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6 Attorneys for Plaintiff DMYTRO
MARTYNIUK, individually, and on behalf of all
7 others similarly situated

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **CENTRAL DISTRICT — SPRING STREET COURTHOUSE**

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

13 Plaintiff,

14 vs.

15 USKO EXPRESS, INC., a California
16 Corporation; and DOES 1 through 100, inclusive.

17 Defendants.

Case No.: 20STCV07379

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

COMPLEX CLASS ACTION

**DECLARATION OF TARAS KICK IN
SUPPORT OF PLAINTIFF'S UNOPPOSED
MOTION FOR FINAL APPROVAL OF
CLASS AND PAGA ACTION SETTLEMENT**

Date: June 29, 2023
Time: 10:00 a.m.
Dept: 9

Complaint filed: February 26, 2020
FAC filed: May 11, 2022
Trial date: None set

1 I, Taras Kick, declare:

2 1. I am an attorney licensed to practice before all courts of the State of California and a
3 shareholder with The Kick Law Firm, APC. The Kick Law Firm, APC represents the named plaintiff and
4 the preliminarily certified class in this matter. The following is based on my personal knowledge, and, if
5 called as a witness, I could and would testify competently thereto.

6 2. I have been a member of the California State Bar since 1989, the year I graduated from the
7 University of Pennsylvania Law School. Prior to that, in 1986, I graduated from Swarthmore College,
8 from which I earned a Bachelor of Arts degree in Economics and Psychology. I have served as class
9 counsel in numerous national and California state class actions, including being appointed lead counsel
10 and a member of plaintiffs' executive committees. From 2012 to September 2017, I was a Commissioner
11 of the California Law Revision Commission, an independent state agency created by statute in 1953 to
12 assist the Legislature and Governor by examining California law and recommending needed reforms,
13 having been appointed by Governor Edmund G. Brown Jr. in 2012, and was Chairperson of the
14 Commission from September 2015 through September 2016 (although my role in this case is independent
15 of any aspect of my duties with the Commission and does not reflect one way or the other any positions
16 of the Commission). For over five years I was a member of the national Board of Directors of Public
17 Justice, including its Class Action Preservation Committee. I am or have been a member of numerous
18 other committees pertaining to consumer class actions, including the American Association for Justice
19 Class Action Litigation Sub-Group; the Consumer Attorneys of California Class Action Group; the
20 American Bar Association Committee on Class Actions & Derivative Suits; and, the State Bar of
21 California Antitrust and Unfair Competition Litigation section. The Kick Law Firm, APC primarily
22 represents plaintiffs in wage and hour and consumer class actions.

23 3. The class action cases in which this firm has been appointed either as lead counsel, or as
24 co-lead counsel, include the following: *Polar v. Button Transportation, Inc., et al.*, Los Angeles County
25 Superior Court Case No. 21STCV02575, assigned to Hon. Carolyn B. Kuhl (class and representative
26 PAGA action, final approval granted May 31, 2023); *Salter v. Quality Carriers, Inc.*, U.S. District Court
27 for the Central District of California Case No: 2:20-cv-00479-JFW-JPRx, assigned to Hon. John F. Walter

(class and representative PAGA action, final approval granted March 27, 2023); *Eaton v. Cavalia (USA) Inc., et al.*, San Francisco County Superior Court, Case No. CGC-19-579421, assigned to Hon. Richard B. Ulmer (class and representative PAGA action, final approval granted November 21, 2022); *Johnson v. Randy Taylor Consulting, LLC, et al.*, Los Angeles County Superior Court Case No. 21SMCV00156, assigned to Hon. Helen Zukin, SSC-207 (class and representative PAGA action, final approval granted November 2, 2022); *In Re Southern California Gas Leak Cases*, Judicial Council Coordinated Proceeding No. 4861, assigned to Hon. Daniel J. Buckley, Coordination Trial Judge, Dept. SSC-1 (co-lead counsel and member of the class action steering committee, final approval granted April 29, 2022); *Samano v. Deleons Transport Inc.*, Los Angeles County Superior Court, Case No. 19STCV44589, assigned for all purposes to Hon. Elihu M. Berle (class and representative PAGA action; final approval granted January 22, 2022); *Johnson, et al., v. Angel View*, San Bernardino County Superior Court, Case No. CIVDS1935378 (class and representative PAGA action; final approval granted November 18, 2021); *Imperial Wage And Hour Cases*, San Bernardino County Superior Court, Case No. JCPDS5130 (class and representative PAGA action; final approval granted November 2, 2021); *Metzke v. Thermo Fisher Scientific, Inc.*, San Francisco County Superior Court, Case No. CGC-19-581914 (class and representative PAGA action; final approval granted October 28, 2021); *Story v. SEFCU*, United States District Court for the Northern District of New York, Case No. 1:18-cv-00764 (an overdraft fee class action, final approval granted on February 25, 2021); *Daves, et al. v. Amadeus Waterawys, Inc.*, Los Angeles County Superior Court, Case No. 19STCV25203, assigned for all purposes to Hon. Ann I. Jones (wage & hour class action; final approval granted January 8, 2021); *Smith v. Bank of Hawaii*, United States District Court for the District of Hawaii, Case No. 1:16-cv-00513 (an overdraft fee class action, final approval granted on December 22, 2020); *Coleman-Weathersbee v. Michigan State University Federal Credit Union*, United States District Court for the Eastern District of Michigan, Case No. 2:19-cv-11674 (an overdraft fee class action, final approval granted on July 29, 2020); *Walker v. People's United Bank*, United States District Court for the District of Connecticut, Case No. 3:17-cv-00304 (an overdraft fee class action, final approval granted on June 29, 2020); *Salls v. Digital Federal Credit Union*, United States District Court for the District of Massachusetts, Case. No. 18-cv-11262-TSH (an overdraft fee class action, final approval

