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EMPIRE TRANSPORTATION, INC.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

SANTIAGO GIOVANNI JOVEL DEL CID,
MICHAEL HARRINGTON, and DERRICK
CARBAJAL, as individuals and on behalf of all
others similarly situated,

Plaintiffs,

v.

EMPIRE TRANSPORTATION, INC., an
unknown entity, and DOES 1 through 50,
inclusive,

Defendants.

Case No.: CIVDS1806733

[Assigned for all purposes to Hon. David Cohn,
Dept. S26]

**JOINT STIPULATION OF SETTLEMENT
AND RELEASE**

1 This Joint Stipulation of Settlement and Release is made and entered into between
2 Plaintiffs Santiago Giovanni Jovel Del Cid, Michael Harrington, and Derrick Carbajal (“Plaintiffs”
3 or “Class Representatives”), individually and on behalf of all members of the Settlement Class,
4 defined below, and Defendant Empire Transportation, Inc. (“Defendant”) (collectively, the
5 “Parties”). Plaintiffs and the Settlement Class are represented by Kenneth H. Yoon, Stephanie E.
6 Yasuda, and Brian G. Lee of Yoon Law, APC. Defendant is represented by Cynthia J. Emry and
7 Dorothy L. Black of Jackson Lewis P.C.

8 **1. THE CONDITIONAL NATURE OF THIS STIPULATION.**

9 **1.1** This settlement and all associated exhibits or attachments are made for the sole
10 purpose of settling the above-captioned lawsuit, which is entitled *Santiago Giovanni Jovel Del Cid*
11 *et al. v. Empire Transportation, Inc.*, San Bernardino County Superior Court Case No.
12 CIVDS1806733. This settlement is made in compromise of disputed claims. Because the Parties
13 desire to settle the Action (as defined in Section 2.1) on a class-wide basis pursuant to Code of
14 Civil Procedure § 382, this settlement must receive preliminary and final approval by the San
15 Bernardino Superior Court (“Court”) (as defined in Section 2.10). Accordingly, the settling
16 Parties enter into this settlement on a conditional basis. If this settlement agreement is not finally
17 approved by the Court, this settlement agreement, and the settlement terms set forth herein
18 (including any modifications made with the consent of the Parties), shall become null and void
19 and have no further force or effect, and the Procedural Order (as defined in Section 2.34) shall be
20 vacated without prejudice to the right of any of the Parties to seek or oppose the certification of a
21 class action or the definition thereof.

22 **1.2** If this settlement is terminated or canceled pursuant to its terms, the Parties to this
23 settlement shall be deemed to have reverted to their respective statuses as of the date and time
24 immediately prior to the execution of this settlement. In such an event, the Settlement
25 Administrator (as defined in Section 2.41) shall refund to Defendant all funds received from
26 Defendant into the Qualified Settlement Fund (“QSF”) (as defined in Section 2.35), after
27 deduction for Settlement Administration Costs (as defined in Section 2.42) incurred as of that
28

1 date, which will be the property of the Settlement Administrator.

2 **1.3** Defendant denies all claims as to liability, damages, penalties, fees, costs, interest,
3 restitution, injunctive relief and all other forms of relief as well as the class allegations asserted in
4 the Action. Defendant has agreed to resolve the Action via this settlement, but to the extent this
5 settlement is deemed void or the Final Approval Date (as defined in Section 2.15) does not occur,
6 Defendant does not waive, but rather expressly reserves, all rights to challenge all such claims and
7 allegations in the Action upon all procedural and factual grounds, including, without limitation,
8 the ability to challenge class treatment on any grounds, as well as asserting any and all other
9 potential defenses or privileges. The Class Representatives and Class Counsel (as defined in
10 Sections 2.7 and 2.4, respectively) agree that Defendant retains and reserves these rights, and
11 agree not to argue or present any argument, and hereby waive any argument that, based on this
12 settlement, Defendant cannot challenge claims and allegations in the Action upon any procedural
13 or factual grounds, including, without limitation, challenging class treatment on any grounds or
14 asserting any and all other potential defenses or privileges.

15 **2. DEFINITIONS.**

16 The following terms, when used in this settlement agreement, have the following
17 meanings:

18 **2.1** “**Action**” means *Santiago Giovanni Jovel Del Cid et al. v. Empire Transportation,*
19 *Inc.*, San Bernardino County Superior Court Case No. CIVDS1806733.

20 **2.2** “**Claim Amount**” means an individual Class Member’s potential Individual
21 Settlement Payment, FLSA Settlement Payment, and PAGA Payment.

22 **2.3** “**Settlement Class**” means all persons employed in California by Empire
23 Transportation, Inc., in a non-exempt position at any time during the Class Period. Defendant
24 estimates the Settlement Class contains approximately 1,632 Class Members. Plaintiffs shall have
25 the option to void this Settlement if the actual Settlement Class increases by more than 15% from
26 the estimate of 1,632.

27 **2.4** “**Class Counsel**” means Yoon Law, APC.

28 **2.5** “**Class Member**” means each person eligible to participate in this settlement who

1 is a member of the Settlement Class defined above.

2 **2.6 “Class Period”** means March 20, 2014 through the Preliminary Approval Date.

3 **2.7 “Class Representatives” or “Plaintiffs”** means Plaintiffs Santiago Giovanni Jovel
4 Del Cid, Michael Harrington, and Derrick Carbajal.

5 **2.8 “Class Representatives’ Released Claims”** means any and all claims, obligations,
6 demands, actions, rights, causes of action, and liabilities against the Releasees (as defined below),
7 of whatever kind and nature, character, and description, whether in law or equity, whether
8 sounding in tort, contract, federal, state and/or local law, statute, ordinance, regulation, common
9 law, or other source of law, whether known or unknown, and whether anticipated or unanticipated,
10 including unknown claims covered by Civil Code § 1542, as quoted below, by the Class
11 Representatives, arising during the period from the beginning of the Class Representatives’
12 respective dates of employment with Defendant to the date the Court enters the order granting
13 final approval of the settlement, for any type of relief, including, without limitation, claims for
14 wages, damages, unpaid costs, penalties (including civil and waiting time penalties), liquidated
15 damages, punitive damages, interest, attorneys’ fees, litigation costs, restitution, or equitable relief
16 with the sole exception of any claims which cannot be released as a matter of law. The Class
17 Representatives’ Released Claims include, but are not limited to, the Released Claims, as well as
18 any other claims under any provision of the Fair Labor Standards Act (“FLSA”), the California
19 Labor Code (including sections 132a, 4553 *et seq.*) or any applicable California Industrial Welfare
20 Commission Wage Orders, and claims under state or federal discrimination statutes, including,
21 without limitation, the California Fair Employment and Housing Act, California Government
22 Code § 12940 *et seq.*; the Unruh Civil Rights Act, California Civil Code § 51 *et seq.*; the
23 California Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000 *et seq.*; the
24 Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*; the Age Discrimination in
25 Employment Act of 1967, as amended; the Employee Retirement Income Security Act of 1974, 29
26 U.S.C. § 1001 *et seq.*; and all of their implementing regulations and interpretive guidelines. The
27 Class Representatives’ Released Claims exclude claims for workers’ compensation or
28 unemployment insurance benefits

1 **2.9 “Complaint”** means the Second Amended Class Action Complaint for Damages
2 filed in San Bernardino County Superior Court Case No. CIVDS1806733, substantially in the
3 form attached hereto as Exhibit 6.

4 **2.10 “Court”** means the California Superior Court for the County of San Bernardino.

5 **2.11 “Data Dispute Form”** shall mean the document substantially in the form attached
6 hereto as Exhibit 2.

7 **2.12 “Data Dispute Deadline”** shall mean forty-five (45) calendar days from the initial
8 mailing of the Notice Packet.

9 **2.13 “Defendant’s Counsel”** means Jackson Lewis P.C.

