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on behalf of themselves and all others similarly situated

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

GENE THOMPSON, an individual, and on
behalf of all current and former aggrieved
employees;

Plaintiff,

vs.

RUST & SONS TRUCKING, INC.; and DOES
1 through 50, inclusive;

Defendants.

Case No.: 37-2020-00021453-CU-OE-CTL
Consolidated Case No.: 37-2022-00007637-CU-
OE-CTL

CLASS ACTION

Assigned for All Purposes To:
Honorable Judge Wohlfeil
Department C-73

**JOINT STIPULATION OF CLASS ACTION
SETTLEMENT**

Complaint Filed: December 3, 2019
Trial Date: November 18, 2022

1 This Joint Stipulation of Class Action Settlement (“Settlement” or “Settlement Agreement”)
2 is made and entered by and between GENE THOMPSON (“Plaintiff” or “Class Representative”),
3 and on behalf of all others similarly situated, and Defendant RUST & SON’S TRUCKING, INC., a
4 California Corporation (“Defendant”) (collectively, the “Parties”).

5 DEFINITIONS

6 The following definitions are applicable to this Settlement Agreement.

7 Definitions contained elsewhere in this Settlement Agreement will also be effective:

8 1. “Action” means *Gene Thompson v. Rust & Son’s Trucking, Inc.*, San Diego Superior
9 Court Case No. 37-2020-00021453-CU-OE-CTL, as well as the consolidated class action *Gene*
10 *Thompson v. Rust & Son’s Trucking, Inc.*, San Diego Superior Court Case No.: 37-2022-00007637-
11 CU-OE-CTL.

12 2. “Attorneys’ Fees and Costs” means attorneys’ fees and costs approved by the Court
13 for Class Counsel’s litigation and resolution of this Action.

14 3. “Class Counsel” means Lurtz Legal, P.C.

15 4. “Class List” means a complete list of all Class Members that Defendant will
16 diligently and in good faith compile from its records and provide to the Settlement Administrator
17 within twenty-one (21) days after Preliminary Approval of this Settlement. The Class List will be
18 formatted in Microsoft Office Excel and will include the following information from Defendant’s
19 records: each Class Member’s (a) full name; (b) last-known mailing address; (c) Social Security
20 Number; and (d) dates of employment and Workweeks as a non-exempt employee in California
21 during the Class Period.

22 5. “Class Member(s)” or “Class” means all of Defendant’s current and former non-
23 exempt employee truck drivers who were paid piece-rate compensation (*i.e.*, paid per mile) at any
24 time during the Class Period (or if any such person is incompetent, deceased, or unavailable due to
25 military service, the person’s legal representative or successor in interest evidenced by reasonable
26 verification). “Class Members” shall not include any person who submits a timely and valid Request
27 for Exclusion. “Class Members” shall also not include Defendant’s owners and kin. There are
28 approximately 130 persons answering to this definition.

1 6. “Class Period” means the period from December 1, 2016, through the date of
2 Preliminary Approval.

3 7. “Class Representative Enhancement Payment” means the amount approved by the
4 Court to be paid to Plaintiff in recognition of his contributions to the Action on behalf of Class
5 Members and aggrieved employees, to be paid from the Maximum Settlement Amount.

6 8. “Court” means the Superior Court of California, County of San Diego.

7 9. “Defendant” means Rust & Son’s Trucking, Inc.

8 10. “Effective Date” means: (1)(a) the date of entry of the Court’s order granting final
9 approval of the Settlement Agreement and Judgment, if no objections have been filed or if an
10 objection was filed and later withdrawn; or (1)(b) if an objection to the Settlement Agreement is
11 filed, then the date when the time expires to file an appeal of the Court’s grant of Final Approval of
12 the Settlement Agreement; or (1)(c) if an objection is filed, as well as a timely Notice of Appeal of
13 the Court’s grant of Final Approval of the Settlement Agreement, then the date the appeal is finally
14 resolved, with the final approval unaffected; and (2) once the Maximum Settlement Amount has
15 been fully funded. It is the intention of the Parties that the Settlement shall not become effective
16 until the Court’s Order Granting Final Approval approving the Settlement has become completely
17 final and Judgment has been entered in accordance with the terms of the Settlement, and no timely
18 recourse remains for an appellant or objector to contest the Settlement.

19 11. “Individual Settlement Payment” means each Class Member’s share of the Net
20 Settlement Amount. Class Members will automatically receive their Individual Settlement Shares
21 unless they opt out of the Settlement. In other words, Class Members are not required to submit
22 claim forms.

23 12. “Maximum Settlement Amount” is the amount of \$850,000.00, which is the
24 maximum amount to be paid by Defendant pursuant to this Settlement Agreement. The Maximum
25 Settlement Amount includes all Individual Settlement Payments to Class Members, the Class
26 Representative Enhancement Payment to Plaintiff, Attorneys’ Fees and Costs to Class Counsel, the
27 Settlement Administration Costs to the Settlement Administrator, and the PAGA Payment as
28 specified in this Agreement. The Parties agree that Defendant will have no obligation to pay any

amount in connection with this Settlement Agreement apart from the Maximum Settlement Amount.
The Parties also agree none of the Maximum Settlement Amount will revert to Defendant.

13. “Net Settlement Amount” means the Maximum Settlement Amount, less the Class Representative Enhancement Payment, Attorneys’ Fees and Costs, and Settlement Administration Costs, and the PAGA Payment as specified in this Agreement.

