own attorney.

How do I dispute my mileage calculation?

If you believe that the number of miles you drove for Defendant as listed on the first page of this Notice is inaccurate, then you may file a dispute by must mailing a letter to the Settlement Administrator, **[REDACTED]**, postmarked on or before **[ENTER DATE]**, providing your name, address, and the basis for the dispute. You should include evidence showing that such information is inaccurate. Defendant may respond with any additional information or records. The Settlement Administrator may rely on Defendant's records without further foundation to perform its calculus but must give fair weight to records provided by you. The Settlement Administrator will make a recommendation and you may either accept it or reject it.

When and where will the Court decide whether to approve the settlement?

The Court will hold a fairness hearing on **[ENTER DATE AND TIME]** at the Los Angeles Superior Court, Spring Street Courthouse, Department 9, 312 N Spring St, Los Angeles, CA 90012. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections and they have been properly lodged, the Court will consider them. The Court will also listen to people who have asked to speak at the hearing. The Court may also decide how much to pay to Class Counsel. At or after the hearing, the Court will decide whether to approve the settlement. We do not know how long this decision will take.

Do I have to come to the hearing?

No. Class Counsel will answer any questions that the Court may have. But, you are welcome to come at your own expense. If you sent an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may appear yourself, and you may also hire your own lawyer to attend, but it is not required. You or your attorney may also appear remotely. The current COVID-19 Courthouse Protocol as of at least December 21, 2022, is as follows: face masks are strongly recommended inside all LA County courthouses in alignment with LA County Department of Public Health guidance. You can find more information on how to appear remotely as well as the Court's social distancing protocols at <https://www.lacourt.org/>. You can also find any updates on future hearing dates for this case by visiting <https://www.lacourt.org/casesummary/ui/> and typing in the case number at the top of the first page of this notice.

What happens if I do nothing at all?

You will participate in the settlement and receive payment. You will be bound by the release as set forth herein.

GETTING MORE INFORMATION

This Class Notice summarizes the proposed settlement. You may call or contact Class Counsel or the Settlement Administrator if you would like more information about the case. You may call **1-XXX-XXX-XXXX** or write the Settlement Administrator, **[REDACTED]**.

You can also access the Los Angeles Superior Court Online Case Information at <https://www.lacourt.org>.

The Settlement Administrator has also set up a website which has links to this Class Notice and other documents related to the proposed settlement, including the Settlement Agreement. The website is: **[ENTER WEBSITE URL]**.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

EXHIBIT 5

(Exhibit 5 to be added after LWDA
submission confirmation is received)

EXHIBIT 6

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

**FINAL RULINGS/ORDERS RE: MOTION FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT; ADDENDUM (checklist)**

JUL 27 2022

Dmytro Martyniuk (formerly Matthew Hallowell) v. USKO Express
Inc., et al., Case No.: 20STCV07379

By: Roxanne Araiza, Deputy
Clerk of Court

The Parties' Motion for Preliminary Approval of Class Action Settlement set for July 27, 2022, is **CONTINUED** to the Court's first available date of **January 11, 2023**, 10 a.m., Department 9. All counsel ordered to appear.

The parties are ordered to address the items listed in the attached addendum (checklist).

Supplemental papers to be filed and served by **December 21, 2022**.

Non-Appearence Case Review is set for **December 28, 2022**, 8:30 a.m., Department 9.

CLERK TO GIVE NOTICE TO MOVING PARTY. THE MOVING PARTY TO GIVE NOTICE TO ALL OTHER PARTIES.

IT IS SO ORDERED.

DATED: July 27, 2022

YVETTE M. PALAZUELOS

YVETTE M. PALAZUELOS
JUDGE OF THE SUPERIOR COURT

ADDENDUM/ (checklist)

The purpose of this checklist is to provide direction on what information and argument the court requires to grant a motion for preliminary approval. The court urges the moving parties to carefully review the checklist and fully comply with each item that applies to your case. The court requests the content of the motion follow the same order as this checklist, since that is how the judge and research attorney review the motion.

You should also consider using the form wage and hour settlement agreements now available on the court's website at <https://www.lacourt.org/forms/all> – "Civil Forms" section. With input and unanimous consensus from an Ad Hoc Wage and Hour Committee (chaired by Judge Hogue and Judge Cunningham and comprised of 8 plaintiff's attorneys and 8 defense attorneys), the court has posted: (1) a form class action settlement agreement, (2) a form class action/PAGA settlement agreement, (3) and a form PAGA settlement agreement. Using these forms should cut down on attorney negotiation time and reduce the lag time between a successful mediation and execution of a long form agreement. Filing a motion that is based on a form agreement and includes a redlined copy identifying modifications will also expedite the court's review process and help reduce the current backlog on hearings. These forms are encouraged but entirely optional.

I. MOVING PAPERS (Motion and Declarations)

All facts submitted for the court to consider must be provided in the form of a declaration or other admissible evidence. The court will not consider facts stated only in the motion.

A. Introductory Information

☐ Summary of the litigation, including identity of the parties, brief procedural history, claims asserted, and general factual basis for the claims.

B. Dunk/Kullar Analysis

☐ Summary of the case, including the legal and factual basis for each claim. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133 (*Kullar*); *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409.)

☐ Summary of the investigation and discovery conducted, including the specific documents reviewed prior to agreeing to settle the case. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802, as modified Sept. 30, 1996 (*Dunk*).) If counsel's analysis was informed by a data sample, show that the sample is statistically reliable.

☐ Summary of settlement negotiations, including when the settlement was reached, and whether the parties were assisted by a mediator. (*Dunk, supra*, 48 Cal.App.4th at p. 1802.)

- ☐ A summary of the risks, expenses, complexity, and duration of further litigation if the settlement is not approved.
- ☐ A summary of the risks of achieving and maintaining class action status.
- ☐ Specific information sufficient for the court to make an independent determination that the consideration being received for the release of class members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation. (*Kullar, supra*, 168 Cal.App.4th at 129.) This discussion should specify the maximum realistic recovery of each claim asserted in the operative complaint, defenses asserted by Defendant, and any other relevant factors justifying the amount offered in settlement. If the settlement is predicated on a payment plan or is predicated on defendant's financial situation, admissible evidence of Defendant's financial situation should be provided, including appropriate financial documents such as a balance sheet, statement of cash flows, profit and loss statement, and the like.
- ☐ If approval of the settlement of class claims is requested together with approval of non-class claims (such as claims under the Labor Code's Private Attorney General Act (PAGA)) discuss why the amount allocated to the non-class claims is fair to those affected. See *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77 (*Moniz*).

C. Class Certification

- ☐ Numerosity: Total number of members in the settlement class and number of members in each sub-class (if applicable).
- ☐ Ascertainability: The manner by which members of the class will be identified and when. (*Noel v. Thrifty Payless* (2019) 7 Cal.5th 955.)
- ☐ Community of Interest: Discuss specific facts showing that the proposed class representatives have claims or defenses typical of the class and can adequately represent the class. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)
- ☐ Adequacy:

Class Counsel: A summary of Class Counsels' experience and a listing of all prior cases in which each named Class Counsel has been approved by a court to act as lead or co-counsel. (See *Dunk, supra*, 48 Cal.App.4th at p. 1802.)

Class Representative(s): Provide evidence that each proposed class representative has agreed to act as same and understands his or her responsibilities. (See *Soderstedt v. CBIZ Southern California, LLC* (2011) 197 Cal.App.4th 133, 155-156; *Jones v. Farmers Ins. Exchange* (2013) 221 Cal.App.4th 986, 998-999).

D. Claim Requirement (if applicable)

☐ If class members are required to submit a claim to receive compensation, explain why a claim form is necessary and either 1) provide an estimate of the anticipated claims rate or 2) provide an explanation why a claims rate cannot be provided.

☐ Provide a detailed explanation why a “claims made” settlement is appropriate in this case.

☐ Indicate what actions class counsel will take to encourage claim submission.

☐ Explain why the claims process is not so burdensome that relief would be inaccessible to class members (if applicable).

E. Miscellaneous

☐ If appropriate, explain why the settlement includes terms that are outside the scope of the operative complaint. (*Trotsky v. Los Angeles Fed. Savings & Loan Assn.* (1975) 48 Cal.App.3d 134, 148.) If approval of settlement of a PAGA claim is requested provide a copy of Plaintiff’s notice letter to the LWDA.

☒ **If notice will be given in English only, explain why this is sufficient.**

☐ A statement of any affirmative obligations to be undertaken by the class member or class counsel and the reason for such obligations.

☐ Provide information regarding any fee splitting agreement and whether the client has given written approval. (*Mark v. Spencer* (2008) 166 Cal.App.4th 219; Rules Prof. Conduct, rule 1.5.1; Cal. Rules of Court, rule 3.769.)

☐ Any agreement that has injunctive relief against a class representative generally is not appropriate in a class action case. Provide the authority and factual reasons why this case is an exception. See *Moniz, supra*, 72 Cal.App.5th at 84. (“[T]he preclusive effect of a prior judgment is determined by the court in which it is asserted, not the court that rendered it.” (*Fireside Bank Cases* (2010) 187 Cal.App.4th 1120, 1131 [115 Cal. Rptr. 3d 80].))

☐ Explanation as to why any class representative enhancement is reasonable, including what the class representative did beyond the expected services of any class representative. (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412; *Radcliffe v. Experian Information Solutions Inc.* (9th Cir. 2013) 715 F.3d 1157, 1165.) In PAGA settlements explanation should be provided as to why an incentive award is appropriate.

SETTLEMENT AGREEMENT

The settlement agreement should address the following:

A. The Basics

☒ **Class definition.** If a PAGA representative action is settled with a proposed Class Settlement consider whether there should be separate definitions for Class Members and Aggrieved Employees.

- The Settlement Class definition at ¶1.21 is vague, and inconsistent with the more adequate definition provided at Notice pg. 1 (first bullet point paragraph, italicized language). Please resolve.
- Why is it proper that PAGA employees and the PAGA period are not defined separately? Furthermore, the term “PAGA Members” is used at ¶VIII.C.1. but not defined.

☒ **Class and Release Period:** ~~If the class and release periods extend beyond the preliminary approval explain why this is appropriate.~~

- The Court would prefer a specific end date for the Class Period be provided rather than the reference to “90 days after full execution of the long-form settlement agreement.” See ¶I.4.

B. Release of Claims

☒ **Scope:** The scope of any release given by class members must be defined with precision and clarity. Any released claims not presented directly in the operative complaint should be based on the facts alleged in the operative complaint. (See *Amaro v. Anaheim Arena Mgmt.* (2021) 69 Cal. App. 5th 521, 537 and FN. 5; *Uribe v. Crown Building Maintenance Co.* 70 Cal. App. 5th 986, 1005.)

- Modify the release of claims (¶VI.1) to specify that Class Members will only release claims alleged in, or arising out of facts asserted in, the operative First Amended Complaint.

☒ **Class cases which include a PAGA claim should have a separate release for the PAGA claim tied to the facts alleged in the notice given to the LWDA. *Id.***

☒ **If PAGA and Class Settlement:** The Release should provide an explanation that released claims include all PAGA claims that could have been premised on the facts alleged in the Plaintiff’s Notice and aggrieved employees will release PAGA claims even if class members request exclusion from the class. See *Robinson v. Southern Counties Oil Co.* (2020) 53 Cal.App.5th 476.

☐ A Civil Code section 1542 waiver is generally not appropriate in a class action case as to the putative class members (if applicable). Provide the authority and factual reasons why this case is an exception. (*Israel-Curley v. California Fair Plan* (2005) 126 Cal.App.4th 123, 129; *Salehi v. Surfside III Condominium Owners’ Assn.* (2011) 200 Cal.App.4th 1146, 1159–1161.)