1 granted in January 2020); *Pingston-Poling v. Advia Credit Union*, United States District Court for the
2 Western District of Michigan, Case No. 1:15-CV-1208 (an overdraft fee class action, final approval
3 granted in January 2020); *Lloyd v. Navy Federal Credit Union*, United States District Court for the
4 Southern District of California, Case No. 3:17-cv-01280 (an overdraft fee class action, final approval
5 granted May 18, 2019); *Ketner v. SECU Maryland*, Civil No.:1:15-CV-03594-CCB (D. MD. 2017) (an
6 overdraft fee class action, final approval granted January 11, 2018); *Towner v. 1st MidAmerica Credit*
7 *Union*, No. 3:15-cv-1162 (S.D. Ill. 2017) (an overdraft fee class action, final approval granted in
8 November 2017); *Lane v. Campus Federal Credit Union*, Case No. 3:16-cv-00037 (M.D. La. 2017) (an
9 overdraft fee class action, final approval granted in August 2017); *Fry v. MidFlorida Credit Union*, United
10 States District Court for the Middle District of Florida, Case No. 8:15-CV-2743 (an overdraft fee class
11 action, final approval granted); *Ramirez v. Baxter Credit Union*, United States District Court for the
12 Northern District of California, Case No. 16-cv-03765-SI (an overdraft fee class action, final approval
13 granted); *Lynch v. San Diego County Credit Union*, San Diego County Superior Court, Case No. 37-2015-
14 00008551 (an overdraft fee class action, final approval granted); *Gunter v. United Federal Credit Union*,
15 United States District Court for the District of Nevada, Case No. 3:15-cv-00483-MMD-WGC (an
16 overdraft fee class action, final approval granted); *Hernandez v. Point Loma Credit Union*, San Diego
17 County Superior Court, Case No. 37-2013-00053519 (an overdraft fee class action, final approval
18 granted); *Gray v. Los Angeles Federal Credit Union*, Los Angeles County Superior Court, Case No.
19 BC625500 (an overdraft fee class action, final approval granted in); *Morales v. Kern Schools Federal*
20 *Credit Union*, Kern County Superior Court, Case No. BCV-15-100538 (an overdraft fee class action, final
21 approval granted in June 2017); *Manwaring v. Golden 1 Credit Union*, Sacramento County Superior
22 Court, Case No. 34-2013-00142667 (an overdraft fee class action, final approval granted); *Casey v.*
23 *Orange County Credit Union*, Orange County Superior Court No. 30-2013-00658493-CJ-BT-CXC (an
24 overdraft fee class action, final approval granted); *Sewell v. Wescom Credit Union*, Los Angeles County
25 Superior Court No. BC5860 (an overdraft fee class action, final approval granted); *Fernandez v. Altura*
26 *Credit Union*, Riverside County Superior Court, Case No. RIC1610873 (an overdraft fee class action,
27 final approval granted); *Hernandez v. Logix Federal Credit Union*, Los Angeles County Superior Court,

1 Case No. BC628495 (an overdraft fee class action, final approval granted); *Bowens v. Mazuma Federal*
2 *Credit Union*, United States District Court for the Western District of Missouri, Case No. 15-00758-CV-
3 W-BP (an overdraft fee class action, final approval granted); *Santiago v. Meriwest Credit Union*,
4 Sacramento County Superior Court, Case No. 34-2015-00183730 (an overdraft fee class action, final
5 approval granted); *Howard v. Sage Software*, Los Angeles County Superior Court Case No. BC487140
6 (final approval granted); *Kirtley v. Wadekar*, United States District Court for the District of New Jersey,
7 Case No. 05-5383 (final approval granted); *Pereyra v. Mike Campbell & Associates*, Los Angeles County
8 Superior Court Case No. BC365631 (final approval granted); *Alston v. Pacific Bell*, Los Angeles County
9 Superior Court Case No. BC297863 (final approval granted); *Oshaben v. Monster Worldwide, Inc.*, et al.,
10 San Francisco County Superior Court Case No. CGC-06-454538 (final approval granted); *Cole v. T-*
11 *Mobile USA, et al.*, Central District of California Case No. 06-6649 (final approval granted).

12 4. Other attorneys at The Kick Law Firm, APC (“TKLF”) who worked on this matter include
13 Daniel Bass, who was admitted to the California Bar in 2012 and has devoted the majority of his career
14 to assisting plaintiffs in employment and class action cases; Jeffrey Bils, who was admitted to the
15 California Bar in 2014 and has since then practiced employment and consumer litigation; Karen Wallace,
16 who was admitted to the California Bar in 2010 and who since then has practiced substantially in plaintiffs’
17 employment and consumer cases; Roy Suh, who was admitted to the California Bar in 2012 and since
18 then has practiced exclusively in plaintiffs’ employment and consumer cases and is very experienced in
19 California wage and hour class action litigation; and, Greg Taylor, a 2016 graduate of UCLA School of
20 Law who had represented plaintiffs in employment actions for approximately five years before joining
21 TKLF in 2022.

22 5. My hourly rate is \$900 an hour and has been approved by multiple courts across the
23 country, including recently in *In Re Southern California Gas Leak Cases*, Judicial Council Coordinated
24 Proceeding No. 4861, assigned to Hon. Daniel J. Buckley, Coordination Trial Judge, Dept. SSC-1;
25 *Johnson v. Randy Taylor Consulting, LLC, et al.*, Los Angeles County Superior Court Case No.
26 21SMCV00156, assigned to Hon. Helen Zukin, Dept. SSC-207; and, *Eaton v. Cavalia (USA) Inc., et al.*,
27 San Francisco County Superior Court, Case No. CGC-19-579421, assigned to Richard B. Ulmer (lead

counsel for the class; final approval granted November 21, 2022). The other attorneys being included in the firm's lodestar have also been approved at the rates being presented in this motion.

6. To date, the lodestar of The Kick Law Firm, APC, in this matter is approximately \$365,330.00 with a total of 503.7 hours expended by TKLF. This includes 151.7 hours billed by me at the rate of \$900 per hour; 151.1 hours for attorney Daniel Bass; 51 hours for attorney Roy Suh; 11.3 hours billed by Karen Wallace; 35.1 hours for attorney Jeffrey Bils; and, 103.5 hours for attorney Greg Taylor, all at \$650 per hour. However, this firm will be restricting their fee request to \$266,667 or one-third of the GSA, despite the substantial risk they bore in this case.

7. The hours and corresponding rates for each attorney at The Kick Law Firm, APC, including a reduction of hours for business judgment reasons, are broken down as follows:

Name	Rate	Hours	Total
Taras Kick	\$900	151.7	\$136,530.00
Daniel Bass	\$650	151.1	\$98,215.00
Roy Suh	\$650	51	\$33,150.00
Karen Wallace	\$650	11.3	\$7,345.00
Jeffrey Bils	\$650	35.1	\$22,815.00
Greg Taylor	\$650	103.5	\$67,275.00
TOTAL			\$365,330.00

8. For business judgment reasons, I substantially reduced the number of hours spent by me in this matter; and, eliminated all hours that non-attorney staff at The Kick Law Firm, APC worked on this matter, including in a paralegal capacity. None of that time is included in the firm's lodestar. Additionally, and based on past experience, I know I personally will incur additional time in connection with this matter, including preparing for and appearing at the final approval hearing; post-final approval document review; potentially fielding questions from class members; and, working with the settlement administrator. Based on my personal knowledge and review of case records in this matter, below is a summary and categorization of the hours expended in the prosecution of this case as follows:

<u>Task</u>	<u>Attorney Time</u>
Pre-suit investigation, Factual Development, Client Meetings and Correspondence <i>Researched potential causes of action; researched potentially applicable laws and regulations; researched CA state law; prepared letter to LWDA; internal correspondence</i>	TK – 7.6 DB – 32 RS – 17.4 JB – 8.2 GT – 3.9
Strategy, Case Analysis, Class Counsel Conferences and Status Conferences <i>Strategy meetings internally at the firm and with the proposed class representative throughout the case; meet and confer with opposing counsel in advance of case management conference; preparing and filing case management conference statements</i>	TK – 6.7 DB – 12.4 RS – 1.6 JB – 0.1 KW – 0.2 GT – 6.2
Pleadings <i>Researched, drafted, and edited complaint; related correspondence with client; researched, drafted, and edited opposition to motion to dismiss; researched, drafted and edited first amended complaint and related documents</i>	TK – 23.7 DB – 45.5 RS – 2.0 GT – 20.1
Discovery <i>Internal correspondence re discovery; conferred re responses; requested and analyzed timekeeping and payroll records produced by Defendant; retained and consulted with expert regarding class-wide damages analysis; prepared motion to compel defendant's discovery responses for class-wide discovery; prepared notices for depositions of defendant</i>	TK – 11.5 DB – 39.2 RS – 21.5 JB – 13.1 GT – 2
Settlement <i>Coordinated settlement strategy; engaged in settlement discussions with opposing counsel; prepared for and engaged in private mediation; negotiated and finalized settlement agreement and all associated documentation</i>	TK – 60.2 DB – 22 RS – 8.5 JB – 13.7 KW – 1.2 GT – 10.3
Preliminary Approval <i>Drafted motion for preliminary approval of class action settlement, accompanying declarations, and proposed order; corresponded with defense counsel regarding preliminary approval; prepared for hearing on preliminary approval; attend hearing in person</i>	TK – 19.3 KW – 9.7 GT – 35.6

<u>Task</u>	<u>Attorney Time</u>
Class Notice <i>Worked with notice administrator to develop notice plan; drafted notices; oversaw notice process.</i>	TK – 9.8 KW – 0.2 GT – 3.5
Final Approval, Settlement Execution, Distribution of Common Fund (Estimated) <i>Prepare motion for final approval and all supporting declarations; related correspondence with class representative and administrator; prepare for and attend final approval hearing, work with settlement administrator to ensure proper distribution of funds to class members, prepare any post-final approval motions.</i>	TK – 12.9 GT – 21.9
Totals	503.7 hours

9. Paragraphs 9 through 20 describe the work done by attorneys at The Kick Law Firm, APC leading up to the present. First, prior to the filing of the complaint, there was initial investigation of the claims alleged; extensive legal research conducted regarding Defendant’s potential liability and defenses; communications with the former plaintiff Matthew Hallowell before filing the complaint, including working with Mr. Hallowell to gather documents and information; and additional communications regarding the case and settlement with the current the class representative Dmytro Martyniuk.

10. On February 24, 2020, pursuant to Labor Code § 2699.3, former plaintiff Matthew Hallowell, submitted notice to the Labor and Workforce Development Agency (“LWDA”) and to Defendant USKO Express, Inc. (“Defendant” or “USKO”), LWDA Case No. LWDA-CM-774505-20, of his intention to litigate various alleged Labor Code violations. Attached as **Exhibit 2** is a true and correct copy of Plaintiff’s LWDA Notice, dated February 24, 2020.

11. On February 26, 2020, Plaintiff filed this putative class action, on behalf of himself and others similarly situated and aggrieved, against Defendants USKO Express, Inc., California-headquartered commercial transportation company, and JS Express, LLC, a small independent motor carrier company

1 that contracted with USKO.¹ On May 11, 2022, Plaintiff filed the First Amended Complaint (“FAC”).
2 Plaintiff’s FAC alleges the following causes of action: (1) Failure to Provide Required Meal Periods; (2)
3 Failure to Provide Required Rest Periods; (3) Failure to Pay Minimum Wage; (4) Failure to Pay All Wages
4 Due to Discharged or Quitting Employees; (5) Failure to Furnish Accurate Itemized Wage Statements; (6)
5 Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties; (7)
6 Unlawful Deductions from Wages; (8) Unfair and Unlawful Business Practices in violation of Bus & Prof.
7 Code § 17200, *et seq.*, and 9) violation of PAGA, Lab. Code § 2698, *et seq.* Defendants have denied and
8 continue to deny Plaintiff’s allegations.

9 12. On July 2, 2020, the parties agreed—with the Court’s approval—to stay the case pending
10 the Ninth Circuit’s determination regarding preemption of California’s meal and rest break requirements
11 in *International Brotherhood of Teamsters, Local 2785 v. Fed. Motor Carrier Safety Admin.*
12 (“*Teamsters*”) (9th Cir. 2021) 986 F.3d 841. While the action was stayed, without this law firm’s
13 involvement or knowledge, Mr. Hallowell settled his individual claims with USKO. As a result of that
14 settlement, Class Counsel sought discovery to find a replacement representative.

15 13. In March 2021, USKO filed a motion to dismiss, which Class Counsel opposed. The Court
16 granted in part and denied in part the motion to dismiss, dismissing the meal and rest break claims in light
17 of *Teamsters*. Class Counsel formally moved for pre-certification discovery in efforts to locate a new
18 Class representative. Class Counsel filed a motion with this Court on this issue on May 26, 2021, entitled
19 Motion for Discovery of Class Contact Information. After that motion was fully briefed, but before this
20 Court ruled on it, the parties agreed the motion be stayed while they went to a mediation to explore whether
21 the matter can be resolved on a class basis.

22 14. On April 25, 2022, the parties filed a Joint Stipulation for Leave to Substitute Class
23 Representative and Amend Complaint to add Dmytro Martyniuk (“Plaintiff”) as the proposed class
24 representative in this matter and file the FAC. (Settlement, § II. D). The Court entered its order granting
25 this on April 25, 2022, and Plaintiff filed the FAC on May 11, 2022.

26
27 ¹ The Parties agreed to request dismissal of JS Express, LLC without prejudice, and the Court entered its
order dismissing JS Express, LLC on April 25, 2022.

1 15. Counsel for the Parties used the pre-mediation time period to investigate the veracity,
2 strength, and scope of the claims, and also to prepare the matter for class certification and trial. The Parties
3 engaged in substantial informal and formal discovery, which Class Counsel used to evaluate the value of
4 the claims. Among other things, Plaintiff received and reviewed hundreds of pages of data and documents,
5 including Class members' driving logs, and a detailed sample of its non-exempt employees' timekeeping
6 and payroll records.

7 16. This firm retained an economics expert, Berger Consulting, to analyze the data and prepare
8 a damages model. Class Counsel carefully considered the class claims at issue and its expert's analysis of
9 Defendant's time and payroll data. Based on the information gathered, including our expert's calculations,
10 we estimated the recovery the Class could potentially obtain, if Plaintiff were to prevail.

11 17. Based on good faith meet and confer efforts, the Parties agreed to proceed to mediation
12 with Hon. Lisa Hart Cole (Ret.) of Signature Resolution. On November 12, 2022, the Parties attended a
13 private mediation with Judge Cole. Through extensive arm's-length negotiations with the assistance of
14 Judge Cole, the parties ultimately reached a settlement in principle. Counsel thereafter negotiated and
15 drafted a long-form settlement agreement. Negotiations during and prior to reaching the Settlement were
16 intensive, non-collusive, and conducted at arm's length. Plaintiff and Class Counsel vigorously prosecuted
17 this case, and Defendant vigorously contested liability. The Parties engaged in sufficient investigation and
18 discovery to assess the relative merits of Plaintiff's claims and of Defendant's defenses to them.