10 **2.14 “Enhancement Payment”** means the amount approved by the Court to be paid to
11 the Class Representatives, not to exceed \$6,000 for Plaintiff Santiago Giovanni Jovel Del Cid,
12 \$1,500 for Plaintiff Michael Harrington, and \$1,000 for Plaintiff Derrick Carbajal, in addition to
13 their respective Claim Amounts as Qualified Claimants, in recognition of their efforts in coming
14 forward as Class Representatives. Enhancement Payments shall be considered non-wages for
15 which an appropriate IRS Form 1099 will be issued to the Class Representative.

16 **2.15 “Final Approval Date”** means the latest of the following dates: (i) if no Class
17 Member files an objection to the Settlement on or prior to the Court entering an order granting
18 final approval of the Settlement, then the date the Court enters an order granting final approval of
19 the settlement; or (ii) if there is an objection to the settlement by a Class Member on or prior to the
20 date the Court enters an order granting final approval of the settlement, then on the date of final
21 resolution of that objection (including any appeal) resulting in final judicial approval of the
22 settlement.

23 **2.16 “Final Approval and Fairness Hearing”** means the hearing set by the Court to (a)
24 review the settlement and determine whether the Court should give final approval to this
25 settlement, (b) consider any timely objections made pursuant to Section 6.4.5 of this settlement,
26 and all responses by the Parties, (c) consider the request for attorneys’ fees and expenses
27 submitted by Class Counsel, (d) consider the Settlement Administrator’s Settlement
28 Administration Costs, and (e) consider the Class Representatives’ application for Enhancement

1 Payments.

2 **2.17 “Final Judgment”** shall mean the order granting final approval of the settlement
3 and judgment entered by the Court.

4 **2.18 “FLSA Claim Form”** means the Claim Form to be submitted by Settlement Class
5 Members who wish to opt-in to the FLSA settlement and receive the FLSA Settlement Payment
6 (substantially in the form attached hereto as Exhibit 5).

7 **2.19 “FLSA Claim Period”** means the period from March 20, 2015 through the
8 Preliminary Approval Date.

9 **2.20 “FLSA Settlement Payment”** means the amount payable from the FLSA
10 Settlement Allocation to each FLSA Settlement Class Member that timely submits a valid FLSA
11 Claim Form. Class Members who do not timely submit an FLSA Claim Form will not receive an
12 FLSA Settlement Payment and will not release their FLSA claims. FLSA Settlement Payments
13 are subject to both employee and employer-side payroll taxes and other required withholdings.

14 **2.21 “FLSA Settlement Allocation”** means the ten percent (10%) of the Net Settlement
15 Amount being allocated for FLSA Settlement Payments. Any unclaimed portion of the FLSA
16 Settlement Allocation shall be added to the Individual Settlement Allocation.

17 **2.22 “FLSA Settlement Class” or “FLSA Settlement Class Members”** means all
18 persons employed in California by Empire Transportation, Inc., in a non-exempt position at any
19 time during the FLSA Claim Period and consent to become a party with respect to the FLSA
20 portion of the Settlement by timely submitting an FLSA Claim Form.

21 **2.23 “Individual Settlement Allocation”** means the 90% of the Net Settlement Amount
22 being allocated for Individual Settlement Payments.

23 **2.24 “Individual Settlement Payment”** means the amount payable from the Individual
24 Settlement Allocation to each Qualified Claimant. Therefore, all Class Members who do not
25 submit a timely request for exclusion will receive an Individual Settlement Payment. Individual
26 Settlement Payments are subject to both employee and employer-side payroll taxes and other
27 required withholdings.

28 **2.25 “Gross Settlement Amount”** is the sum of Two Hundred and Eighty Five

1 Thousand U.S. Dollars (\$285,000.00), which represents the amount payable in this settlement by
2 Defendant, and includes without limitation the Settlement Administration Costs, attorneys' fees,
3 litigation costs, Class Representatives' Enhancement Payment, and the PAGA Payment.
4 Defendant's employer share of payroll taxes is to be separately paid by Defendant and is in
5 addition to the Gross Settlement Amount.

6 **2.26 "Net Settlement Amount"** is the remaining portion of the Gross Settlement
7 Amount available for distribution to Qualified Claimants after deduction of Court approved
8 attorneys' fees and litigation costs, Settlement Administration Costs, the Class Representatives'
9 Enhancement Payment, and the PAGA Payment. Ninety percent (90%) of the Net Settlement
10 Amount shall be allocated to the Individual Settlement Payments (the "Individual Settlement
11 Allocation") and ten percent (10%) of the Net Settlement Amount shall be allocated to the FLSA
12 Settlement Payments (the "FLSA Settlement Allocation").

13 **2.27 "Notice of Settlement"** means the document substantially in the form attached
14 hereto as Exhibit 1.

15 **2.28 "Notice Packet"** means the Notice of Settlement, Data Dispute Form, and FLSA
16 Claim Form.

17 **2.29 "PAGA Claim Period"** means, for purposes of this settlement only, the period
18 from March 12, 2019 through the Preliminary Approval Date.

19 **2.30 "PAGA Payment"** means Twenty Eight Thousand, Five Hundred U.S. Dollars
20 (\$28,500.00) of the Gross Settlement Amount to be allocated to claims under the Labor Code
21 Private Attorney's General Act of 2004, California Labor Code §§ 2698 *et seq.*, with Twenty One
22 Thousand, Three Hundred Seventy Five U.S. Dollars (\$21,375.00) being awarded to the State of
23 California, subject to Court approval, and Seven Thousand One Hundred and Twenty Five U.S.
24 Dollars (\$7,125.00) being awarded to PAGA Settlement Members.

25 **2.31 "PAGA Settlement Allocation"** means the 25% of the total PAGA Payment
26 (\$7,125.00) allocated to PAGA Settlement Members. The PAGA Settlement Allocation will be
27 issued to all PAGA Settlement Members, and PAGA Settlement Members cannot exclude
28 themselves from the PAGA release or receiving their share of the PAGA Settlement Allocation.

1 **2.32 “PAGA Settlement Members”** means all persons employed in California by
2 Empire Transportation, Inc., in a non-exempt position at any time during the PAGA Claim Period.
3 As non-party employees may not opt-out of a PAGA Settlement under applicable law, all PAGA
4 Settlement Members are bound by this Settlement without the need for notice or certification of
5 such a class.

6 **2.33 “Preliminary Approval Date”** means the date the Court approves the settlement,
7 and the exhibits thereto, and enters an order providing for notice to the Settlement Class, an
8 opportunity to opt out of the Settlement Class, an opportunity to submit timely objections to the
9 settlement, a procedure for submitting Data Dispute Forms, and setting a hearing on the fairness of
10 the terms of settlement, including approval of attorneys’ fees and costs.

11 **2.34 “Procedural Order”** means the document substantially in the form attached hereto
12 as Exhibit 3.

13 **2.35 “QSF”** means the Qualified Settlement Fund set up by the Settlement
14 Administrator for the benefit of the Qualified Claimants and from which the settlement payments
15 shall be made.

16 **2.36 “Qualified Claimant”** means any and all Class Members who have not submitted a
17 timely and correctly completed request for exclusion, as set forth in Section 6.4.4.

18 **2.37 “Released Class Claims”** means all claims under state or local law, whether
19 statutory, common law or administrative law, pled or that could have been pled based on the
20 factual assertions in the Complaint, including but not limited to: (1) failure to provide meal
21 periods and rest breaks in violation of California Labor Code §§ 226 and 512; (2) failure to pay
22 overtime and minimum wages in violation of California Labor Code §§ 510 and 1194; (3) failure
23 to reimburse business expenses in violation of California Labor Code § 2802; (4) waiting time
24 penalties in violation of California Labor Code § 203; (5) failure to maintain accurate itemized
25 wage statements in violation of California Labor Code § 226; (6) unfair and unlawful business
26 practices in violation of California Business and Professions Code § 17200 *et seq.*; including, but
27 not limited to, injunctive relief; punitive damages; liquidated damages, penalties of any nature;
28 interest; fees including but not limited to California Code of Civil Procedure § 1021.5; costs; and

1 all other claims and allegations made or which could have been made in the Action during the
2 Class Period. Notwithstanding the above, the Released Class Claims exclude all claims for civil
3 penalties, including any claims, causes of action, or legal theories of relief pled, or that could have
4 been pled, based on the factual assertions in the Complaint and PAGA Notice to the Labor &
5 Workforce Development Agency (“LWDA”) arising under the California Private Attorneys
6 General Act (California Labor Code §§ 2698 *et seq.*) (“PAGA”), which are defined in Section 2.39
7 below.