14. “Objection” means any written objection to this Settlement sent by a Class Member to the Settlement Administrator as specified herein and in the Notice of Settlement. An Objection to Settlement must be sent to the Settlement Administrator within the time limitations set forth in this Stipulation.

15. “Notice of Class Action Settlement” means the notice of settlement, attached as **Exhibit A**, to be mailed to all members of the Class upon Preliminary Approval.

16. “Notice Packet” means the Notice of Class Action Settlement, the Objection Form, and the Request For Exclusion collectively that will be mailed to all members of the Class upon Preliminary Approval.

17. “Objection Form” means the form Class Members can use to submit objections regarding this Settlement to the Settlement Administrator, attached as **Exhibit B**, to be mailed to all members of the Class upon Preliminary Approval.

18. “PAGA” means the California Labor Code Private Attorneys General Act of 2004.

19. “PAGA Payment” means the payment made hereunder to the California Labor and Workforce Development Agency (“LWDA”) and the Class Members for settlement of claims for civil penalties under PAGA. Class Members will still receive their portion of the PAGA Payment even if they submit valid and timely Requests for Exclusion.

20. “PAGA Period” means the period from April 16, 2019, through the date of Preliminary Approval.

21. “Parties” means Plaintiff and Defendant collectively.

22. “Plaintiff” means Gene Thompson.

23. “Preliminary Approval” means the Court order granting preliminary approval of the Settlement Agreement.

1 24. “Released Claims” means all causes of action and factual or legal theories that were
2 alleged in the operative complaints or that could have been alleged against Defendant based on the
3 facts contained in the operative complaints, including all of the following claims for relief: (a) failure
4 to pay all regular wages, minimum wages and overtime wages due; (b) failure to provide proper
5 meal and rest periods and to properly provide premium pay in lieu thereof; (c) failure to provide
6 complete, accurate or properly formatted wage statements; (d) failure to keep requisite payroll
7 records; (e) failure to reimburse necessary business expenditures; (f) failure to pay waiting time
8 penalties; (g) engaging in unfair business practices that could have been premised on the claims,
9 causes of action or legal theories of relief described above or any of the claims, causes of action or
10 legal theories of relief pleaded in the operative complaints; (h) all claims under the California Labor
11 Code Private Attorneys General Act of 2004, which shall only bind Plaintiff and the State of
12 California, that were described in Plaintiff’s letter sent to the LWDA on April 15, 2020 and only to
13 the extent that these claims were alleged in the operative complaints; (i) any other claims or penalties
14 under the California Labor Code or other wage-and-hour laws pleaded in the Action; and (j) all
15 damages, penalties, interest, and other amounts recoverable under said claims, causes of action or
16 legal theories of relief. Plaintiff does not release any aggrieved employee’s claim for wages or
17 damages. Moreover, Plaintiff does not release Class Members’ claims for wages or damages if they
18 submitted valid and timely Requests for Exclusion. The period of the Released Claims shall extend
19 to the limits of the Class Period. The *res judicata* effect of the Judgment will be the same as that of
20 the Released Claims. Defendant shall be entitled to a release of Released Claims which occurred
21 during the Class Period only during such time that the Class Member was classified as non-exempt
22 or piece-rate paid employee and expressly excludes all other claims for vested benefits, wrongful
23 termination, unemployment insurance, disability, social security, workers’ compensation, claims
24 while classified as exempt, and claims outside of the Class Period.

25 25. “Released Parties” means Defendant and its past, present, and future agents,
26 employees, officers, directors, partners, trustees, shareholders, attorneys, parents, subsidiaries,
27 related corporations, divisions, joint venturers, assigns, predecessors, successors, affiliated
28 organizations, and all persons acting by or through or in concert with any of them, and each of them.

1 26. “Request for Exclusion” means a timely written request by a Class Member to be
2 excluded from the Settlement. The Request for Exclusion must: (i) set forth the name, address,
3 telephone number and last four digits of the Social Security Number of the Class Member requesting
4 exclusion; (ii) be signed by the Class Member; (iii) be returned to the Settlement Administrator; (iv)
5 clearly state that the Class Member does not wish to be included in the Settlement; and (v) be
6 postmarked on or before the Response Deadline. This is attached as **Exhibit C**, to be mailed to all
7 members of the Class upon Preliminary Approval.

8 27. “Response Deadline” means the deadline by which Class Members must postmark
9 the Settlement Administrator Requests for Exclusion or Objection Forms to the Settlement. The
10 Response Deadline will be thirty-five (35) calendar days from the initial mailing of the Notice Packet
11 by the Settlement Administrator, unless the thirty-fifth (35th) day falls on a Sunday or Federal
12 holiday, in which case the Response Deadline will be extended to the next day on which the U.S.
13 Postal Service is open.

14 28. “Settlement Administrator” means CPT Group, Inc. or any other third-party class
15 action settlement administrator approved by the Parties and the Court for the purposes of
16 administering this Settlement. The Parties each represent that they do not have a financial interest in
17 the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that
18 could create a conflict of interest.

19 29. “Settlement Administration Costs” includes all costs payable to the Settlement
20 Administrator for administering this Settlement, including, but not limited to: (a) printing,
21 distributing, and tracking notice and other documents for this Settlement; (b) tax reporting; (c)
22 distributing all payments to be made pursuant to this Settlement; and (d) providing necessary reports
23 and declarations as requested by the Parties. After conference and consultation with the Settlement
24 Administrator, \$10,000.00 will be allocated to it.

25 30. “Workweeks” means the number of calendar weeks that the Class Member worked
26 as a piece-rate employee truck driver during the Class/PAGA Periods.