19 18. On May 9, 2022, Plaintiff filed a Motion for Preliminary Approval of Class and PAGA
20 Action Settlement and supporting documents. The Court ordered the parties to make certain revisions and
21 file supplemental papers in support of final approval on July 27, 2022, and again on January 11, 2023. On
22 July 27, 2022, and again on January 11, 2023, Plaintiff made each of the requested revisions and filed
23 supplemental briefing. On January 20, 2023, Plaintiff provided the Court with a copy of the fully executed
24 revised Settlement Agreement and revised proposed Class Notice. Attached as **Exhibit 1** is a true and
25 correct copy of the fully executed revised Settlement Agreement ("Settlement," "Settlement Agreement,"
26 "SA").

27 19. On January 27, 2023, the Court entered the Order Granting Preliminary Approval of Class

1 and PAGA Representative Action Settlement (“Preliminary Approval Order”), preliminarily approving
2 the terms of the Settlement Agreement, the Class Notice, and the proposed administration procedures and
3 associated deadlines.

4 20. Thereafter, Plaintiff drafted the concurrently filed Motion for Final Approval, and worked
5 with the settlement administrator and opposing counsel on class notice and settlement administration
6 issues.

7 21. The Kick Law Firm, APC undertook this case on a contingent basis, with the understanding
8 that it would not be compensated for our efforts unless the case was successful. To date, TKLF has not
9 been paid for any of its time spent on this matter. The time spent on this matter by the firm’s attorneys
10 has required considerable work that could have, and would have, been spent on other billable matters. As
11 a result of having accepted and been devoted to this case, it is my informed belief this law firm wound up
12 not representing parties in cases it otherwise would have, and which in my opinion would have
13 compensated this firm at its hourly rates requested here.

14 22. The Kick Law Firm, APC is the only Class Counsel in this case, so there is no fee sharing.

15 23. Class Counsel requests reimbursement of \$9,324.64 for actual costs advanced and
16 necessarily incurred in connection with the prosecution and settlement of the Action to date. All of these
17 out of these pockets were reasonably and necessarily incurred to pursue this Action and are detailed below:

Date	Vendor	Amount
3/3/20	LWDA	\$75.00
3/3/20	USPS	\$8.40
4/28/20	One Legal	\$65.00
5/4/20	USPS	\$1.00
5/17/20	First Legal	\$1,639.15
5/17/20	First Legal	\$270.91
5/17/20	First Legal	\$99.78
5/17/20	First Legal	\$270.91
5/29/20	One Legal	\$65.00
8/5/20	One Legal	\$65.00
9/4/20	USPS	\$0.50
10/3/20	GLS US	\$20.24
12/3/20	One Legal	\$115.66
5/5/21	First Legal	\$154.85

1	6/1/21	First Legal	\$52.25
2	6/28/21	One Legal	\$236.01
3	7/7/21	First Legal	\$64.85
4	7/7/21	First Legal	\$154.85
5	9/24/21	CaseAnywhere	\$109.20
6	9/24/21	CaseAnywhere	\$162.00
7	10/29/21	Signature Resolution	\$2,700.00
8	11/9/21	First Legal	\$163.25
9	12/2/21	Berger Consulting	\$750.00
10	12/3/21	LA Court Connect	\$15.00
11	12/3/21	One Legal	\$130.23
12	12/4/21	CaseAnywhere	\$138.00
13	12/22/21	LA Translation	\$240.00
14	3/5/22	CaseAnywhere	\$120.00
15	3/15/22	CaseAnywhere	\$120.00
16	4/5/22	CaseAnywhere	\$12.20
17	5/4/22	CaseAnywhere	\$32.90
18	5/12/22	Copy of Order	\$33.45
19	6/3/22	CaseAnywhere	\$8.00
20	6/3/22	CaseAnywhere	\$74.32
21	6/3/22	CaseAnywhere	\$12.20
22	7/25/22	LASC Filing	\$2.25
23	8/3/22	CaseAnywhere	\$12.20
24	9/5/22	CaseAnywhere	\$12.20
25	10/5/22	Elena McGivern Translation	\$65.00
26	10/9/22	First Legal	\$31.00
27	10/17/22	CaseAnywhere	\$126.00
	10/17/22	CaseAnywhere	\$192.00
	12/9/22	CaseAnywhere	\$120.00
	1/13/23	Elena McGivern Translation	\$65.00
	1/19/23	Elena McGivern Translation	\$65.00
	2/3/23	CaseAnywhere	\$12.20
	2/3/23	CaseAnywhere	\$12.20
	2/3/23	CaseAnywhere	\$12.20
	2/3/23	CaseAnywhere	\$15.20
	2/3/23	CaseAnywhere	\$15.20
	2/3/23	CaseAnywhere	\$15.20
	3/3/23	CaseAnywhere	\$92.74
	3/4/23	CaseAnywhere	\$156.00

4/5/23	CaseAnywhere	\$15.00
4/5/23	CaseAnywhere	\$15.20
4/5/23	CaseAnywhere	\$77.54
5/3/23	CaseAnywhere	\$15.20
	TOTAL	\$9,324.64

24. As evidenced by Plaintiff's declaration filed in support of the motion for preliminary approval, the proposed class representative Dmytro Martyniuk is typical of the settlement classes. He was employed by Defendants during the Class Period and subject to the same compensation and employment policies and practices. Mr. Martyniuk's interests are essentially identical to those of the Class. Moreover, he has participated in this case since stepping in as class representative after the former plaintiff became no longer eligible to be a class representative. He spent time and effort participating in phone conferences with Class Counsel, reviewing documents, and reviewing the proposed settlement. Though he was offered nothing to serve as a class representative, Mr. Martyniuk willingly faced reputational risks as a result of bringing the Action in order to champion the rights of his fellow workers.

25. The Parties agree that under the terms of the revised Settlement, if any Individual Settlement Payment check remains uncashed after one hundred eighty (180) days from the date the check is issued, such check(s) will be cancelled. Thereafter, all funds from the uncashed or undeliverable checks will be distributed to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of Cal. Code of Civ. Proc. section 384, subd. (b). (Ex. 1, SA, ¶ VIII.E.2.)

26. The investigation and discovery conducted in this matter have been adequate to give the Plaintiff and Class Counsel a sound understanding of the merits of their position, Defendant's defenses, and to evaluate the reasonable value range of the claims of the Class.

27. In terms of valuation of the case, an analysis to satisfy *Kullar v. Footlocker* was already performed in the Motion for Preliminary Approval but is now repeated here. Based on calculations by Plaintiff's expert consultant, had this case gone to trial and Plaintiff prevailed on all legal theories, Defendant's maximum exposure for underpayment of wages is approximately \$4,307,400, without PAGA penalties. This means that the proposed settlement of \$1,550,000.00 is approximately 35.98% of the total

possible recovery for unpaid wages, excluding PAGA. If a court were to award a maximum statutory PAGA violation of \$25,000 per misclassification violation, maximum exposure would be \$16,382,400. Moreover, to account for the real litigation risks, strengths, and weaknesses of the case, Plaintiff considered the following discounts: 50% for the risk of Defendant prevailing on its misclassification, joint employer, and *Oman* defenses; 30% discount on penalty claims under *Maldonado*; 40% for the risk of non-certification; and 50% discount on PAGA claims for the Court's discretion on reducing penalties and underlying risks (based on the midpoint of minimum and maximum misclassification penalties). Defendant's total risk-adjusted realistic exposure was therefore calculated at \$1,709,316 if using the maximum PAGA \$25,000 statutory penalty for misclassification. The negotiated gross settlement amount of \$1,550,000 thus represents approximately 91% of Plaintiff's realistic valuation of the claims applying the maximum statutory PAGA penalties.