8 **2.38 “Released FLSA Claims”** means any claims, causes of action, or legal theories of
9 relief pled, or that could have been pled, based on the factual assertions in the Complaint arising
10 under the Fair Labor Standards Act (29 U.S.C. § 201 *et seq.*) during the FLSA Claim Period.
11 Released FLSA Claims will be released by eligible FLSA Settlement Class Members *only if* they
12 consent to join as a party plaintiff by submitting a valid FLSA Claim Form.

13 **2.39 “Released PAGA Claims”** means any claims, causes of action, or legal theories of
14 relief pled, or that could have been pled, based on the factual assertions in the Complaint and
15 PAGA Notice to the LWDA arising under the California Private Attorneys General Act
16 (California Labor Code §§ 2698 *et seq.*) (“PAGA”) during the PAGA Claim Period. All eligible
17 PAGA Settlement Members cannot exclude themselves from releasing the Released PAGA
18 Claims and cannot opt out of receiving their share of the PAGA Settlement Allocation.

19 **2.40 “Releasees”** means Empire Transportation, Inc., and all its present and former
20 parent companies, subsidiaries, divisions, concepts, related or affiliated companies, shareholders,
21 officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any
22 individual or entity, who or which could be liable for any of the Released Class Claims, Released
23 FLSA Claims, and Released PAGA Claims, and Defendant’s counsel of record in the Action.

24 **2.41 “Settlement Administrator”** means and refers to Phoenix Settlement
25 Administrators, the entity that will be responsible for the administration of the settlement and
26 related matters as described in this settlement. Defendant will not object to Class Counsel seeking
27 permission to pay up to Twenty Thousand U.S. Dollars (\$20,000.00) for its services from the
28 Gross Settlement Amount.

1 **2.42 “Settlement Administration Costs”** means the fees and expenses reasonably
2 incurred by the Settlement Administrator as a result of the procedures and processes expressly
3 required by this settlement, and shall include all costs of administering the settlement, including,
4 but not limited to, all tax document preparation, custodial fees, and accounting fees incurred by the
5 Settlement Administrator; all costs and fees associated with preparing, issuing, and mailing any
6 and all notices of settlement and other settlement correspondence to Class Members and/or
7 Qualified Claimants; all costs and fees associated with communicating with Class Members, Class
8 Counsel, and Defendant’s Counsel regarding settlement; all costs and fees associated with
9 computing, processing, reviewing, and paying the Claim Amounts, and resolving disputed claims;
10 all costs and fees associated with calculating tax withholdings and payroll taxes, working with
11 Defendant so that related payment to federal and state tax authorities can be made, and printing tax
12 forms relating to payments made under the settlement; all costs and fees associated with preparing
13 any tax returns and any other filings required by any governmental taxing authority or agency; all
14 costs and fees associated with preparing any other notices, reports, or filings to be prepared in the
15 course of administering Claim Amounts; and any other costs and fees incurred and/or charged by
16 the Settlement Administrator in connection with the execution of its duties under this Stipulation.
17 The Settlement Administration Costs are estimated not to exceed \$20,000.00.

18 **3. DESCRIPTION OF THE LITIGATION.**

19 **3.1** The Action was brought by former employees of Defendant alleging the following:
20 (1) violation of Labor Code §§ 226.7 and 512 regarding unpaid meal and rest period premium
21 wages; (2) violation of Labor Code §§ 510 and 1194 regarding unpaid overtime and minimum
22 wages; (3) violation of Labor Code § 2802 regarding non-reimbursement of necessary business
23 expenses; (4) violation of Labor Code § 203 regarding waiting time penalties; (5) violation of
24 Labor Code § 226 regarding recordkeeping; (6) violation of Business and Professions Code §
25 17200 *et seq.*; (7) PAGA; and (8) violation of the FLSA.

26 **3.2** Defendant has filed and served an answer to the Action, denying all material
27 allegations and asserting affirmative defenses.

28 **3.3** Through formal and informal discovery, Defendant provided Class Counsel with

1 copies of applicable versions of its personnel/payroll policies and collective bargaining
2 agreements, as well as records relating to employees' hours worked and wages paid.

3 **3.4** On May 20, 2019, the Parties attended a full-day mediation session with Steven
4 Pearl. The Parties were unable to resolve the matter on that date, but continued to discuss
5 settlement. Following months of further negotiations, the Parties fully executed a binding
6 Memorandum of Understanding ("MOU") on June 15, 2020. Based on the framework of the
7 MOU, the Parties have worked together to memorialize the instant longform Joint Stipulation of
8 Settlement and Release.

9 **3.5** The agreed-upon settlement was reached after evaluating Defendant's financial
10 condition, the Parties' theories of potential exposure for the underlying claims, as well as
11 Plaintiffs' claims for interest and penalties. The Parties also assessed appropriate discounts to the
12 potential liability based on Defendant's contentions and defenses.

13 **3.6** The Parties agree that the above-described investigation and evaluation, as well as
14 discovery and the information exchanged during the settlement negotiations, are more than
15 sufficient to assess the merits of the respective Parties' positions and to compromise the issues on
16 a fair and equitable basis.

17 **4. BENEFITS OF THE SETTLEMENT TO THE PROPOSED CLASS.**

18 **4.1** Based on their own independent investigations and evaluations, Class Counsel are
19 of the opinion that the settlement with Defendant for the consideration and terms set forth below,
20 in view of the Class Representatives' and average Class Members' claims and the risk of loss, is
21 fair, reasonable, and adequate in light of all known facts and circumstances, and is in the best
22 interests of the Settlement Class. Class Counsel are also of the opinion that the total consideration
23 and payment set forth in this settlement is adequate in light of Defendant's financial condition and
24 the uncertainties surrounding the risk of further litigation and the defenses that Defendant have
25 asserted and could assert.

26 **4.2** Following investigation and discovery into Defendant's financial condition, Class
27 Counsel have weighed Defendant's financial situation and the monetary benefit under the
28 settlement to the Settlement Class against the expenses and length of continued proceedings that

1 would be necessary to prosecute the Action against Defendant through trial and possible appeals.
2 Class Counsel have also considered the uncertain outcome and risk of any litigation, especially in
3 complex actions such as class actions, as well as the difficulties and delay inherent in such
4 litigation. Therefore, Class Counsel have determined that the settlement is in the best interests of
5 the Settlement Class.

6 **5. POSITION OF DEFENDANT.**

7 **5.1** Neither this settlement, nor any document referred to in it, nor any actions taken
8 pursuant to this settlement, is or shall be claimed to be, construed as, or deemed to be, an
9 admission by Defendant of the truth of any of the allegations in the Complaint, the propriety of
10 class treatment, the validity of any of the claims that were or could have been asserted by any of
11 the Class Representatives and/or Class Members in the Action, or of any liability or guilt of
12 Defendant in the Action. There has been no final determination by any court as to the merits of
13 the claims asserted by Plaintiffs against Defendant.

14 **5.2** Defendant specifically and generally denies any and all liability or wrongdoing of
15 any sort with regard to any of the claims alleged, makes no concessions or admissions of liability
16 of any sort, and contends that for any purpose other than settlement, the Action is not appropriate
17 for class action treatment. Nonetheless, Defendant has concluded that further conduct of the
18 Action would be undesirable, and Defendant wants the Action to be fully and finally settled in the
19 manner and upon the terms and conditions set forth in this settlement. Defendant has also
20 considered the uncertainty and risks inherent in any litigation. Defendant therefore desires to
21 settle the Action in the manner and upon the terms and conditions set forth in this settlement.