27 31. “Workweek Value” means the value of each compensable Workweek, as determined
28 by the formula set forth in herein.

TERMS OF AGREEMENT

Plaintiff, on behalf of himself and the Class, and Defendant agree as follows:

32. Funding of the Settlement. Defendant will make a single payment of \$600,000.00 into an interest-bearing Qualified Settlement Fund ("QSF"), which the Settlement Administrator will manage and establish. This amount will be used to pay: (i) the Individual Settlement Payments; (ii) the Class Representative Enhancement Payments; (iii) Class Counsel's Costs; and (iv) the PAGA Payment; and (v) Settlement Administration Costs.

33. Attorney's Fees and Costs. Class Counsel will seek an award of Attorneys' Fees of not more than \$250,000.00 in attorneys' fees (29.4% of the Maximum Settlement Amount) and not more than \$20,000.00 in attorneys' costs, which Defendant agrees not to oppose such application. All Attorneys' Fees and Costs will be paid from the Maximum Settlement Amount. Plaintiff and Class Counsel will not have the right to revoke this Settlement in the event the Court fails to approve the sum of Attorneys' Fees and Costs sought by Class Counsel. Any portion of the Attorneys' Fees and Costs not awarded to Class Counsel will be added to the Net Settlement Amount. See Distribution and Timing of Attorneys' Fees Payment, ¶ 51.

34. Class Representative Enhancement Payments. Plaintiff will apply to the Court for a Class Representative Enhancement Payment of not more than \$15,000.00 to Plaintiff for his efforts and work in prosecuting the Action on behalf of Class Members and aggrieved employees, and Defendant agrees not to oppose such application. The Class Representative Enhancement Payment, which will be paid from the Maximum Settlement Amount, will be in addition to Plaintiff's right to an Individual Settlement Payment pursuant to this Settlement. Plaintiff will be solely and legally responsible to pay any and all applicable taxes on the Class Representative Enhancement Payment and will hold Defendant harmless from any claim or liability for taxes, penalties, or interest arising as a result of the payments. Plaintiff will not have the right to revoke this Settlement if the Court fails to approve the amount sought by Plaintiff as a Class Representative Enhancement Payment. Any portion of the Class Representative Enhancement Payment not awarded to the Class Representative will be added to the Net Settlement Amount.

1 35. Settlement Administration Costs. The Settlement Administrator will be paid for the
2 reasonable costs of administration of the Settlement and distribution of payments. These costs, which
3 will be paid from the Maximum Settlement Amount, will include, *inter alia*: (a) the required tax
4 reporting on the Individual Settlement Payments; (b) the issuing of 1099 IRS Forms; (c) preparing
5 and distributing Notice Packets; (d) calculating and distributing all payments to be made pursuant to
6 the Settlement; and (e) providing necessary reports and declarations. Class Counsel obtained a
7 “capped fee” quote from the Settlement Administrator – CPT Group, Inc. – to complete the
8 administration for ten thousand dollars (\$10,000). The Settlement Administrator’s “capped fee”
9 quote will represent the Settlement Administrator’s agreement that, based on the class size and
10 distributions under the terms of this Settlement, the costs for administration of the terms of this
11 Settlement will not exceed the specified amount. All the Settlement Administration Costs shall be
12 paid from the Maximum Settlement Amount upon completion of all duties required to be performed
13 by the Settlement Administrator under the terms of this Settlement, or as otherwise required by the
14 Court, subject to the “capped fee” quote from the Settlement Administrator. The Settlement
15 Administrator will set up the QSF.

16 36. PAGA Payment. \$35,000.00 shall be allocated from the Maximum Settlement
17 Amount for settlement of claims for civil penalties under PAGA. The Settlement Administrator shall
18 pay seventy-five percent (75%) of such PAGA Payment, or \$28,125.00, to the LWDA and twenty-
19 five percent (25%) of the PAGA Payment, or \$9,375.00, shall go to the Class Members as described
20 in this Agreement. Class Members will receive a pro rata share of the \$9,375.00. Class Members
21 will still receive their portion of the PAGA Payment even if they submit valid and timely Requests
22 for Exclusion.

23 37. Individual Settlement Payment Calculations. Individual Settlement Payments will
24 be calculated and apportioned from the Net Settlement Amount based on the number of Workweeks
25 a Class Member worked during the Class Period as a piece-rate employee truck driver in California.
26 Calculations of Individual Settlement Payments will be made as follows:
27
28

1 37(a). The Settlement Administrator will calculate the total number of Workweeks
2 worked by each Class Member during the Class Period and the aggregate total number of Workweeks
3 worked by all Class Members during the Class Period.

4 37(b). To determine each Class Member's estimated "Individual Settlement
5 Payment," the Settlement Administrator will use the following formula: The Net Settlement Amount
6 will be divided by the aggregate total number of Workweeks, resulting in the Workweek Value. Each
7 Class Member's "Individual Settlement Payment" will be calculated by multiplying each individual
8 Class Member's total number of Workweeks by the Workweek Value.

9 37(c). The entire Net Settlement Amount will be disbursed as Individual Settlement
10 Payments to Class. If there are any valid and timely Requests for Exclusion from Class Members,
11 the Settlement Administrator shall proportionately increase the Individual Settlement Payment for
12 each Class Member according to the number of Workweeks worked, so that the amount distributed
13 to the Class equals one hundred percent (100%) of the Net Settlement Amount. Additionally, all
14 interest accrued from Defendant's payments into the QSF during the funding process and through
15 distribution will be added to the Net Settlement Amount and the Individual Settlement Payments
16 will be proportionally increased on a *pro rata* basis.