28. Although I do believe this was a strong case, it had risks. Plaintiff anticipates that had the Action not settled, Defendant would have challenged class certification and liability. Defendant has vigorously asserted multiple defenses. Defendant disputes that it had *any* direct relationship with the Class members—employee, independent contractor, or otherwise—and merely acts as a broker between clients and independent motor carriers, which handle the driving and delivery. If Defendant were to prevail on this threshold defense, Plaintiff would be unable to recover for his claims under the Labor Code and PAGA. Moreover, due to the complex facts surrounding the relationship between the Defendant and Class members, there was a reasonable risk of a factfinder finding in favor of Defendant. Defendant already prevailed on its contention that Plaintiff's claims for meal and rest periods are preempted by the Federal Motor Carrier Safety Administration ("FMCSA"). Defendant could also argue Plaintiff's claims for wage statement and waiting time penalties claims are entirely derivative of Plaintiff's rest period and wage claims, and therefore suffered from not only the same litigation risks as the now-dismissed meal and rest break claims, but also additional risks unique to these claims.

29. Further, Plaintiff also faced the risk Defendant might successfully argue that their piece-rate compensation scheme was lawful under the California Supreme Court's decision in *Oman v. Delta Air Lines, Inc.* (2020) 9 Cal.5th 762, which arguably in certain circumstances permitted translating contractual

1 compensation for tasks into an average hourly rate to meet minimum wage. (*Id.*; *See, e.g., Ayala v. US*
2 *Xpress*, 851 Fed.Appx. 53 (9th Cir. 2021) (applying the *Oman* decision to compensation of truck drivers
3 on a piece-rate basis).)

4 30. Defendant’s argument that any underpayment to its employees “willfully or intentionally”
5 done, would, if successful, preclude any recovery. It may be difficult to show that the defense is
6 unsupported by any evidence, unreasonable, or presented in bad faith, and there are numerous authorities
7 on which Defendant could rely on to demonstrate good faith.

8 31. Additionally, Defendant contended that individualized questions of fact predominate over
9 any common issues, and these issues would pose challenges to certification. For instance, Defendant
10 argued that drivers spent different amounts of time in California, resided in different states, and that the
11 determination of whether California law applied to each driver would give rise to hundreds of individual
12 inquiries. Defendant further argued that variations in non-productive time spent by each Class member
13 could result manageability issues and result in individual issues predominating. Defendant would have
14 likely argued again at trial, if any, that Plaintiff’s claims were not appropriate for class-wide adjudication.
15 Additionally, preparation for trial would have been expensive for all Parties.

16 32. Were litigation to proceed, there is a strong likelihood it would be protracted and
17 contentious, as Defendant disputes almost all aspects of Plaintiff’s claims. As a threshold matter, if the
18 Agreement is not approved, Plaintiff will have to prepare and file a motion for class certification, which
19 outcome is uncertain based on Defendant’s contentions, *inter alia*, that Plaintiff’s claims are preempted,
20 that Defendant’s compensation policy is lawful, that individual questions of fact predominate, and that
21 Plaintiff cannot show the “willfulness” requirement for Section 203 penalties. If the motion were granted,
22 Defendant would likely move for decertification, appeal certification, or move for Summary Judgment.
23 Plaintiff believes he would prevail on the question of certification, but the risks to absent Class Members
24 are significant.

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1 33. To succeed on the merits, Plaintiff would have to prove that Defendant actually engaged
2 in the practices and policies alleged and that those practices and policies violated the law. While Class
3 Counsel believe strong evidence exists showing Defendant's liability, there remains a risk that the trier of
4 fact might find otherwise. If the case were to proceed to trial, additional discovery would be needed and
5 the Parties would thus incur significant additional expenses, which money could go instead to fund a
6 settlement for the benefit of the Class as a whole. Moreover, discovery disputes would have certainly
7 arisen, which would have cost the Parties additional time and money.

8 34. Further, regardless of which Party prevailed, appellate practice likely would ensue, further
9 delaying any possible recovery by Class Members including, if Plaintiff prevailed at trial, appeal after
10 final judgment of the class certification in Plaintiff's favor had it been granted. In other words, both Parties
11 would likely incur substantial attorneys' fees and costs from continued litigation, likely approaching
12 hundreds of thousands of dollars. In contrast, the Settlement provides real and significant benefits for the
13 Class Members here and now, while avoiding the further expenses, risks, and delay of prolonged litigation
14 with only the possibility of recovery.

15 35. Class Counsel believes the Settlement, which provides for a gross settlement amount of
16 \$1,550,000.00, is fair, adequate, and reasonable to Class Members Settlement, and represents a
17 considerable recovery for a Class of 629 individuals, especially taking into account the potential risks and
18 rewards inherent in any case and, in particular, the aforementioned risks in this matter.

19 36. In light of the above considerations, and given the risks inherent in continuing to litigate,
20 including 1) the possibility of an unfavorable, or less favorable, result at trial, 2) the likely possibility that
21 post-trial motions may similarly result in a less favorable result than at trial, and 3) the possibility of a less
22 favorable result on appeal, with the certainty that the appeal process would be lengthy, Class Counsel
23 believes the Agreement is a fair, adequate, and reasonable resolution for the Class as a whole. Class
24 Counsel believes the Settlement is in the best interest of the Class Members.

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37. On June 6, 2023, this law firm will submit the Settlement Agreement as well as the Motion for Final Approval of Class and PAGA Action Settlement and supporting declarations to the LWDA pursuant to the Private Attorneys General Act (“PAGA”).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 6th day of June 2023, at Los Angeles, California.

/s/ Taras Kick
Taras Kick

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 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 during the period from May 11, 2021 through May 23, 2022 (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 operative complaint, the First Amended Complaint (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 within 5 business days of receipt by the Settlement Administrator. 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 within 5 business days of receipt and will mail the Class Notice to the updated address identified within 5 business days of identifying the updated address. 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 California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

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 Mises 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]

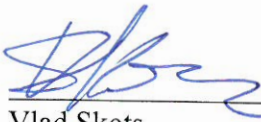
Dated: January 10, 2023

CLASS REPRESENTATIVE

By: 
Dmytro Martyniuk

Dated: January 10, 2023

USKO EXPRESS, INC.

By: 
Vlad Skots
President of USKO Express, Inc.

Dated: January 10, 2023

THE KICK LAW FIRM, APC

By: 
Taras P. Kick
Greg Taylor
Attorneys for Plaintiff

Dated: January 10, 2023

MEDINA MCKELVEY LLP

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

Exhibit A

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 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 operative complaint, the First Amended Complaint (the "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 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.