22 **5.3** Defendant will stipulate to the certification of the Settlement Class's claims for
23 settlement purposes only. Defendant disputes that certification is proper for the purposes of
24 litigating the Settlement Class's claims proposed in or flowing from the Complaint.

25 **6. OPERATIVE TERMS OF SETTLEMENT.**

26 The Parties to the Action agree as follows:

27 **6.1.1 Cooperation.** The Parties will cooperate in obtaining, through written
28 stipulation or unopposed motion if a motion is required, an order from the Court approving the

1 settlement. The Parties agree to use their best efforts to expedite the preparation and submission
2 of the settlement and related documents. The Parties further agree to fully cooperate in the
3 drafting and/or filing of any further documents or filings reasonably necessary to be prepared or
4 filed, shall take all steps that may be requested by the Court or that are otherwise necessary to the
5 approval and implementation of this settlement, and shall otherwise use their respective best
6 efforts to obtain Court approval of this settlement. In regard to Defendant's financial condition,
7 Defendant agrees to provide: (1) a declaration attesting to Defendant's current financial situation
8 to be filed in support of Plaintiff's motion for preliminary approval; and (2) to make supporting
9 financial documentation available to Plaintiff's counsel and any objector to the proposed class
10 settlement (if any) who obtains a Court order for the production of such documentation pursuant to
11 the stipulated protective order in this Action. The parties also agree to reasonably cooperate in
12 providing any necessary information to the Settlement Administrator, to the extent necessary to
13 fulfill all terms of this agreement.

14 **6.2 Preliminary Approval.**

15 **6.2.1** Following execution of this settlement agreement, Plaintiffs shall apply to
16 the Court for the entry of an Order:

- 17 A. Conditionally certifying the Settlement Class for purposes of this settlement
18 agreement;
- 19 B. Appointing Kenneth H. Yoon, Stephanie E. Yasuda, and Brian G. Lee of Yoon
20 Law, APC as Class Counsel;
- 21 C. Appointing Plaintiffs Santiago Giovanni Jovel Del Cid, Michael Harrington, and
22 Derrick Carbajal as Class Representatives for the Settlement Class;
- 23 D. Approving Phoenix Settlement Administrators as Settlement Administrator;
- 24 E. Preliminarily approving this settlement agreement and its terms as fair, reasonable,
25 and adequate;
- 26 F. Approving the form and content of the Notice of Settlement Award attached hereto
27 as Exhibit 1, and directing the mailing of same; and
- 28 G. Scheduling a Final Approval hearing.

1 The Parties will request that the Court's preliminary approval of this settlement be
2 embodied in a Procedural Order, a proposed form of which is attached as Exhibit 3.

3 **6.3 Notice to Class Members.** The Settlement Administrator shall disseminate the
4 Notice Packet in the manner described below:

5 **6.3.1** Within thirty (30) calendar days of the Court's entry of the Procedural
6 Order, Defendant will provide to the Administrator a list in Microsoft Excel format containing
7 each Class Members' (i) full name, (ii) last known address, (iii) Social Security Number, and (iv)
8 dates of active employment in which they worked for Defendant in California during the Class
9 Period (including in particular: the first date a Class Member first performed work during the
10 Class Period, the date a Class Member stopped performing work during the Class Period, and any
11 subsequent dates in which the Class Member may have re-entered the Class Period by again
12 performing work or re-exited the Class Period by again discontinuing work).

13 **6.3.2** No later than fifteen (15) calendar days after receipt of such address
14 information, the Settlement Administrator will perform a national change of address ("NCOA")
15 search, update the addresses per the results of the NCOA search, and then mail the Notice of
16 Settlement, Data Dispute Form, and FLSA Claim Form substantially in the forms attached as
17 Exhibits 1, 2, and 5 respectively, to each Class Member by first-class mail, postage prepaid.

18 **6.3.3** In the event that a Notice Packet sent by mail is returned as undeliverable:

19 (a) Within five (5) calendar days of receipt of a returned Notice Packet,
20 the Settlement Administrator will make reasonable efforts to obtain a valid mailing address by
21 using the social security of the Class Member and standard skip tracing devices to conduct a
22 search for a correct mailing address and by contacting Class Counsel and Defendant through
23 Defendant's Counsel.

24 (b) Following each search that results in a corrected address, the
25 Settlement Administrator shall promptly resend the original Notice Packet to the Class Member by
26 first-class mail, postage prepaid. Following each search that results in no corrected address, the
27 Settlement Administrator shall resend the Notice Packet to the Class Member, postage prepaid, to
28 the original address, within five (5) calendar days from the date of the skip trace. Only one (1)

1 such re-mailing to the same address shall ever occur, per Class Member.

2 **6.3.4** Class Counsel shall cooperate in good faith with the Settlement
3 Administrator's reasonable efforts to obtain valid mailing addresses for Class Members.
4 Defendant shall cooperate in good faith with the Settlement Administrator's reasonable efforts to
5 obtain valid mailing addresses for Class Members to the extent they were active employees of
6 Defendant at the time of the Procedural Order or are active employees at the time of any request
7 made by the Settlement Administrator.

8 **6.3.5** All costs of mailing of the Notice Packet, whether foreseen or not, shall be
9 paid from the Gross Settlement Amount, including the cost of searching for Class Members'
10 addresses as provided in Section 6.3.2. All other reasonable costs of the Settlement Administrator
11 shall also be paid from the Gross Settlement Amount.

12 **6.3.6** No later than fourteen (14) calendar days prior to the date of the Final
13 Approval and Fairness Hearing, the Settlement Administrator shall file a declaration under penalty
14 of perjury advising the Court that the requirements of Sections 6.3.1 and 6.3.2 of this settlement
15 have been fulfilled.

16 **6.3.7** Compliance with these procedures shall constitute due and sufficient notice
17 to Class Members of this settlement and shall satisfy the requirement of due process. Nothing else
18 shall be required of, or done by, the Parties, Class Counsel, and Defendant's Counsel to provide
19 notice of the proposed settlement.

20 **6.4 Responses to Notice.**

21 **6.4.1** The Notice Packet shall provide Class Members with information as to how
22 they may challenge the information in the Data Dispute Form and how Class Members that
23 worked during the FLSA Claim Period may opt in to receive an FLSA Settlement Payment. Class
24 Members will have until the Data Dispute Deadline within which to complete and postmark their
25 Data Dispute Form and FLSA Claim Form for return to the Settlement Administrator. Except as
26 provided by Sections 6.4.2 and 6.4.3, no Data Dispute Forms will be honored if postmarked after
27 the Data Dispute Deadline.

28 **6.4.2** For Class Members who are re-mailed the Notice Packet due to it being

1 undeliverable, the deadline by which to submit a Data Dispute Form, submit an FLSA Claim
2 Form, file an objection, or submit a request for exclusion will be the later of (i) fourteen (14)
3 calendar days from the date the Notice Packet was re-mailed, or (ii) the Data Dispute Deadline.

4 **6.4.3** If a Data Dispute Form or FLSA Claim Form is timely submitted, but is
5 deficient or incomplete, the Settlement Administrator will return the form (or, if deemed
6 necessary, a new form) to the Class Member within five (5) business days of receipt of the Data
7 Dispute Form or FLSA Claim Form with a deficiency notice explaining the deficiencies and
8 stating that the Class Member will have ten (10) calendar days from the date of the deficiency
9 notice to correct the deficiencies and resubmit the Data Dispute Form or FLSA Claim Form.
10 Neither the Parties nor any of their counsel shall discourage any Class Member from submitting a
11 Data Dispute Form.