17 38. No Credit Toward Benefit Plans. The Individual Settlement Payments made to Class
18 Members under this Settlement, as well as any other payments made pursuant to this Settlement,
19 will not be utilized to calculate any additional benefits under any benefit plans to which any Class
20 Members may be eligible, including, but not limited to: (i) profit-sharing plans, (ii) bonus plans, (iii)
21 401(k) plans, (iv) stock purchase plans, (v) vacation plans, (vi) sick leave plans, (vii) PTO plans, and
22 (viii) any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will
23 not affect any rights, contributions, or amounts to which any Class Members may be entitled under
24 any benefit plans.

25 39. Settlement Administration Process. The Parties agree to cooperate in the
26 administration of the settlement and to make all reasonable efforts to control and minimize the costs
27 and expenses incurred in administration of the Settlement. Defendant agrees to fund the QSF by
28 making the above-described payment through the Settlement Administrator and agrees to fund

1 Plaintiff's Attorneys' Fees. The schedule and timing of this Settlement is intended for the QSF to be
2 fully funded at the point in time following final approval and the effective date of the Settlement and
3 when distribution of the approved payments has been approved and ordered by the Court.

4 40. Funding of the Qualified Settlement Fund. To facilitate the funding of the QSF for
5 distribution as detailed above, Defendant will make a single payment within ten (10) days of the
6 Effective Date into an interest-bearing QSF, which the Settlement Administrator will manage and
7 establish. The Settlement Administrator will notify Defendant's Counsel of the account information
8 to which Defendant will wire the payment into the QSF to fund the Maximum Settlement Amount.
9 Upon establishing the QSF, the Settlement Administrator will maintain the fund through preliminary
10 approval, settlement administration, and the final approval process.

11 41. Delivery of the Class List. Within twenty-one (21) calendar days of entry of the
12 Court's Order Granting Preliminary Approval, Defendant will provide the Class List to the
13 Settlement Administrator.

14 42. Confirmation of Contact Information in the Class List and Undeliverable Notices.
15 Prior to mailing, the Settlement Administrator will perform a search based on the National Change
16 of Address Database for information to update and correct for any known or identifiable address
17 changes. Any Notice Packets returned to the Settlement Administrator as non-deliverable on or
18 before the Response Deadline will be sent promptly via regular First-Class U.S. Mail to the
19 forwarding address affixed thereto, and the Settlement Administrator will indicate the date of such
20 re-mailing on the Notice Packet. If no forwarding address is provided, the Settlement Administrator
21 will promptly attempt to determine the correct address using an Accurint search/skip-trace and will
22 perform a single remailing.

23 43. Notice by First-Class U.S. Mail. Within ten (10) days after the Settlement
24 Administrator receives the Class List from Defendant, the Settlement Administrator will mail a
25 Notice Packet to all Class Members via regular First-Class U.S. Mail, using the most current, known
26 mailing addresses identified in the Class List.

1 44. Notice Packets. All Class Members will be mailed a Notice Packet, comprised of the
2 Notice of Class Action Settlement, the Objection Form, and the Request For Exclusion in the forms
3 attached as **Exhibits A, B, and C** respectively or as provided by Court order.

4 45. Disputed Information in the Notice Packets. Class Members will have an opportunity
5 to dispute the information provided in their Notice Packets. To the extent Class Members dispute
6 their employment dates or the number of Workweeks, Class Members may produce evidence to the
7 Settlement Administrator showing that such information is inaccurate. The Settlement Administrator
8 will advise the Parties of such dispute, allow Defendant five (5) business days to respond with any
9 additional information or records, and then decide the dispute. Defendant's records will be presumed
10 correct, but the Settlement Administrator will evaluate the evidence submitted by the Class Member
11 and Defendant and will make the final decision as to the merits of the dispute.

12 46. Requests for Exclusion. Any Class Member wishing to opt-out from the Settlement
13 Agreement must sign and postmark a written Request for Exclusion to the Settlement Administrator
14 within the Response Deadline. The postmark date will be the exclusive means to determine whether
15 a Request for Exclusion has been timely submitted. The Parties and their counsel will not solicit or
16 encourage any Class Member, directly or indirectly, to opt out of the Settlement Agreement. More
17 specifically, a Class Member may request to be excluded from the effect of this Agreement, and any
18 payment of amounts under this Agreement by timely mailing a Request for Exclusion letter to the
19 Settlement Administrator stating that the Class Member wants to be excluded from this Action. This
20 letter must include the Class Member's name, address, telephone number, and signature. To be valid
21 and timely, the request to be excluded must be postmarked by the Response Deadline date that will
22 be specified in the Notice Packet (no less than thirty-five (35) calendar days from the initial mailing
23 of the Notice Packet by the Settlement Administrator). A Class Member who properly submits a
24 valid and timely request to be excluded from the Action will not receive an Individual Settlement
25 Payment, will not be bound by the class action releases of the Settlement, and will not have standing
26 to object to the Settlement. However, a Class Member who properly submits a valid and timely
27 request to be excluded from the Action will still receive his or her portion of the PAGA Payment. A
28 Class Member who does not timely request exclusion will be bound by the releases herein and

1 receive an Individual Settlement Payment. A Request for Exclusion must be mailed to the Settlement
2 Administrator at its address to be provided in the Notice Packet, and the Settlement Administrator
3 will promptly transmit the requests for exclusion to the Parties' counsel.