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 2

The Kick Law Firm

A Professional Corporation

815 Moraga Drive
Los Angeles, CA 90049
310 395 2988 / Fax 310 395 2088

February 24, 2020

**Via Certified U.S. Mail – Return
Receipt Requested**

USKO Express, Inc.
11290 Point East Drive, Suite 220
Rancho Cordova, CA 95742

**Via Certified U.S. Mail – Return
Receipt Requested**

JS Express, LLC
4106 Autumnwind Ct.
Rocklin, CA 95677

Via Online Submission

Department of Industrial Relations
Accounting Unit
Attn. PAGA Administrator
455 Golden Gate Ave, 10th Floor
San Francisco, CA 94102

Re: Notice Pursuant to California Labor Code § 2699.3

Employee: Matthew Hallowell

Employers: USKO Express, Inc.; JS Express, LLC; and related entities

To Whom It May Concern:

This office represents Matthew Hallowell (“Mr. Hallowell”), who was employed by USKO Express, Inc.; JS Express, LLC; and related entities (collectively, “Employers”). Pursuant to the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code § 2698, *et seq.*, this letter sets forth the specific provisions of the Labor Code and Industrial Welfare Commission (“IWC”) Wage Order No. 9-2001, which Mr. Hallowell alleges Employers have violated, including the facts and theories to support the alleged violations. Please be advised that this letter constitutes written notice required by Labor Code § 2699.3, subdivisions (a)(1)(A) and (c)(1)(A) and may lead to immediate action against Employers in a court of law and/or administrative proceedings, as well as the imposition of substantial penalties and other remedies against Employers. Enclosed please find a draft of Mr. Hallowell’s proposed complaint, which is incorporated by reference into this notice. Under separate cover, our office is sending a check in the amount of \$75.00 to the Accounting Unit of the Department of Industrial Relations for the requisite filing fee, pursuant to Labor Code § 2699.3, subdivisions (a)(1)(B) and (c)(1)(B).

This letter also serves as notice of Mr. Hallowell’s demand for preservation and non-spoliation of evidence, requesting that all relevant documents and data be saved and that all electronic files and hard-copy documents that are related to Mr. Hallowell’s employment and potential claims must be preserved, even without a court order. Spoliation of evidence may result in legal claims for damages and monetary and evidentiary sanctions, including “adverse inference” jury instructions. Furthermore, intentional spoliation of evidence may carry criminal consequences pursuant to California Penal Code § 135.

We are investigating a potential class and representative action on behalf of Employers’ current and former non-exempt employees in the State of California regarding, among other things, the following violations: failure to provide meal and rest periods to employees in violation of Labor Code §§ 226.7 and 512 and Wage Order No. 9-2001, §§ 11-12; failure to pay one additional hour of compensation at the employee’s regular rate of compensation for each workday that a meal or

rest period is not provided in violation of Labor Code § 226.7 and Wage Order No. 9-2001, §§ 11(B) and 12(B); failure to pay employees minimum wages for all hours worked in violation of Labor Code §§ 1194, 1197 and 1197.1 and Wage Order No. 9-2001, § 4; failure to pay employees overtime wages in violation of Labor Code §§ 510 and 1194 and Wage Order No. 9-2001, § 3; failure to timely pay employees all wages earned in violation of Labor Code § 204; willful failure to pay all wages due to discharged and quitting employees in violation of Labor Code §§ 201-203; failure to furnish accurate itemized wage statements to employees in violation of Labor Code § 226; failure to maintain required records pursuant to Labor Code §§ 226, 1174 and 1174.5 and Wage Order No. 9-2001, § 7; failure to indemnify employees for necessary expenditures incurred in discharge of duties in violation of Labor Code § 2802(a); failure to provide suitable seating in violation of Labor Code § 1198 and Wage Order No. 9-2001, § 14; unlawful deductions and withholdings from employees' wages in violation of Labor Code §§ 221, 222.5, 223 and 224; and willful misclassification as independent contractors in violation of Labor Code § 226.8.

The allegations made by Mr. Hallowell on behalf of himself and all other similarly-situated current and former non-exempt employees of Employers (including, but not limited to those employees misclassified as independent contractors) in the State of California during the four years preceding the date of this notice are based on the following facts and theories: meal periods were less than thirty minutes, late (first meal periods starting after the fifth hour of work and/or second meal periods starting after the tenth hour), not given at all (including second meal periods after ten hours of work), or interrupted; rest periods were less than ten minutes, not provided, interrupted, and/or late; employees were not provided one hour of pay for each workday a meal period was not provided; employees were not provided one hour of pay for each workday a rest break was not authorized and permitted; and employees were not paid proper minimum and overtime wages for all hours worked as required by California law.¹ Given the overtime, meal period and rest period violations and Employers' failure to compensate their employees fully, as set forth above, employees' wage statements were inaccurate and failed to comply with California law. In short, Employers' unlawful employment practices and policies have deprived their employees of earned wages and other compensation.

Failure to Provide Meal Periods

Pursuant to Labor Code §§ 226.7 and 512 and Wage Order No. 9-2001, § 11, an employer is required to provide meal periods to its employees. An employer must provide a meal period to any employee who works a shift of more than five (5) hours and a second meal period to any employee who works a shift of more than ten (10) hours. Furthermore, an employer must pay one extra hour of compensation for each workday a meal period is not provided.

If an employee is not relieved of all duty during a meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal period is permitted only when 1) the nature of the work prevents an employee from being relieved of all duty and 2) the parties have agreed in writing to on duty meal periods.

Mr. Hallowell and other aggrieved employees are non-exempt employees and are entitled to the protections of California Labor Code §§ 226.7 and 512 and Wage Order No. 9-2001, § 11.

¹ "[T]he statement that defendant has not provided its employees with proper rest periods states both the facts and the theory." *Gutierrez v. California Commerce Club, Inc.* (2010) 187 Cal.App.4th 969, 979 n.5.

Employers failed to provide their employees timely and uninterrupted thirty-minute meal breaks. In fact, Mr. Hollowell's and other aggrieved employees' meal periods were short (less than thirty minutes), late (first meal periods after the fifth hour of work and second meal periods after the tenth hour), interrupted and/or missed. Employers consistently failed to provide Mr. Hollowell and other aggrieved employees meal breaks because Mr. Hollowell and other aggrieved employees were given too much work to perform to take meal breaks.

Employers further violated Labor Code § 226.7 and Wage Order No. 9-2001 by failing to compensate Mr. Hollowell and other aggrieved employees who were not provided with meal periods in accordance with California law one additional hour of pay at each employee's regular rate of compensation for each workday a meal period was not provided.

Failure to Authorize and Permit Rest Periods

Pursuant to Labor Code § 226.7 and Wage Order No. 9-2001, § 12, an employer is required to provide rest periods to its employees. An employer must provide a ten (10) minute rest period for every four (4) hours worked or major action thereof which insofar as practicable shall be in the middle of each work period. Furthermore, an employer must pay one extra hour of compensation for each workday a rest period is not authorized and permitted.