12 **6.4.4** Class Members, with the exception of the Class Representatives, may opt
13 out of the settlement. Class Members who wish to exercise this option must submit a request for
14 exclusion to the Settlement Administrator as provided in this section. The request for exclusion
15 must: (a) be in writing; (b) state the name, address and telephone number of the Class Member; (c)
16 state either the Class Member's approximate years of employment with Defendant or the
17 employee identification number given to the Class Member by Defendant; (d) request exclusion
18 from the Class saying words to the effect of "I wish to opt out of the Class in: *Santiago Giovanni*
19 *Jovel Del Cid, et al. v. Empire Transportation, Inc.*, San Bernardino County Superior Court Case
20 No. CIVDS1806733"; (e) be sent via U.S. Mail post-marked no later than the Data Dispute
21 Deadline; and (f) be signed and dated with return address or contact information. No request for
22 exclusion may be made on behalf of a group of members of the Settlement Class. The date of the
23 postmark on the return-mailing envelope shall be the exclusive means used to determine whether a
24 request for exclusion has been timely submitted. By submitting such a request for exclusion, a
25 Class Member shall be deemed to have exercised his or her option to opt out of the class action
26 lawsuit. With the exception of PAGA Settlement Members, any member of the Settlement Class
27 who requests exclusion from the settlement will not be entitled to any share of the settlement, will
28 not be bound by the settlement, and will not have any right to object, appeal, or comment thereon.

1 PAGA Settlement Members who request exclusion from the settlement will still receive their
2 equitable share of the PAGA Settlement Allocation. Members of the Settlement Class who fail to
3 submit a valid and timely request for exclusion shall be bound by all terms of the settlement and
4 the Final Judgment entered in this Action, regardless of whether they otherwise have requested
5 exclusion from the settlement. No later than fourteen (14) calendar days before the Final
6 Approval and Fairness Hearing, the Settlement Administrator shall file a declaration under penalty
7 of perjury advising the Court with a complete list of all members of the Settlement Class who have
8 timely requested exclusion from the settlement.

9 **6.4.5** Any person who does not request exclusion but who wishes to object or
10 otherwise be heard concerning this settlement must provide the Court and Class Counsel with
11 written notice of his or her intent to object to this settlement and/or appear at the Final Approval
12 and Fairness Hearing as provided in this section. To be considered timely, the notice must be filed
13 with the Court pursuant to the Court's procedures for filing no later than the Data Dispute
14 Deadline and be sent to the Settlement Administrator via U.S. Mail and postmarked no later than
15 the Data Dispute Deadline. The notice must include the objector's name, address, telephone
16 number, and signature, and set forth any and all objections to the settlement and include any
17 supporting papers and arguments. Any person who fails to submit such a timely written notice
18 shall be barred from making any statement objecting to this settlement, including at said hearing,
19 and shall forever waive his or her objection, except by special permission of the Court. Either of
20 the Parties may file a responsive document to any notice of intent to object or appear with the
21 Court no later than five (5) business days before the Final Approval and Fairness Hearing. Any
22 person who objects to the settlement shall be bound by the order of the Court.

23 **6.4.6** If any individual whose name does not appear on the updated class list
24 provided to the Settlement Administrator believes that he or she is a member of the Settlement
25 Class, he or she shall have the opportunity to dispute his or her exclusion from the Settlement
26 Class. If an individual believes he or she should be a member of the Settlement, he or she must
27 notify the Settlement Administrator in writing no later than the Data Dispute Deadline. The
28 Parties will meet and confer regarding any such individuals in an attempt to reach an agreement as

1 to whether any such individual should be regarded as a member of the Settlement. If the Parties so
2 agree, the Settlement Administrator will mail a Notice Packet to the individual, and treat the
3 individual as a member of the Settlement Class for all other purposes. Such an individual will
4 have all of the same rights as any other member of the Settlement Class under this agreement.

5 **6.4.7** If five percent (5%) or more of the total number of Class Members submit
6 timely and valid requests for exclusion, then Defendant shall have the option to void the
7 settlement. Defendant must exercise this option within thirty (30) calendar days after expiration of
8 the Data Dispute Deadline. If Defendant chooses to exercise this option, the effect will be
9 precisely the same as if final approval did not occur, as discussed herein.

10 **6.4.8** Neither the Parties nor their respective counsel will solicit or otherwise
11 encourage any Class Member, directly or indirectly, to request exclusion from the settlement or
12 object to the settlement.

13 **6.5 Data Dispute Procedures.**

14 **6.5.1** Any Qualified Claimant who disputes the number of workweeks listed
15 on the Data Dispute Form shall complete the Data Dispute Form and provide the completed form
16 together with any supporting information or documentation to the Settlement Administrator by the
17 Data Dispute Deadline. A Data Dispute Form will be deemed submitted (a) when postmarked, if
18 it is mailed by first-class, registered, or certified mail, postage prepaid, addressed in accordance
19 with the instructions on the form, or (b) if otherwise submitted, when it is actually received at the
20 address designated on the form. If a Qualified Claimant does not timely dispute the information
21 contained in the Data Dispute Form, the information contained in the Data Dispute Form mailed to
22 the Qualified Claimant shall govern the calculation of his or her entitlement under the Settlement.

23 **6.5.2** Defendant shall review and respond to each submitted Data Dispute Form
24 disputing the number of workweeks within ten (10) calendar days of receipt, and shall transmit a
25 copy of its response to the Settlement Administrator. Defendant's response shall state whether
26 Defendant agrees with or disputes the information provided in the Data Dispute Form.
27 Defendant's dates of employment data will be presumed to be correct, unless a particular Class
28 Member proves otherwise to the Settlement Administrator by credible evidence.

1 (a) If Defendant agrees with all of the information provided in the Data
2 Dispute Form disputing the number of workweeks, the information and documentation provided
3 by the Qualified Claimant and attached to the Data Dispute Form shall govern the calculation of
4 the entitlement under the Settlement of the person whose employment information is listed in the
5 Data Dispute Form.

6 (b) If Defendant disagrees with any of the information provided in a
7 Data Dispute Form disputing the number of workweeks, it shall follow the procedure set forth in
8 Section 6.5.3 of this Settlement.

9 **6.5.3** In the event that Defendant disagrees with the information provided in a
10 Data Dispute Form disputing the dates of employment, Defendant's Counsel will promptly advise
11 Class Counsel in writing of the dispute and provide Class Counsel with copies of all information
12 relevant to the dispute. Copies of all Data Dispute Forms and correspondence with the person(s)
13 submitting Data Dispute Forms shall be made available to Class Counsel upon request.
14 Defendant's Counsel and Class Counsel shall attempt in good faith to resolve any such dispute
15 within ten (10) calendar days of Class Counsel's receipt of Defendant's Counsel's notice of a
16 dispute as to the Data Dispute Form. Class Counsel shall have full discretion on behalf of the
17 Qualified Claimants to resolve such disputes with Defendant's Counsel, except that any and all
18 payment relating to the disputed entitlement must be from the Net Settlement Amount.

19 **6.5.4** In the event the Parties are unable to resolve any dispute under this section,
20 the Settlement Administrator shall review all information, material and documents provided by the
21 claimant, Class Counsel, and/or Defendant's Counsel, and make a decision regarding the dispute.
22 This decision shall be final and unappealable.

23 **6.5.5** The Class Representatives, by signing this agreement, are bound by the
24 terms herein and further agree not to request to be excluded from the settlement. Any such request
25 for exclusion shall therefore be void and of no force or effect. Defendant, Class Counsel, and the
26 Class Representatives waive their rights to file an appeal, writ, or any challenge whatsoever to the
27 terms of this settlement.

28 **6.6 Application for Attorneys' Fees and Costs.** Class Counsel shall apply to the

1 Court for an award of fees from the Gross Settlement Amount in an amount not to exceed Ninety
2 Nine Thousand and Seven Hundred and Fifty U.S. Dollars (\$99,750.00) (thirty five percent (35%)
3 of the Gross Settlement Amount) and actual costs as supported by declaration, not to exceed
4 \$15,000.00. Neither Class Counsel nor any other attorneys acting for, or purporting to act for, the
5 Settlement Class, Class Members, or Class Representatives, may recover or seek to recover any
6 amounts for fees, costs, or disbursements from the Releasees or the settlement except as expressly
7 provided herein.