4 47. Defective Submissions. If a Class Member's Request for Exclusion is defective as
5 to the requirements listed herein, that Class Member will be given an opportunity to cure the
6 defect(s). The Settlement Administrator will mail the Class Member a cure letter within three (3)
7 business days of receiving the defective submission to advise the Class Member that his or her
8 submission is defective and that the defect must be cured to render the Request for Exclusion valid.
9 The Class Member will have until the later of (i) the Response Deadline or (ii) fifteen (15) calendar
10 days from the date of the cure letter, whichever date is later, to postmark a revised Request for
11 Exclusion. If the revised Request for Exclusion is not postmarked within that period, it will be
12 deemed untimely.

13 48. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class
14 Member who does not affirmatively opt out of the Settlement Agreement by submitting a timely and
15 valid Request for Exclusion will be bound by all its terms, including those pertaining to the Released
16 Claims, as well as any Judgment that may be entered by the Court if it grants final approval of the
17 Settlement.

18 49. Objection Procedures. The Notice Packet shall state that Class Members who wish
19 to object to the Settlement may do so by a written statement of objection to be mailed by the
20 Response Deadline to the Settlement Administrator or by appearing at the hearing for Final
21 Approval. The Objection must be signed by the Class Member and contain all information required
22 by this Settlement Agreement. The postmark date of the filing and service will be deemed the
23 exclusive means for determining that the Objection is timely. The Objection Form must state: (1) the
24 case name and number; (2) the name of the Class Member; (3) the address of the Class Member; (4)
25 the last four digits of the Class Member's Social Security Number; (4) the basis for the objection;
26 and (5) if the Class Member intends to appear at the Final Approval/Settlement Fairness Hearing.
27 The Settlement Administrator will promptly provide any Objection Forms to the Parties' counsel
28 upon receiving them. Class Counsel will include all objections received and Plaintiff's response(s)

1 with Plaintiff's motion for final approval of the Settlement. Class Members may also have a right to
2 have their objections heard at the Final Approval/Settlement Fairness Hearing. Class Counsel will
3 not represent any Class Members with respect to any such objections to this Settlement, and any
4 Class Members who request exclusion from the Settlement will not have standing to object to it. If
5 a Class Member objects to the Settlement, the Class Member will remain a member of the Class and
6 if the Court approves this Settlement, the objecting Class Member will be deemed a member of the
7 Class and be bound by the terms of the Settlement and Final Approval in the same way and to the
8 same extent as a Class Member who did not object.

9 50. Settlement Administrator Reports. The Settlement Administrator will provide
10 Defendant's counsel and Class Counsel a weekly report of the number of Class Members who have
11 submitted valid Requests for Exclusion, Objection Forms, and disputes regarding Workweeks
12 calculations. The Settlement Administrator will also provide to Parties' counsel any updated reports
13 regarding the administration of the Settlement Agreement as needed or requested.

14 51. Distribution and Timing of Payments: Within thirty (30) days of the Effective Date,
15 and after Defendant has fully funded the QSF with the Maximum Settlement Amount, the Settlement
16 Administrator will issue payments to: (i) all Class Members who have not submitted a valid and
17 timely Request for Exclusion, including any Class Member whose notice was returned as
18 undeliverable; (ii) Plaintiff; (iii) Class Counsel for costs; and (iv) the LWDA. The Settlement
19 Administrator will also issue a payment to itself for Court-approved services performed in
20 connection with the Settlement. The Settlement Administrator will pay Individual Settlement
21 Payments from the Net Settlement Amount to all Class Members who do not timely request
22 exclusion. The Settlement Administrator will do so by sending a check in the appropriate amount to
23 the Class Member at the address indicated in the list of Class Member names and addresses provided
24 by Defendant, or as subsequently determined by the Settlement Administrator to be correct.

25 52. Distribution and Timing of Attorneys' Fees Payment: Defendant shall pay Class
26 Counsel's Attorneys' Fees separately and shall issue payments to Class Counsel's office as follows:
27 (i) within sixty (60) days of the Effective Date, Defendant shall issue payment to Class Counsel in
28 the amount of \$100,000.00; (ii) within one hundred and twenty days (120) of the Effective Date,

1 Defendant shall issue payment to Class Counsel in the amount of \$100,000.00; (iii) within one
2 hundred and fifty (150) days of the Effective Date, Defendant shall issue payment to Class Counsel
3 in the amount of \$50,000.00. The forgoing payments shall be made to Class Counsel directly via
4 wire transfer, with the Routing Number (RTN) to be provided under separate cover in advance of
5 the payment deadlines. Defendant acknowledges and agrees that if any of the forgoing payments are
6 untimely, incomplete, or late, then, at the option of Class Counsel, the entire balance shall become
7 due and payable immediately and Class Counsel shall have the right to pursue all available legal
8 remedies and enter judgment against Defendant in connection with the unpaid Attorneys' Fees.

9 53. Uncashed Settlement Checks. Class Members will receive checks for their
10 Individual Settlement Payments. Checks will remain negotiable for one hundred twenty (120)
11 calendar days ("Check-Cashing Deadline"). Any check not cashed within one hundred twenty (120)
12 calendar days will be void. The funds from the uncashed checks shall be redistributed by the
13 Settlement Administrator to those Class Members who have cashed their checks. The Settlement
14 Administrator shall make the redistribution not later than twelve (12) days after the expiration of the
15 120-day period. Class Counsel believes this method is supported by public policy and is in the best
16 interest of the Class. Any costs associated with administering the remaining funds under this
17 paragraph (e.g., bank stop-payment charges, settlement administration costs associated with any
18 reserve amount) will be deducted before the funds are redistributed.