Mr. Hollowell and other aggrieved employees were and are non-exempt employees and are entitled to the protections of Labor Code § 226.7 and Wage Order No. 9-2001. Employers failed to authorize and permit their employees to take required rest periods. Specifically, Employers maintained a policy or practice of not authorizing and permitting Mr. Hollowell and other aggrieved employees to take one 10-minute rest break for shifts 3.5-6.0 hours, a second rest break for shifts greater than 6 hours and less than or equal to 10 hours, and a third rest break for shifts in excess of 10 hours. Employers consistently failed to authorize and permit Mr. Hollowell and other similarly-situated individuals to take rest breaks because Mr. Hollowell and other similarly-situated individuals were given too much work to perform to take rest breaks. When Mr. Hollowell and other aggrieved employees were able to take rest breaks, Employers failed to authorize and permit Mr. Hollowell and other aggrieved employees to take their rest breaks in the middle of each work period insofar as practicable.

Employers further violated Labor Code § 226.7 and Wage Order No. 9-2001, § 12 by failing to pay Mr. Hollowell and other aggrieved employees one additional hour of pay at each employee's regular rate of compensation for each workday a rest period was not authorized and permitted.

Failure to Pay Minimum Wages

Pursuant to Labor Code §§ 1194 and 1197 and Wage Order No. 9-2001, § 4, payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

Mr. Hollowell and other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code §§ 1194 and 1197 and Wage Order No. 9-2001, § 4. Employers failed to pay Mr. Hollowell and other aggrieved employees minimum wages for all hours worked by, among other things: requiring, suffering or permitting Mr.

Hallowell and other similarly-situated individuals to work off-the-clock; requiring, suffering or permitting Mr. Hallowell and other aggrieved employees to work through their meal breaks but not compensating them for this time; illegally and inaccurately recording time worked by Mr. Hallowell and other aggrieved employees; failing to properly maintain Mr. Hallowell's and other aggrieved employees' records; failing to provide accurate itemized wage statements to Mr. Hallowell and other aggrieved employees for each pay period; and other methods to be discovered.

Employers' conduct violates Labor Code §§ 1194 and 1197 and Wage Order No. 9-2001, § 4.

Failure to Pay Overtime Wages

Pursuant to California Labor Code §§ 510 and 1194 and Wage Order No. 9-2001, § 3, an employer must compensate its employees for all overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive work day, with double time for all hours worked in excess of eight (8) hours on the seventh day of any workweek, or after twelve (12) hours in any workday.

Mr. Hallowell and other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code §§ 510 and 1194 and Wage Order No. 9-2001. Employers failed to compensate Mr. Hallowell and other aggrieved employees for all overtime hours worked as required under the foregoing provisions of the Labor Code and IWC Wage Order by, among other things: failing to pay overtime at one and one-half (1 ½) times or double the regular rate of pay as provided by Labor Code §§ 510 and 1194 and Wage Order No. 9-2001, § 3; requiring, suffering or permitting Mr. Hallowell and other aggrieved employees to work off-the-clock; requiring, suffering or permitting Mr. Hallowell and other aggrieved employees to work through meal periods but not compensating them for this time; illegally and inaccurately recording time worked by Mr. Hallowell and other aggrieved employees; failing to properly maintain Mr. Hallowell's and other aggrieved employees' records through falsifying hours worked; failing to provide accurate itemized statements to Mr. Hallowell and other aggrieved employees for each pay period; and other methods to be discovered.

In violation of California law, Employers have refused to perform their obligations to compensate Mr. Hallowell and other aggrieved employees for all wages earned and all hours worked. Employers' conduct violates Labor Code §§ 510 and 1194 and Wage Order No. 9-2001, § 3.

Failure to Timely Pay All Wages Earned

Pursuant to Labor Code § 204, an employer must pay its employees at least twice a month for all wages earned during the preceding pay period. Labor Code § 204 provides that labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. An employer using an alternate payday schedule must pay wages within seven calendar days of the end of the payroll period in which the wages were earned.

Employers failed to pay Mr. Hallowell and other aggrieved employees on their regularly scheduled payday for all work performed during the preceding pay period. Specifically, Employers required Mr. Hallowell and other aggrieved employees to work off-the-clock without compensation, including but not limited time spent awaiting loads and/or dispatches, and required Mr. Hallowell and other aggrieved employees to work through required meal breaks without compensation. Additionally, Employers failed to pay Mr. Hallowell and other aggrieved employees premium wages owed for each workday a meal period was not provided and each workday a rest period was not authorized and permitted.

Employers also failed to pay Mr. Hallowell and other aggrieved employees for the overtime wages they earned in violation of Labor Code § 204. Labor Code § 204 requires an employer to pay overtime wages no later than the payday for the next regular payroll period following the payroll period in which the overtime wages were earned. Employers knew they were required to pay overtime wages, yet on many occasions failed to pay Mr. Hallowell and other aggrieved employees overtime wages on any payday.

Failure to Pay All Wages Due Upon Separation

Pursuant to Labor Code § 201, 202 and 203, an employer is required to pay all earned and unpaid wages to an employee upon separation. Labor Code § 201 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge are due and payable immediately. Pursuant to Labor Code § 202, an employer is required to pay all accrued wages due to an employee no later than 72 hours after the employee quits his or her employment, unless the employee provided 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Labor Code § 203 provides that if an employer willfully fails to pay, in accordance with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the employer is liable for waiting time penalties in the form of continued compensation to the employee at the same rate for up to thirty (30) days.

Employers willfully failed to pay accrued wages and other compensation to Mr. Hallowell and other aggrieved employees in accordance with Labor Code §§ 201 and 202. Because Employers required Mr. Hallowell and other aggrieved employees to work off-the-clock without compensation and through required meal breaks without compensation and failed to pay Mr. Hallowell and other aggrieved employees the premium wages for all meal periods which were not provided and all rest periods which were not authorized or permitted, Employers failed and continue to fail to pay the full earned and unpaid wages due to Mr. Hallowell and other aggrieved employees upon separation.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226 requires every employer to furnish each of its employees an accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social

security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Employers failed to provide Mr. Hallowell and other aggrieved employees with timely and accurate itemized wage statements in writing showing each employee's gross wages earned, total hours worked, the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, all deductions made, net wages earned, the inclusive dates of the period for which the employee is paid, the name and address of the legal entity or entities employing Mr. Hallowell and other aggrieved employees, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate, in violation of Labor Code § 226 and Wage Order No. 9-2001, § 7.

Specifically, Employers had knowledge they were not providing their employees with proper meal and rest breaks; nevertheless, Employers knowingly failed to include in the wage statements the extra hour of compensation owed for each workday a meal break was not provided and each workday a rest break was not authorized and permitted. As a result, Mr. Hallowell and other aggrieved employees lost wages. In addition, Employers had knowledge they were requiring employees to work off-the-clock and were not properly compensating their employees for all hours worked, yet Employers knowingly failed to include this time worked in the wage statements. As a result, Mr. Hallowell and other aggrieved employees lost wages. Employers also did not properly calculate the regular rate of pay of Mr. Hallowell and other aggrieved employees. As a result, Mr. Hallowell's and other aggrieved employees' wage statements did not include all applicable hourly rates in effect during the pay period and the corresponding number of hours worked.

Failure to Maintain Required Records

Employers failed to maintain records as required under Labor Code §§ 226 and 1174 and Wage Order No. 9-2001, § 7, including but not limited to the following records: total daily hours worked by each employee; applicable rates of pay; all deductions; meal periods; time records showing when each employee begins and ends each work period; and accurate itemized statements.

Specifically, Employers had knowledge they were not providing their employees with proper meal and rest breaks; nevertheless, Employers knowingly failed to include in the wage statements the extra hour of compensation owed for each workday a meal break was not provided and each workday a rest break was not authorized and permitted. In addition, Employers had knowledge they were requiring employees to work off-the-clock and were not properly compensating their employees for all hours worked, yet Employers knowingly failed to include this time worked in the regular rate of pay of aggrieved employees.

Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties, and Unlawful Deductions

Labor Code § 2802(a) requires an employer to indemnify an employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of her his or her duties, or of his or her obedience to the directions of the employer. Employers failed to indemnify Mr. Hallowell and other aggrieved employees for all business expenses and/or losses

incurred in direct consequence of the discharge of their duties while working under the direction of Employers, including but not limited to expenses for cell phones, equipment, fees, fines, fuel, travel-related expenses, and other employment-related expenses, in violation of Labor Code § 2802.

Moreover, Labor Code §§ 221, 222.5, and 223 makes it unlawful to deduct or withhold from employees' wages outside of circumstances specified in Labor Code § 224. Employers, however, made such deductions directly from Mr. Hallowell and other aggrieved employees' compensation in violation of Labor Code §§ 221, 222.5, 223 and 224. Specifically, such deductions included, but were not limited to deductions for insurance, leased equipment, fuel, and fees. Furthermore, Labor Code § 450 provides that no employer "may compel or coerce an employee, or applicant for employment, to patronize his or her employer, or any other person, in the purchase of any thing of value."

Failure to Provide Suitable Seating

Pursuant to California Labor Code § 1198 and Wage Order No. 9-2001, § 14, an employer shall provide suitable seats when the nature of the work reasonably permits the use of seats. California Labor Code § 1198 and Wage Order No. 9-2001, § 14 also require that when employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

Mr. Hallowell and other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code § 1198 and Wage Order No. 9-2001, § 14. Employers failed to provide Mr. Hallowell and other aggrieved employees suitable seating as required under the foregoing provisions of the Labor Code and IWC Wage Order by, among other things: failing to provide Mr. Hallowell and other aggrieved employees with suitable seating when their work reasonably permitted Mr. Hallowell and other aggrieved employees to be seated while working; failing to provide seating to Mr. Hallowell and other aggrieved employees when they were not actively engaged in their work that, due to its nature, required standing; and other methods to be discovered.

Willful Misclassification as Independent Contractors

Labor Code § 226.8(a) states in part that it is "unlawful for any person or employer to engage" in the "(1) Willful misclassification of an individual as an independent contractor." Moreover, Labor Code § 226.8(a) goes on to also state that it is similarly "unlawful for any person or employer to engage" in the "(2) Charging an individual who has been willfully misclassified as an independent contractor a fee, or making any deduction from compensation, for any purpose... arising from the individuals employment where any of the acts described... would have violated the law if the individual had not been misclassified." Mr. Hallowell and other aggrieved employees were willfully misclassified as independent contractors and required to pay, by direct payment and/or deductions from wages, for various goods, materials, space rental, services, government licenses, repairs, equipment maintenance, or fines arising from their employment by Employers in violation of Labor Code § 226.8.

Specifically, Employers willfully misclassified Mr. Hallowell and other aggrieved employees as independent contractors, “owner-operators” or “lease-operators” to avoid compliance with the California Labor Code and the applicable IWC Orders’ wages. Moreover, Employers’ willful misclassification made Mr. Hallowell and other aggrieved employees assume Employers’ responsibilities to pay operational expenses, including but not limited to administrative fees, fees for the use of equipment, and the costs of workers’ compensation/occupational accident insurance for Mr. Hallowell and other aggrieved employees. For instance, Mr. Hallowell and/or other aggrieved employees were required to pay for their own truck, trailer, onboard equipment, fuel, and insurance by paying Employers or a source chosen by Employers, but still were only allowed to transport loads for Employers, were required to take the loads dictated to them, were required to follow the specific delivery instructions provided to them, and to do so for the amount of compensation determined for them by Employers or Employers’ dispatchers and other agents.

This notice is hereby given to Employers and any and all related and/or alter ego companies, corporations, partnerships, and/or business entities, as well as against any and all officers, owners, directors, managers, managing agents, or entities who are or may be liable under California law for any of the violations alleged herein as to any locations or employees who worked at any time in the State of California.

This notice is made on behalf of all persons who are, were, or will be non-exempt employees of Employers, or any related or alter-ego company, corporation, partnership, and/or business entity at any time on or after a date four years prior to the date of this letter in the State of California.

This notice shall be construed as extending without limitation to any past, present, future, or continuing violation of the Labor Code, the applicable IWC Wage Order, or any applicable regulation which might be discovered as a result of a reasonable and diligent investigation made pursuant to this notice.

This notice shall further represent Mr. Hallowell’s reasonable attempt to settle his dispute with Employers prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to apprise Employers of Mr. Hallowell’s aforementioned grievances and the proposed remedies as detailed below, while affording Employers reasonable opportunity to meet Mr. Hallowell’s demands.

Demand is hereby made that Employer shall agree, in writing received at this office no later than 30 calendar days from the postmark date of this notice, as follows:

1. Employers shall pay Mr. Hallowell and all other similarly-situated persons employed by Employers at any time during the past 48 months back pay and compensation for the above-referenced violations.
2. Employers shall comply with all California labor laws and ensure that their non-exempt employees are paid proper overtime compensation and given required meal and rest periods.

3. Employers shall conduct a survey or interview all current and former non-exempt employees in California during the past 48 months to obtain information from them regarding the number of meal breaks which were not provided, the number of rest breaks which were not authorized and permitted, and the number of employees who were required to pay for cell phones, equipment, travel-related expenses, fuel, insurance, fines, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.

4. Employers shall pay each employee one hour of pay for each workday he or she was not authorized and permitted one or more rest periods, as required by Labor Code § 226.7. Employers also shall pay each employee one hour of pay for each workday he or she was not provided one or more meal periods, as required by Labor Code § 226.7.

5. Employers shall reimburse those employees who were forced to pay for any business expenses incurred for Employers' benefit, as well as those items employees were compelled and coerced to purchase from Employers or other persons, that include but are not limited to leases, equipment, insurance, fuel, fees, fines, phone, and travel-related expenses.

6. Employers shall pay waiting time penalties, equal to thirty days of pay, to each former employee who was not paid all wages due as described herein.

7. Employers shall pay accrued interest to all employees at the rate of ten percent per annum for said unpaid wages.

8. Employers shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code § 2698 *et seq.*, including but not limited to penalties under Labor Code §§ 206.5, 210, 225.5, 226.3, 558, 1174.5, 1182.12, 1197.1, 1198, 1199 and 2699 and Wage Order No. 9-2001, § 20.

If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please notify this office of that decision by certified mail addressed to The Kick Law Firm, APC, 815 Moraga Drive, Los Angeles, CA 90049. Additionally, please advise us if the Agency or Employers require additional information regarding Mr. Hallowell's complaints.

Thank you for your prompt attention to this matter.

Very truly yours,

The Kick Law Firm, APC



Daniel J. Bass