8 **6.7 Application for Enhancement Payments.**

9 **6.7.1** Class Counsel, on behalf of Plaintiffs, shall apply to the Court for an
10 Enhancement Payment from the Gross Settlement Amount for each of them, up to the maximum
11 amounts set for in Section 2.14, per the Court's direction, or no later than the same day as
12 Plaintiffs file their anticipated Motion for Final Approval of Class Action Settlement.

13 **6.7.2** Any request for an Enhancement Payment may be supported by a
14 declaration from Class Representatives seeking payment and outlining the burdens and obligations
15 assumed in connection their role as a Class Representatives.

16 **6.8 Final Approval and Fairness Hearing.** On the date set forth in the Notice Packet,
17 the Court shall hold the Final Approval and Fairness Hearing where objections, if any, may be
18 heard.

19 **6.9 Final Judgment.** At the Final Approval and Fairness Hearing, the Parties shall
20 request that the Court give final approval to this Agreement and shall submit to the Court the
21 Proposed Final Order Approving Settlement of Class Action. Final Judgment will be entered after
22 Defendant fully meets all its financial obligations under this settlement (including the payment
23 schedule in Section 6.11.1).

24 **6.10 Allocation of the Net Settlement Amount and PAGA Payment.**

25 **6.10.1** The Net Settlement Amount shall be allocated as follows: ninety percent
26 (90%) of the Net Settlement Amount shall constitute the Individual Settlement Allocation, and ten
27 percent (10%) of the Net Settlement Amount shall constitute the FLSA Settlement Allocation.
28 Any unclaimed portion of the FLSA Settlement Allocation shall be added to the Individual

1 Settlement Allocation.

2 **6.10.2** Each Individual Settlement Payment shall be determined based on the
3 following calculation: the number of workweeks that the Class Member was a member of the
4 Class during the Class Period divided by the total number of workweeks that every Class Member
5 was a member of the Class during the Class Period, then multiplied by the Individual Settlement
6 Allocation.

7 **6.10.3** Each FLSA Settlement Payment shall be determined based on the following
8 calculation: the number of workweeks that the FLSA Settlement Class Member was a member of
9 the FLSA Claim Period divided by the total number of workweeks that every FLSA Settlement
10 Class Member was a member of the FLSA Claim Period, then multiplied by the FLSA Settlement
11 Allocation.

12 **6.10.4** Each PAGA Settlement Member shall receive payment based on their
13 equitable share of the PAGA Settlement Allocation without a claims process. Each PAGA
14 Settlement Member's payment shall be determined based on the following calculation: the number
15 of workweeks that the PAGA Settlement Member was a member of the PAGA Claim Period
16 divided by the total number of workweeks that every PAGA Settlement Member was a member of
17 the PAGA Claim Period, then multiplied by the PAGA Settlement Allocation. PAGA Settlement
18 Members who request exclusion from the settlement will still receive their equitable share of the
19 PAGA Settlement Allocation.

20 **6.10.5** Pertaining to any calculations performed under Sections 6.10.2, 6.10.3, and
21 6.10.4, counted workweeks shall constitute all full or partial weeks within which a Class Member
22 was considered actively employed by Defendant in California. Any partial workweek will be
23 rounded up to the nearest full workweek. Any workweeks worked by a Class Member, when not a
24 member of the Class (for example, while classified as exempt, while on a leave of absence, etc.)
25 are not included as workweeks. There will be no reversion of any of the Gross Settlement
26 Amount or Net Settlement Amount to Defendant. The calculation of a Class Member's
27 workweeks and a determination as to whether a Class Member was actively employed in a
28 particular workweek shall be construed from Defendant's records. All Qualified Claimants will

1 receive their Claim Amount, such that one hundred percent (100%) of the Net Settlement Amount
2 will be paid.

3 **6.10.6** The Parties recognize that the Claim Amounts to be paid to Class Members
4 reflect settlement of a dispute over claimed wages, interest, premiums and penalties. All Claim
5 Amounts to Qualified Claimants are allocated as follows:

6 (a) Twenty percent (20%) of the Individual Settlement Payments and
7 one hundred percent (100%) of the FLSA Settlement Payment shall be allocated for payment as
8 alleged unpaid wages to Qualified Claimants. Each Qualified Claimant will be issued a W-2 form
9 reporting this payment.

10 (b) Eighty percent (80%) of the Individual Settlement Payments and one
11 hundred percent (100%) of the PAGA Payments shall be allocated as alleged penalties and interest
12 to Qualified Claimants. Each Qualified Claimant will be issued a Form 1099 reporting this
13 payment as required by law.

14 **6.10.7** Defendant will be separately responsible for the employer's share of
15 withholding taxes for the settlement payments to the Qualified Claimants and the employee tax
16 withholding will be withheld from the Individual Settlement Payments.

17 (a) The Settlement Administrator will prepare W-2's as part of this
18 settlement. The Settlement Administrator shall work with Defendant to ensure that all monies and
19 information needed to remit and report the applicable portions of the payroll tax payment to the
20 appropriate taxing authorities are provided on a timely basis. Defendant agreea to reasonably
21 cooperate with the Settlement Administrator to the extent necessary to determine the amount of
22 the payroll tax payment required under this Section.

23 (b) Other than the withholding and reporting requirements set forth in
24 Sections 2.31 and 6.10.4(a), Qualified Claimants shall be solely responsible for the reporting and
25 payment of their share of any federal, state and/or municipal income or other taxes on payments
26 made pursuant to this Settlement. No party has made any representation to any of the other Parties
27 as to the taxability of any payments pursuant to this Settlement, including the payments to Class
28 Members, the payments to Class Counsel, the payments to the Class Representatives, the payroll

1 tax liability of Defendant, or the allocation of settlement proceeds to wage and non-wage income
2 as provided in Section 6.10.6, or otherwise as to tax implications of any provision of this
3 settlement.

4 **6.11 Distribution of Settlement Proceeds.**

5 **6.11.1** The Parties agree to the following schedule for funding of the Gross
6 Settlement Amount:

- | | | | |
|----|---|---|-----------------------------|
| 7 | • | October 15, 2020 or after preliminary approval: | \$20,000.00 |
| 8 | • | 14 days after preliminary approval*: | \$13,250.00 |
| 9 | • | December 1, 2020*: | \$13,250.00 |
| 10 | • | January 1, 2021*: | \$13,250.00 |
| 11 | • | February 1, 2021**: | \$13,250.00 |
| 12 | • | March 1, 2021**: | \$13,250.00 |
| 13 | • | April 1, 2021**: | \$13,250.00 |
| 14 | • | May 1, 2021**: | \$13,250.00 |
| 15 | • | June 1, 2021**: | \$13,250.00 |
| 16 | • | July 1, 2021**: | \$13,250.00 |
| 17 | • | August 1, 2021**: | \$13,250.00 |
| 18 | • | September 1, 2021**: | \$13,250.00 |
| 19 | • | October 1, 2021**: | \$13,250.00 |
| 20 | • | November 1, 2021**: | \$13,250.00 |
| 21 | • | December 1, 2021**: | \$13,250.00 |
| 22 | • | January 1, 2022**: | \$13,250.00 |
| 23 | • | February 1, 2022**: | \$13,250.00 |
| 24 | • | March 1, 2022**: | \$13,250.00 |
| 25 | • | April 1, 2022**: | \$13,250.00 |
| 26 | • | May 1, 2022***: | \$13,250.00 |
| 27 | • | June 1, 2022***: | \$13,250.00 plus employer's |
| 28 | | | share of payroll taxes |

1 *assuming preliminary approval by the Court is not denied with prejudice by the Court,
2 notwithstanding any other motion practice or appeal.

3 **assuming final approval of settlement is not denied with prejudice by the Court,
4 notwithstanding any other motion practice or appeal.

5 ***assuming final approval of settlement.