19 54. Certification of Completion. Upon completion of administration of the Settlement,
20 the Settlement Administrator will provide a written declaration under oath to certify such completion
21 to the Court and the Parties' counsel.

22 55. Allocation of Individual Settlement Payments. All Individual Settlement Payments
23 will be allocated as follows: (a) twenty-five percent (25%) as wages; (b) twenty-five percent (25%)
24 as penalties; (c) forty-percent (40%) as expense reimbursement; and (d) ten percent (10%) as interest.
25 PAGA payments will be treated as penalties. Additionally, all interest accrued from Defendant's
26 installment payments into the QSF during the funding process and through distribution will be added
27 to the Net Settlement Amount, and Individual Settlement Payments will be proportionally increased
28

1 on a *pro rata* basis. The Settlement Administrator will be responsible for issuing to claimants a form
2 W-2 for amounts deemed “wages” and an IRS Form 1099 for the portions allocated to penalties.

3 56. Administration of Taxes by the Settlement Administrator. The Settlement
4 Administrator will be responsible for issuing to Plaintiff, Class Members, and Class Counsel tax
5 forms as may be required by law for all amounts paid pursuant to this Settlement. The Settlement
6 Administrator will also be responsible for forwarding all taxes and penalties to the appropriate
7 government authorities as may be required by law.

8 57. Tax Liability. Defendant makes no representation as to the tax treatment or legal
9 effect of the payments called for hereunder, and Plaintiff and Class Members are not relying on any
10 statement, representation, or calculation by Defendant or by the Settlement Administrator in this
11 regard. Plaintiff and Class Members understand and agree that they will be solely responsible for the
12 payment of any taxes and penalties assessed on the payments described herein and will defend,
13 indemnify, and hold Defendant free and harmless from and against any claims resulting from
14 treatment of such payments as non-taxable damages.

15 58. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
16 PURPOSES OF THIS PARAGRAPH, THE “ACKNOWLEDGING PARTY” AND EACH PARTY
17 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER
18 PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
19 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR
20 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS
21 INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE
22 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE
23 MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART
24 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY
25 UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE
26 (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT
27 ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY
28 OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS

1 NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
2 ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT
3 MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR
4 ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS
5 THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES
6 (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON
7 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
8 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION
9 CONTEMPLATED BY THIS AGREEMENT.

10 59. No Prior Assignments. The Parties and their counsel represent, covenant, and
11 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to
12 assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand,
13 action, cause of action or right herein released and discharged.

14 60. Nullification of Settlement Agreement. If: (i) the Court does not finally approve the
15 Settlement as provided herein; or (ii) the Settlement does not become final for any other reason, then
16 this Settlement Agreement, and any documents generated to bring it into effect, will be null and void.
17 Any order or judgment entered by the Court in furtherance of this Settlement Agreement will
18 likewise be treated as void from the beginning.

19 61. Preliminary Approval Hearing. Plaintiff will obtain a hearing before the Court to
20 request the Preliminary Approval of the Settlement Agreement and the entry of a Preliminary
21 Approval Order for: (i) conditional certification of the Class for settlement purposes only; (ii)
22 preliminary approval of the proposed Settlement Agreement; and (iii) setting a date for a Final
23 Approval/Settlement Fairness Hearing. The Preliminary Approval Order will provide for the Notice
24 Packet to be sent to all Class Members as specified herein. In conjunction with the Preliminary
25 Approval hearing, Plaintiff will submit this Settlement Agreement, which sets forth the terms of this
26 Settlement and will include the proposed Notice Packet Settlement.

27 62. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of the
28 deadlines to postmark Requests for Exclusion or Objection Forms to the Settlement Agreement, and

1 with the Court's permission, a Final Approval/Settlement Fairness Hearing will be conducted to
2 determine the Final Approval of the Settlement Agreement along with the amounts properly payable
3 for: (i) Individual Settlement Payments; (ii) the Class Representative Enhancement Payment; (iii)
4 the Attorneys' Fees and Costs; and (iv) the Settlement Administration Costs. The Final
5 Approval/Settlement Fairness Hearing will not be held earlier than thirty (30) days after the
6 Response Deadline. Class Counsel will be responsible for drafting all documents necessary to obtain
7 final approval. Class Counsel will also be responsible for drafting the attorneys' fees and costs
8 application to be heard at the final approval hearing.

9 63. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by the
10 Court or after the Final Approval/Settlement Fairness Hearing, the Parties will present the Judgment
11 to the Court for its approval. After entry of the Judgment, the Court will have continuing jurisdiction
12 solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the
13 Settlement, (ii) Settlement administration matters, and (iii) such post-Judgment matters as may be
14 appropriate under court rules or as set forth in this Settlement Agreement. Defendant expressly
15 acknowledges and agrees that notwithstanding final approval of the class action settlement as
16 contemplated herein, the Court (*i.e.*, Judge Joel R. Wohlfeil of the San Diego Superior Court) shall
17 maintain jurisdiction to enforce the provisions regarding the timely and complete payment of
18 Attorneys' Fees to Class Counsel.