☒ Release Effective Date: Indicate the point in time at which the release will be deemed effective as to the absent class members. If the release will be effective before settlement funds are paid, explain why this is in the best interest of the class.

- **Modify the effective date of the releases to be the date on which Defendant fully funds the settlement. See §§ VI.1, VI.2.**

☒ Class Data: If there are confidentiality provisions, explain why they are in the best interest of the Class and whether they will impede Class Counsel's ability to discharge fiduciary duties.

- **See §VII.C.**

C. Monetary Terms of Settlement

☐ Settlement Amount: Indicate the amount of the gross settlement, how and when the settlement will be paid, and information regarding payment plan, if any. If a class claim is being settled with a PAGA claim the amounts allocated should be separated and paid only to the aggrieved employees.

☒ Deductions from the settlement fund: Indicate the amounts to be deducted from the gross settlement for attorneys' fees and costs, plaintiff incentive awards, administrative costs, PAGA payment and allocation of award to LWDA and the parties, and any other existing deductions.

- **Specific amounts for attorney's fees, attorney's costs, and settlement administration costs must be provided in the terms of the Settlement Agreement.**
- **All estimated deductions from the settlement fund must also be disclosed to the Class in the Notice.**

☐ If there are subclasses, explain why the monetary distribution is fair to each subclass. Ensure there is a class representative who fits the definition of each subclass.

☐ Information about how attorney fees will be calculated. The percentage method, with or without a lodestar cross-check, may be used in common fund cases. (*Laffitte v. Robert Half Internat., Inc.* (2016) 1 Cal.5th 480, 503.) In other cases, counsel should fully brief how the fees are calculated.

☐ If wages are involved, explain how Defendant's share of taxes will be paid.

☐ Whether, and under what circumstances, amounts may revert to Defendant, and a justification for such reversion (if applicable). (*Cundiff v. Verizon California, Inc.* (2008) 167 Cal.App.4th 718, 728–729.)

☒ **Payment Formula: Amount and manner of distribution of the compensation to each class member, including the estimated amount each class member will receive and the timeline on which payments will be issued.**

- **Provide a separate payment formula for the calculation of PAGA penalties to be paid to PAGA Members, considering the PAGA statute's applicable statute of limitations.**

☐ Tax allocation of settlement payments.

☐ Nature of injunctive relief (if any), and valuation of such relief.

D. Notice Administration

The following issues regarding notice administration should be addressed in the settlement agreement. A copy of the proposed notice must be attached to the settlement agreement as an exhibit.

☒ **Indicate the administrator for the settlement and why the bid for administration is fair.**

☒ **Provide the qualifications and experience of the Administrator, including evidence that the settlement administrator has procedures in place to protect the security of class data and adequate insurance in the event of a data breach or defalcation of funds.**

☐ Indicate how/when the administrator will receive the class list.

☐ Indicate whether the list will be updated by the administrator prior to the initial mailing by use of National Change of Address Registry.

☐ Provide the deadline for the initial issuance of notice to class members.

☒ **Ensure the content of the notice complies with California Rules of Court, rule 3.766(d). In wage and hour cases the notice should indicate the specific amount the class member will receive and how that amount was calculated. A separate breakdown for PAGA payments should be provided. The terms of the release(s) should be reflected in the Notice.**

☒ **Ensure the notice accurately reflects the Court's current social distancing procedures for attendance at hearings and review of court files. (Counsel should check the Court website for most current information.)**

☐ Indicate how and when payments will be processed.

☐ Indicate how notices returned to the administrator as undeliverable will be handled.

☒ Explain how re-mailed notices, if any, will be handled. Will class members who receive re-mailed notices be given an extended deadline to respond (i.e., opt-out, object, and dispute workweeks)?

☐ Explain how notice of any change of the date or location of the will hearing be given.

☐ Indicate whether there will be a settlement website. If so, provide the URL.

☐ If publication notice will be given indicate the timing, locations, and manner by which publication notice will be disseminated.

☒ Explain how notice of final judgment will be given to the class. (Cal. Rules of Court, rule 3.771(b)) (e.g. Posted on claims administrator's website.)

E. Responses to Notice

☐ Description of the procedures for submitting written objections, requests for exclusion, claim forms (if applicable) and disputes to estimated payments.

☒ Indicate the deadline to submit objections, requests for exclusion, claim forms (if applicable), and/or disputes to workweeks. Confirm the deadline is reasonable and that class members who receive re-mailed notices will be given an extension.

- The deadline to submit requests for exclusion, written objections, and/or disputes to workweeks should be a date 45 or more days from the date on which notice is initially mailed. Also, the term "Response Deadline" is used at ¶VIII.D.6 but not defined.

☐ The objection procedure the same as the opt-out procedure, with the only requirement being that objections be mailed to the settlement administrator and not filed with the court.

☒ Do not include language indicating that class members may only be heard at final approval if they have complied with all objection procedures or that they must use specific language to request exclusion, or, if a specific procedure is sought, explain why it is necessary. In general, the court will hear from any class member who attends the final approval hearing and asks to speak regarding his or her objection.

- Remove any requirement or implication that Class Members must use specific language to request exclusion. See Notice pg. 3.
- Make clear that the court will hear from any class member who attends the final approval hearing and asks to speak regarding his or her objection, regardless of whether a written objection was submitted.

F. Cy Pres Distribution

☐ Indicate the length of time from issuance for which settlement checks will remain valid.

☐ Identify the fund to which uncashed checks will be directed and detail the steps that will be taken to ensure compliance with Code of Civil Procedure section 384. The Court's Omnibus Trailer Bill of 2018 replaced the language of the prior statutory distribution scheme under Code of Civil Procedure, section 384 with a requirement that the Court re-open judgments following the final distribution of funds to include the cy pres in the judgment and to include the unclaimed amount, plus an unspecified amount of interest. Such information should be actively contemplated/provided for within the current terms of the settlement.

☒ Explain why the cy pres distribution fills the purposes of the lawsuit or is otherwise appropriate. (*State of California v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 472; *In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 722; *Nachshin v. AOL, Inc.* (9th Cir. 2011) 663 F.3d 1034, 1038–1041; *Dennis v. Kellogg Co.* (9th Cir. 2012) 697 F.3d 858, 865; Code Civ. Proc., § 384.)

☒ Provide declarations disclosing the interest or involvement (or lack thereof) by any counsel or party in the governance or work of the cy pres recipient.

G. MISCELLANEOUS

☒ Assure the Settlement Agreement and Notice are consistent and that the Settlement Agreement has been signed by all parties and counsel. Carefully proofread both.

☐ The Settlement Agreement and paperwork derivative thereof should not suggest that the end result of court approval will be dismissal of the Action with prejudice or entry of a Final Judgment and Order dismissing with prejudice all claims. See California Rules of Court, rule 3.769(h).

III. EXHIBITS TO THE MOTION

☒ Provide proof of submission of the proposed settlement agreement to the LWDA. (Lab. Code, § 2699, subd. (l)(2).)

- This also applies to any further revised versions of the settlement agreement.

☐ Include a proposed Judgment, which should not include a dismissal or any findings not contained in the Final Approval Order. (Cal. Rules of Court, rule 3.769(h).)

☐ All exhibits should be bookmarked, as set forth in the Presiding Judge's First Amended General Order of May 3, 2019 re: Electronic Filing, available on the Court website.

If the Settlement Agreement is modified pursuant to this checklist, please submit both a red-lined copy showing changes made as well as a final version signed by all parties. Do not submit an addendum in lieu of a full amended settlement agreement including all operative settlement terms.

Modify Notice to match any alterations to the Settlement Agreement.