6
7 If payment is due on a Saturday, Sunday or holiday, the payment will be due the next business day
8 which is not a Saturday, Sunday or holiday.

9 **6.11.2** Should the date of the Court's preliminary approval of the settlement occur
10 after any of the scheduled payments listed in Section 6.11.1, Defendant shall pay the total balance
11 that would have already been due within ten (10) business days of the Court's signed order
12 granting preliminary approval. Defendant's payments will then follow the rest of the scheduled
13 payments outlined above in Section 6.11.1.

14 **6.11.3** In the event that a scheduled payment has not been timely received by the
15 Settlement Administrator in accordance with Section 6.11.2, Class Counsel must give Empire's
16 counsel three (3) court days' notice, via electronic mail to Empire's counsel, that Empire is in
17 default on any given payment. Defendant has fifteen (15) court days following receipt of the
18 notice from Plaintiff's counsel to cure the delinquency by wiring the full defaulted amount to the
19 Settlement Administrator. If Defendant has not cured the default by the sixteenth court day and
20 the Court already has granted final approval of the settlement, Class Counsel may request that the
21 Court enter Final Judgment, as contemplated by Section 6.9, including a Judgment (attached
22 hereto as Exhibit 4) against Defendant of Two Hundred and Eighty Five Thousand U.S. Dollars
23 (\$285,000.00), less a credit for any amounts already paid to the Settlement Administrator to date.
24 Empire will not be permitted to cure a default more than seven (7) times during the scheduled
25 payment period; after the seventh event of default, there is no longer any obligation to provide
26 notice and opportunity to cure.

27 **6.11.4** The QSF shall be an interest-bearing account at a federally-insured bank(s)
28 that is/are mutually acceptable to the Parties and the Settlement Administrator, and is FDIC

1 insured for the full amount deposited.

2 **6.11.5** Within fifteen (15) business days after the Final Approval Date, the
3 Settlement Administrator shall promptly deduct and pay (and, if available, electronically wire)
4 from the Gross Settlement Amount: (1) half of the Settlement Administration Costs; and (2) all
5 Court-awarded attorneys' costs (not to exceed \$15,000). Within fifteen (15) business days after
6 wire receipt of the final payment pursuant to Section 6.11.1, the Settlement Administrator shall
7 promptly deduct and pay (and, if available, electronically wire) from the Gross Settlement
8 Amount: (1) all Court-awarded attorneys' fees; (2) Enhancement Payments; (3) State of
9 California's portion of the PAGA Payment; and (4) the second half of the Settlement
10 Administration Costs. Following deduction of the amount of such payments, the Settlement
11 Administrator shall deposit the remaining amount into the QSF and calculate and make payments
12 to the Qualified Claimants in accordance with this Agreement.

13 (a) The Settlement Administrator shall wire the Court-approved
14 attorneys' fees and costs to Class Counsel. Class Counsel shall provide the Settlement
15 Administrator with the pertinent taxpayer identification number and wire instructions within two
16 (2) business days after the Final Approval Date, if not earlier.

17 (b) The Settlement Administrator shall send a check by mail for the
18 Court-approved Enhancement Payments to the Class Representatives, as directed by Class
19 Counsel.

20 **6.11.6** Within fifteen (15) business days after wire receipt of the final payment
21 pursuant to Section 6.11.1, the Settlement Administrator shall issue Claim Amounts to Qualified
22 Claimants in the form of a check, which shall become null and void if not deposited within ninety
23 (90) days of issuance. After ninety (90) days of issuance, funds from undeposited checks will be
24 held by the Settlement Administrator; if the Class Member to whom the undeposited check is
25 issued does not contact Class Counsel or the Settlement Administrator concerning his or her
26 settlement payment within one-hundred eighty (180) to three hundred and sixty five (365) days of
27 issuance of the payment (depending on the directions of the State Controller), the amount of that
28 Class Member's Claim Amount that has remained undeposited as of that time, plus any interest

1 that has accrued on that sum, shall be transmitted to the California State Controller with the
2 identity of the Class Member to whom the funds belong, to be held and disposed of by the
3 Controller under California's Unclaimed Property Law. The failure by a Class Member to claim
4 or deposit any check issued by the Settlement Administrator shall have no effect on that Class
5 Member's release of all Released Claims as set forth herein.

6 **6.11.7** No person shall have any claim against the Settlement Administrator,
7 Defendant or any of the Releasees, the Class Representatives, the Class Members, or Class
8 Counsel based on distribution or payments made substantially in accordance with this settlement,
9 or further orders of this Court. Neither Plaintiffs nor Defendant shall bear any liability for lost or
10 stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless
11 responsible by its own acts of omission or commission, the same is true for the Settlement
12 Administrator.

13 **6.12 Release of Claims.**

14 **6.12.1** Upon full and final payment by Defendant of the Gross Settlement Amount
15 consistent with Section 6.11.1, Class Representatives and each Qualified Claimant and FLSA
16 Settlement Class member shall be deemed to have fully, finally, and forever released the Releasees
17 from their respective Released Class Claims, Released FLSA Claims, and Released PAGA
18 Claims.

19 **6.12.2** In addition, upon full and final payment by Defendant of the Gross
20 Settlement Amount consistent with Section 6.11.1, Plaintiffs Santiago Giovanni Jovel Del Cid,
21 Michael Harrington, and Derrick Carbajal shall be deemed to have fully, finally, and forever
22 released the Releasees from the Class Representatives' Released Claims.

23 **6.12.3** With respect to the Class Representatives' Released Claims, Plaintiffs
24 Santiago Giovanni Jovel Del Cid, Michael Harrington, and Derrick Carbajal shall be deemed to
25 have expressly waived and relinquished, to the fullest extent permitted by law, the provisions,
26 rights, and benefits they may otherwise have had pursuant to § 1542 of the California Civil Code,
27 which provides as follows:

28 A general release does not extend to claims that the creditor or releasing party does not

1 know or suspect to exist in his or her favor at the time of executing the release and that, if
2 known by him or her, would have materially affected his or her settlement with the debtor
or released party.

3 **6.12.4** The Class Representatives warrant and represent that they have not
4 heretofore assigned or transferred to any person not a party to this settlement agreement any
5 released matter or any part or portion thereof and Class Representatives shall defend, indemnify
6 and hold harmless the Releasees from and against any claim (including the payment of attorneys'
7 fees and costs actually incurred whether or not litigation is commenced) based on or in connection
8 with or arising out of any such assignment or transfer made, purported or claimed.

9 **6.13 Miscellaneous Provisions.**

10 **6.13.1 Notices.** Unless otherwise specifically provided herein, all notices,
11 demands, or other communications given hereunder shall be in writing and shall be deemed to
12 have been duly given as of the third business day after mailing by United States certified mail,
13 return receipt requested, addressed as follows:

14 To the Plaintiffs and the Settlement Class:
Kenneth H. Yoon, Esq.
15 Stephanie E. Yasuda, Esq.
Brian G. Lee, Esq.
16 Yoon Law, APC
One Wilshire Boulevard, Suite 2200
17 Los Angeles, CA 90017

18 To Defendant:
Cynthia J. Emry, Esq.
19 Dorothy L. Black, Esq.
Jackson Lewis P.C.
20 725 South Figueroa Street, Suite 2500
Los Angeles, California 90017

21 **6.13.2 No Construction Against the Drafter.** The Parties hereto agree that the
22 terms and conditions of this settlement are the result of lengthy, intensive, arms-length
23 negotiations between the Parties and that this settlement shall not be construed in favor of or
24 against any party by reason of the extent to which any party or its counsel participated in the
25 drafting of this settlement.

26 **6.13.3 Posting.** Per California Rules of Court, Rule 3.771(b), the Settlement
27 Administrator shall post the final order, once entered, on its website for at least ninety (90)
28

1 calendar days.