19 64. General Release by Plaintiff. In consideration for the consideration set forth in this
20 Agreement, Plaintiff, for himself, his heirs, successors and assigns, does waive, release, acquit and
21 forever discharge the Released Parties, from any and all claims, actions, charges, complaints,
22 grievances and causes of action, of whatever nature, whether known or unknown, which exist or
23 may exist on Plaintiff's behalf as of the date of this Agreement, including but not limited to any and
24 all tort claims, contract claims, wage claims, wrongful termination claims, disability claims, benefit
25 claims, public policy claims, retaliation claims, statutory claims, personal injury claims, emotional
26 distress claims, invasion of privacy claims, defamation claims, fraud claims, quantum meruit claims,
27 and any and all claims arising under any federal, state or other governmental statute, law, regulation
28 or ordinance, including any claims arising under the California Fair Employment and Housing Act

1 (FEHA), the California Labor Code, the Wage Orders of California's Industrial Welfare
2 Commission, other state wage and hour laws, the Americans with Disabilities Act, the Age
3 Discrimination in Employment Act (ADEA), the Employee Retirement Income Security Act, Title
4 VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, the California
5 Family Rights Act, the Family Medical Leave Act, California's Whistleblower Protection Act,
6 California Business & Professions Code sections 17200, *et seq.*, and any and all claims arising under
7 any federal, state or other governmental statute, law, regulation or ordinance. Plaintiff hereby
8 expressly waives and relinquishes any and all claims, rights or benefits that he may have under
9 California Civil Code section 1542, which provides as follows:

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

14 Plaintiff may hereafter discover claims or facts in addition to, or different from, those which
15 he now knows or believes to exist, but he expressly agrees to fully, finally and forever settle and
16 release any and all claims against the Released Parties, known or unknown, suspected or
17 unsuspected, which exist or may exist against Released Parties at the time of execution of this
18 Agreement, including, but not limited to, any and all claims relating to or arising from Plaintiff's
19 employment with Defendant. The Parties further acknowledge, understand, and agree that this
20 representation and commitment is essential to the Agreement and that this Agreement would not
21 have been entered into were it not for this representation and commitment.

22 65. Release by All Class Members. Plaintiff and all Class Members who do not submit
23 a valid and timely Request for Exclusion, on behalf of himself or herself, his or her heirs,
24 descendants, dependents, executors, administrators, assigns, and successors, fully and finally release
25 and discharge the Released Parties from any and all of the Released Claims for the entirety of the
26 Class Period. This waiver and release will be final and binding on the Effective Date and will have
27 every preclusive effect permitted by law. Plaintiff and the Class Members may hereafter discover
28 facts or legal arguments in addition to or different from those they now know or currently believe to

1 be true with respect to the Released Claims. Regardless, the discovery of new facts or legal
2 arguments shall in no way limit the scope or definition of the Released Claims, and by virtue of this
3 Agreement, Plaintiff and the Class Members shall be deemed to have, and by operation of the final
4 judgment approved by the Court, shall have, fully, finally, and forever settled and released all of the
5 Released Claims. The Parties understand and specifically agree that the scope of the release
6 described in this paragraph: (a) is a material part of the consideration for this Agreement; (b) was
7 critical in justifying the agreed upon economic value of this settlement and without it Defendant
8 would not have agreed to the consideration provided; and (c) is narrowly drafted and necessary to
9 ensure that Defendant is obtaining peace of mind regarding the resolution of claims that were or
10 could have been alleged based on the facts, causes of action, and legal theories contained in the
11 operative complaints in the Action.

12 66. Exhibits Incorporated by Reference. The terms of this Settlement include the terms
13 set forth in any attached Exhibits, which are incorporated by reference as though fully set forth
14 herein. Any Exhibits to this Settlement Agreement are an integral part of the Settlement.

15 67. No Unalleged Claims. Plaintiff and Class Counsel represent that they are not
16 currently aware of any: (a) unalleged claims in addition to, or different from, those which are finally
17 and forever settled and released against the Released Party by this Settlement; and (b) unalleged
18 facts or legal theories upon which any claims or causes of action could be brought against Defendant,
19 except such facts and theories specifically alleged in the operative complaints in these Action.
20 Plaintiff and Class Counsel will further represent that, other than the instant Action, they have no
21 current intention of asserting any other claims against Defendant in any judicial or administrative
22 forum. Plaintiff and Class Counsel will further represent that they do not currently know of or
23 represent any persons who have expressed any interest in pursuing litigation or seeking any recovery
24 against Defendant. The Parties further acknowledge, understand, and agree that the representations
25 described in this paragraph are essential to the Settlement and that this Settlement would not have
26 been entered into were it not for this representation.

27 68. Plaintiffs' Option to Revoke Settlement: Defendant estimates that there are
28 approximately 130 Class Members and/or 10,500 Workweeks. If, during the Class Period, the

1 number of Class Members and/or Workweeks increases by more than fifteen percent (15%) of the
2 amount stated, then Plaintiff may terminate this Settlement Agreement.

3 69. Defendant's Option to Escalate Settlement. If, after the Response Deadline, the
4 number of Class Members who submitted timely and valid written requests for exclusion from the
5 Settlement is at least fifteen percent (15%) of all 130 Class Members, Defendant shall have the
6 option of either: (1) agreeing to increase the Maximum Settlement Amount on a pro-rata basis
7 according to the number of additional Workweeks over the fifteen percent (15%) cap, or (2) agreeing
8 to close the Class Period just before the date the Workweeks exceeds this fifteen percent (15%) cap.

9 70. Entire Agreement. This Agreement and any attached Exhibits constitute the entirety
10 of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements may
11 be deemed binding on the Parties. This provision has no application or impact on any arbitration
12 agreements, confidentiality agreements, employee handbooks or policies executed by a Class
13 Member during his or her employment with Defendant, which remain in full force and effect.

14 71. Amendment or Modification. This Settlement Agreement may be amended or
15 modified only by a written instrument signed by the Parties' counsel or their successors-in-interest.