2 **6.13.4 Publicity.** The Class Representative and Class Counsel will not make any
3 public disclosure of the settlement or this Confidential Memorandum of Understanding until after
4 the Motion for Preliminary Approval is filed. Class Counsel will take all steps necessary to ensure
5 the Class Representatives are aware of, and will encourage him to adhere to, the restriction against
6 any public disclosure of the settlement or this Confidential Memorandum of Understanding until
7 after the Motion for Preliminary Approval is filed. Following preliminary approval of the
8 settlement, the Class Representatives and Class Counsel will not initiate any communications with
9 and, if contacted by the media, will only discuss information publicly available. Class Counsel
10 will take all steps necessary to ensure the Class Representatives are aware of, and will encourage
11 them to adhere to, the restriction against initiating any media comment. Class Counsel will not
12 identify the name of the Defendant or Defendant's Counsel in any marketing or promotional
13 communications. Defendant's Counsel will not identify the name of the Plaintiffs or Class
14 Counsel in any marketing or promotional communications. Nothing herein will restrict Class
15 Counsel from including publicly available information regarding this settlement in future judicial
16 submissions regarding Class Counsel's qualifications and experience or speaking with Class
17 Members.

18 **6.13.5 Waiver and Amendment.** This settlement may not be changed, altered, or
19 modified, except in writing signed by the Parties hereto and approved by the Court. This
20 settlement may not be discharged except by performance in accordance with its terms or by a
21 writing used by the Parties hereto.

22 **6.13.6 Integrated Agreement.** This agreement, including exhibits, constitutes the
23 full, complete and entire understanding, agreement and arrangement between the Class
24 Representatives and Class Members on the one hand and Defendant on the other hand with respect
25 to the settlement of the Action and Released Claims against Defendant. Except those set forth
26 expressly in this agreement, there are no other agreements, covenants, promises, representations,
27 or arrangements between the Parties with respect to the settlement of the Action and the Released
28 Claims against Defendant.

1 **6.13.7 Binding Agreement.** This settlement shall be binding upon and inure to
2 the benefit of the Parties hereto and their respective heirs, trustees, executors, Settlement
3 Administrators, successors, and assigns.

4 **6.13.8 Counterparts.** This settlement shall become effective upon its execution
5 by the Class Representatives. The Class Representatives, Class Counsel, Defendant and
6 Defendant's Counsel may execute this settlement in counterparts, and execution of counterparts
7 shall have the same force and effect as if each had signed the same instrument.

8 **6.13.9 Attorneys' Fees.** In the event that one or more of the settling Parties to
9 this settlement institutes any legal action, arbitration, or other proceeding to enforce the provisions
10 of this settlement or to declare rights and/or obligations under this settlement, the successful Party
11 or Parties shall be entitled to recover from the unsuccessful Party or Parties reasonable attorneys'
12 fees and costs, including expert witness fees incurred in connection with any enforcement actions.
13 The Court shall retain jurisdiction of this matter for purposes of interpreting and enforcing the
14 terms of this agreement and the Final Order. Cal. Code Civ. Proc. § 664.6.

15 **6.13.10 California Law.** This settlement and the exhibits hereto shall be
16 considered to have been negotiated, executed, and delivered, and to have been wholly performed,
17 in the State of California, and the rights and obligations of the Parties to the settlement shall be
18 construed and enforced in accordance with, and governed by, the substantive laws of the State of
19 California without giving effect to that State's choice of law principles.

20 **6.13.11 Formatting.** Paragraph titles or captions contained in the settlement are
21 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or
22 describe the scope of this Settlement, or any provision thereof.

23 IN WITNESS WHEREOF, this settlement is executed by the Parties and their duly
24 authorized attorneys, as of the day and year herein set forth.

25
26 Dated: _____

By: _____
Santiago Giovanni Jovel Del Cid
Plaintiff

1 **6.13.7 Binding Agreement.** This settlement shall be binding upon and inure to
2 the benefit of the Parties hereto and their respective heirs, trustees, executors, Settlement
3 Administrators, successors, and assigns.

4 **6.13.8 Counterparts.** This settlement shall become effective upon its execution
5 by the Class Representatives. The Class Representatives, Class Counsel, Defendant and
6 Defendant's Counsel may execute this settlement in counterparts, and execution of counterparts
7 shall have the same force and effect as if each had signed the same instrument.

8 **6.13.9 Attorneys' Fees.** In the event that one or more of the settling Parties to
9 this settlement institutes any legal action, arbitration, or other proceeding to enforce the provisions
10 of this settlement or to declare rights and/or obligations under this settlement, the successful Party
11 or Parties shall be entitled to recover from the unsuccessful Party or Parties reasonable attorneys'
12 fees and costs, including expert witness fees incurred in connection with any enforcement actions.
13 The Court shall retain jurisdiction of this matter for purposes of interpreting and enforcing the
14 terms of this agreement and the Final Order. Cal. Code Civ. Proc. § 664.6.

15 **6.13.10 California Law.** This settlement and the exhibits hereto shall be
16 considered to have been negotiated, executed, and delivered, and to have been wholly performed,
17 in the State of California, and the rights and obligations of the Parties to the settlement shall be
18 construed and enforced in accordance with, and governed by, the substantive laws of the State of
19 California without giving effect to that State's choice of law principles.

20 **6.13.11 Formatting.** Paragraph titles or captions contained in the settlement are
21 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or
22 describe the scope of this Settlement, or any provision thereof.

23 IN WITNESS WHEREOF, this settlement is executed by the Parties and their duly
24 authorized attorneys, as of the day and year herein set forth.

25 Dated: Nov 20, 2020

26 By: 
27 Santiago Giovanni Jovel Del Cid
28 Plaintiff

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Dated: Nov 20, 2020

By: 
Michael Harrington (Nov 20, 2020 12:47 PST)
Michael Harrington
Plaintiff

Dated: _____

By: _____
Derrick Carbajal
Plaintiff

Dated: _____

By: _____
Miguel A. Oliver, CEO
Defendant Empire Transportation, Inc.

APPROVED AS TO FORM AND CONTENT:

DATED: _____

YOON LAW, APC

By: _____
Kenneth H. Yoon
Brian G. Lee
Attorneys for Plaintiffs and the Class

DATED: _____

JACKSON LEWIS P.C.

By: _____
Cynthia J. Emry
Dorothy L. Black
Attorneys for Defendant
Empire Transportation, Inc.

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Dated: _____

By: _____
Michael Harrington
Plaintiff

Dated: Dec 10, 2020

By: 
Derrick Carbajal (Dec 10, 2020 13:05 PST)
Derrick Carbajal
Plaintiff

Dated: _____

By: _____
Miguel A. Oliver, CEO
Defendant Empire Transportation, Inc.

APPROVED AS TO FORM AND CONTENT:

DATED: _____

YOON LAW, APC

By: _____
Kenneth H. Yoon
Brian G. Lee
Attorneys for Plaintiffs and the Class

DATED: _____

JACKSON LEWIS P.C.

By: _____
Cynthia J. Emry
Dorothy L. Black
Attorneys for Defendant
Empire Transportation, Inc.

1 Dated: _____

By: _____
Michael Harrington
Plaintiff

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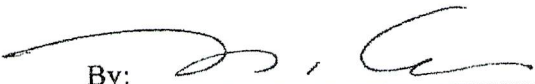
3 Dated: _____

By: _____
Derrick Carbajal
Plaintiff

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6 Dated: December 10, 2020

By: 
Miguel A. Oliver, CEO
Defendant Empire Transportation, Inc.

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9 APPROVED AS TO FORM AND CONTENT:

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11 DATED: 12/10/20

YOON LAW, APC

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14 By: 
Kenneth H. Yoon
Brian G. Lee
Attorneys for Plaintiffs and the Class

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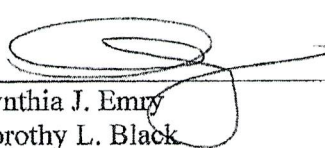
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18 DATED: 12/10/20

JACKSON LEWIS P.C.

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21 By: 
Cynthia J. Emry
Dorothy L. Black
Attorneys for Defendant
Empire Transportation, Inc.

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