16 72. Authorization to Enter Into Settlement Agreement. The Parties' counsel warrant and
17 represent they are expressly authorized by the Parties whom they represent to negotiate this
18 Settlement Agreement and to take all appropriate action required or permitted to be taken by such
19 Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other
20 documents required to effectuate the terms of this Settlement Agreement. The Parties and their
21 counsel will cooperate with each other and use their best efforts to effect the implementation of the
22 Settlement. If the Parties are unable to reach agreement on the form or content of any document
23 needed to implement the Settlement, or on any supplemental provisions that may become necessary
24 to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve
25 such disagreement.

26 73. Binding on Successors and Assigns. This Agreement will be binding upon, and inure
27 to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

1 74. California Law Governs. All terms of this Settlement Agreement and Exhibits hereto
2 will be governed by and interpreted according to the laws of the State of California.

3 75. Execution and Counterparts. This Settlement Agreement is subject only to the
4 execution of all Parties. However, the Settlement may be executed in one or more counterparts. All
5 executed counterparts and each of them, including facsimile and scanned copies of the signature
6 page, will be deemed to be one and the same instrument if the Parties' counsel will exchange among
7 themselves original signed counterparts.

8 76. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe
9 this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have
10 arrived at this Settlement after arm's-length negotiations and in the context of adversarial litigation,
11 considering all relevant factors, present and potential. The Parties further acknowledge that they are
12 each represented by competent counsel and that they have had an opportunity to consult with their
13 counsel regarding the fairness and reasonableness of this Settlement. The Court may, in its discretion,
14 contact the mediator to discuss the Settlement and whether the Settlement is objectively fair and
15 reasonable.

16 77. Invalidity of Any Provision. Before declaring any provision of this Settlement
17 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent
18 possible consistent with applicable precedents so as to define all provisions of this Settlement
19 Agreement valid and enforceable.

20 78. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to
21 class certification for purposes of this Settlement only. However, Plaintiff or Class Counsel may
22 appeal any reduction in Attorneys' Fees and Costs that are below the amount they request from the
23 Court, and either Party may appeal any court order that materially alters the Settlement Agreement's
24 terms.

25 79. Non-Admission of Liability. The Parties enter this Settlement to resolve the dispute
26 that has arisen between them and to avoid the burden, expense, and risk of continued litigation. In
27 entering this Settlement, Defendant does not admit, and specifically denies, that it: (a) violated any
28 federal, state, or local law; (b) violated any regulations or guidelines promulgated pursuant to any

1 statute or any other applicable laws, regulations, or legal requirements; (c) breached any contract;
2 (d) violated or breached any duty; (e) engaged in any misrepresentation or deception; or (d) engaged
3 in any other unlawful conduct with respect to its employees. Neither this Settlement, nor any of its
4 terms or provisions, nor any of the negotiations connected with it, will be construed as an admission
5 or concession by Defendant of any such violations or failures to comply with any applicable law.
6 Except as necessary in a proceeding to enforce the terms of this Settlement, this Settlement and its
7 terms and provisions will not be offered or received as evidence in any action or proceeding to
8 establish any liability or admission on the part of Defendant or to establish the existence of any
9 condition constituting a violation of, or a non-compliance with, federal, state, local or other
10 applicable law.

11 80. Waiver. No waiver of any condition or covenant contained in this Settlement or
12 failure to exercise a right or remedy by any of the Parties will be considered to imply or constitute a
13 further waiver by such Party of the same or any other condition, covenant, right or remedy.

14 81. Enforcement Action. If one or more of the Parties institutes any legal action or other
15 proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare
16 rights and/or obligations under this Settlement, the successful Party or Parties will be entitled to
17 recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert
18 witness fees incurred in connection with any enforcement actions.

19 82. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms
20 and conditions of this Settlement. Accordingly, this Settlement will not be construed more strictly
21 against one Party than another merely by virtue of the fact that it may have been prepared by counsel
22 for one of the Parties, it being recognized that, because of the arms-length negotiations between the
23 Parties, all Parties have contributed to the preparation of this Settlement.

24 83. Representation By Counsel. The Parties acknowledge they have been represented by
25 counsel throughout all negotiations that preceded the execution of this Settlement and that this
26 Settlement has been executed with the consent and advice of counsel. Further, Plaintiffs and Class
27 Counsel warrant and represent that there are no liens on the Settlement Agreement.
28

1 84. All Terms Subject to Final Court Approval. All amounts and procedures described
2 in this Settlement Agreement herein will be subject to final Court approval.

3 85. Cooperation and Execution of Necessary Documents. All Parties will cooperate in
4 good faith and execute all documents to the extent reasonably necessary to effectuate the terms of
5 this Settlement Agreement.

6 86. Binding Agreement. The Parties warrant they understand and have full authority to
7 enter this Settlement and further intend that this Settlement will be fully enforceable and binding on
8 all Parties. The Parties also agree that this Settlement will be admissible and subject to disclosure in
9 any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that
10 otherwise might apply under federal or state law.

11
12 **SO AGREED AND STIPULATED.**

13
14 Dated: Nov. 16, 2022

PLAINTIFF

Gene Thompson
GENE THOMPSON

DEFENDANT

15
16
17
18 Dated: _____

RUST & SON'S TRUCKING, INC.
By:
Title:

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10 otherwise might apply under federal or state law.

11
12 **SO AGREED AND STIPULATED.**

13
14 **PLAINTIFF**

15 Dated: _____

16
17 **GENE THOMPSON**

18 **DEFENDANT**

19 Dated 7/1/16 22

20 
21 **RUST & SON'S TRUCKING, INC.**
22 By:
23 Title: