

Larry W. Lee (State Bar No. 228175)
Mai Tulyathan (State Bar No. 316704)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
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(213) 488-6555
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Attorneys for Plaintiff, the Class, and Aggrieved Employees

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

VAN WALKER, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

vs.

WFS EXPRESS, INC., a Delaware
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 34-2020-00285301-CU-OE-GDS

**DECLARATION OF MAI TULYATHAN IN
SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: November 9, 2021
Time: 1:30 p.m.
Dept.: 53

Reservation No.: 2592774

Complaint Filed: August 5, 2020
Trial Date: None

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I, Mai Tulyathan, declare as follows:

1. I am an attorney at law duly admitted to practice before all courts in the State of California and am a member of the law firm of the Diversity Law Group, P.C., one of the attorneys of record for Plaintiff Van Walker (“Plaintiff”) in the above-entitled action. I have personal knowledge of the matters set forth herein, and if called upon as a witness to testify thereto, I could and would competently do so.

2. On June 5 and August 3, 2020, Plaintiff submitted his written notices under Labor Code § 2699.3 (the “PAGA Notices”) to the California Labor and Workforce Development Agency (“LWDA”) and Defendant WFS Express, Inc. (“Defendant”). Attached hereto as **Exhibit A** are true and correct copies of Plaintiff’s PAGA notices.

3. On August 5, 2020, Plaintiff filed his Complaint against Defendant in the Sacramento County Superior Court, alleging causes of action for (1) violation of Labor Code § 226.7; (2) violation of Labor Code §§ 226.7 and 512; (3) failure to pay wages; (4) violation of Labor Code § 226(a); (5) violation of Labor Code § 2802; (6) violation of Business & Professions Code § 17200, *et seq.*; and (7) violation of the PAGA, Labor Code § 2698, *et seq.*

4. Plaintiff's class and PAGA claims are predicated upon the following allegations. Plaintiff alleges that Defendant failed to provide off-duty rest breaks or pay rest period premium compensation in violation of Labor Code § 226.7. In this regard, Plaintiff alleges that employees were required to remain on-duty and continue working through their rest breaks and thus were not provided with compliant rest periods. Plaintiff also alleges that Defendant failed to correctly pay overtime wages and meal period premiums at the regular rate of pay in violation of Labor Code §§ 226.7, 510, 512, 558, 1194. In this regard, Plaintiff asserts that Defendant failed to factor in non-discretionary incentives, such as shift premiums and shift differentials, into the calculation of the regular rate of pay for overtime wages and premium compensation. Additionally, Plaintiff alleges that Defendant failed to pay all wages owed to its employees, including minimum, regular, overtime, and reporting time pay. Plaintiff also alleges that Defendant violated Labor Code § 2802 as Defendant required employees to use their personal

1 cell phones for work-related purposes, including to utilize the “Discord” mobile application for
2 work communication purposes, without proper reimbursement for said usage. Lastly, Plaintiff
3 alleges that Defendant violated Labor Code § 226(a) by failing to provide accurate itemized
4 wage statements. More specifically, in addition to derivative wage statement violations, Plaintiff
5 alleges that whenever shift premiums and/or shift differential wages were paid, Defendant’s
6 wage statements identified the wrong total hours worked. As a result of the alleged violations
7 above, Plaintiff seeks damages and penalties under the California Labor Code, the California
8 Business & Professions Code, the PAGA, as well as attorneys’ fees and costs.

9 5. On October 30, 2020, Defendant removed this case to the Eastern District of
10 California. After meet and confer discussions, on August 18, 2021, the Parties stipulated to
11 remand this action back to the Sacramento County Superior Court.

12 6. After removal of the lawsuit, the Parties participated in their Fed. R. Civ. P. 26(f)
13 discovery conference, during which the Parties agreed to participate in private mediation.

14 7. In connection with mediation, Defendant has informally provided data and
15 documents to facilitate and effective mediation, including data pertaining to the number of class
16 members, the number of pay periods at issue, time and payroll records for the class members, as
17 well as information pertaining to Defendant’s policies, practices, and procedures pertaining to
18 shift premiums and shift differentials, the payment of overtime wages and meal period
19 premiums, its wage statement practices, and use of personal cell phones for mobile applications
20 to be used for work-related purposes.

21 8. Plaintiff retained an expert witness, Econ One Research, Inc., to review and
22 analyze the data and records provided by Defendant to calculate potential exposure for the claims
23 involved.

24 9. On May 12, 2021, the Parties participated in a full-day mediation with mediator
25 Michael Loeb, Esq. Thereafter, the Parties continued settlement negotiations facilitated by Mr.
26 Loeb and between counsel for a period of several months, and were able to reach the current
27 settlement. Attached hereto as **Exhibit B** is a true and correct copy of the Parties’ Joint
28 Stipulation for Class Action Settlement (“Stipulation” or “Settlement Agreement”).

1 10. The Parties recognize the risk, expense, and delay in continuing litigation with the
2 class and PAGA claims, and believe the Settlement to be fair, reasonable, and adequate.

3 11. Each side has apprised the other of their respective factual contentions, legal
4 theories and defenses, resulting in negotiations taking place between the Parties.

5 12. Based on the data and records provided by Defendant, Plaintiff's expert has
6 calculated the potential exposure for class claims at \$7,949,797.50. The following represents a
7 breakdown of the class-wide damages/penalties calculated by Plaintiff's expert based on data and
8 records provided by Defendant:

- 9 • \$2,387,258.50 in unpaid rest period premiums (calculated based on 311,291 shifts
10 and a 100% violation rate);
- 11 • \$15,805 in underpaid overtime wages and meal period premiums as a result of the
12 miscalculation of the regular rate of pay (based on time and payroll records
13 analyzed);
- 14 • \$208,545 for the unpaid business reimbursement claim (calculated based on
15 assumption that class members are owed \$5 per pay period);
- 16 • \$52,623 in unpaid reporting time pay (based on time and payroll records
17 analyzed);
- 18 • \$5,106,266 in waiting time penalties under Labor Code § 203 (calculated based
19 1,412 number of former employees and their average hourly rate of pay); and
- 20 • \$179,300 for Labor Code § 226(e) penalties for the independent wage statement
21 violations (calculated on 2,056 pay periods with payment for shift differential
22 wages).

23 13. Defendant raised several defenses that presented risk, including that a class cannot
24 be certified due to individualized inquiries presented from each of the different claims. With
25 respect to the rest break violations, Defendant claims that its rest break policy is fully compliant
26 with the law, and to the extent there were any violations, such violations were sporadic and
27 isolated. Furthermore, Defendant has indicated that it has conducted an investigation into the
28 procedures for taking rest breaks and maintains that there are no rest break violations and/or

1 deviation from the rest break policy. With respect to the regular rate claims, Defendant
2 maintains that it pays meal period premiums properly and that it correctly calculates the regular
3 rate of pay when paying overtime. With respect to the wage statement violations, Defendant
4 maintains that its wage statement practices are compliant with Labor Code § 226 and that all
5 hours worked are correctly accounted for on its wage statements, such that Plaintiff's
6 independent wage statement claims would fail. With respect to the Labor Code § 2802 claim,
7 Defendant has asserted as a defense that employees had the option to use their personal cell
8 phones to use the Discord mobile application, but were not required to do so. Based on that,
9 individualized inquiries would predominate such that Plaintiff would not be able to certify the
10 2802 claims. Specifically, it is also Defendant's position that a significant amount of employees
11 part of the Settlement Class (an estimated two-third or 66.66%) have signed arbitration
12 agreements that Defendant maintains would be enforceable in Court. Finally, Defendant
13 contended that to the extent there were any violations, such violations were not willful or
14 intentional. Based on that, Defendant claims that Plaintiff's waiting time penalties should be
15 significantly lowered.

16 14. If Plaintiff were to reduce the amount of waiting time penalties by 66.66% based
17 on Defendant's argument that a significant amount of employees part of the Settlement Class
18 have signed enforceable arbitration agreements and that any purported violations were not willful
19 or intentional, Plaintiff would expect a more modest waiting time penalties amount of
20 approximately \$1,702,429.

21 15. With respect to potential liability of Plaintiff's PAGA claim, Plaintiff's expert has
22 calculated that Defendant could face civil penalties of up to approximately \$4,800,250 if Plaintiff
23 were successful at trial. The following represents a breakdown of the PAGA penalties by claim:

- 24 • \$1,231,150 in PAGA penalties for rest period violations;
- 25 • \$164,500 in PAGA penalties for regular rate overtime violations;
- 26 • \$174,000 in PAGA penalties for meal period premium violations;
- 27 • \$169,200 in PAGA penalties for reporting time pay violations;
- 28 • \$2,462,300 in PAGA penalties for 2802 violations;

- \$85,100 in PAGA penalties for untimely payment of wages; and
- \$514,000 in PAGA penalties for independent wage statement violations.

16. Although Plaintiff believes in the merits of the alleged claims and maintains there is no reason for reducing PAGA penalties, Plaintiff is aware that Defendant may raise defenses to the claims and further with respect to the reduction of PAGA penalties and that it could be persuasive to the Court. Thus, even if Plaintiff were to successfully prove her claims at trial, there is a possibility that the Court may only award a small percentage of PAGA penalties, as the Court has discretion to do so. The Total Settlement Amount was premised with this risk in mind, associated with the possibility of the Court significantly reducing Plaintiff's PAGA penalties, along with other attendant risks, even if Plaintiff was to prevail at trial.

17. Although Plaintiff believes that a class can be certified, Plaintiff also believes in the fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff involved in not prevailing on one or more of the causes of action or theories alleged in the lawsuit, the possibility of non-certification, and the potential for any appeals.

18. The total amount of class and PAGA penalties amount would realistically range anywhere between \$12,750,047 to \$9,346,210.50, without discounting for potentially losing any of the causes of action or discounting for reduction of PAGA penalties. The total class and penalties would reduce to \$4,545,960.50 if Plaintiff were to account for the reduction in waiting time penalties, based on the arguments raised by Defendant above.

19. The Total Settlement Amount is \$950,000, which is approximately 8.6% of the average of the potential amount of damages/penalties (calculated based on the approximate average of total class and PAGA penalties of \$11,048,128.80). If the PAGA penalties were reduced by 90% such as in *Carrington*, the settlement would be approximately 14% of the average potential exposure.

20. Based on their own independent investigation and evaluation, the Parties and their respective counsel are of the opinion that settlement for the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable, and adequate and is in the best interests of the Class and Defendant in light of all known facts and circumstances and the expenses and risks

1 inherent in litigation.

2 21. On a raw average, each Participating Settlement Class Member may potentially
3 recover approximately **\$223.96**. The amount actually paid to each Participating Settlement Class
4 Member may increase or decrease depending on the number of opt-outs and the number of pay
5 periods each Settlement Class Member worked during the Settlement Class Period.

6 22. The terms of the Settlement provide that uncashed checks (upon the expiration
7 date) shall be distributed to State Bar of California's Justice Gap Fund in accordance with Code
8 of Civil Procedure § 384.

9 23. Attached as **Exhibit C** is a true and correct copy of the proposed Notice of Class
10 Action Settlement ("Class Notice") to be sent to Class Members.

11 24. From the inception of the case, Class Counsel have zealously represented the
12 interests of the Class. The settlement was obtained for the benefit of the Class, as opposed to the
13 individual Class Representatives. Further, Class Counsel have been approved as class counsel on
14 a number of prior cases, have litigated numerous other class action cases, and are competent to
15 represent the Class.

16 25. I have spent significant time researching and pursuing the claims that have been
17 alleged in this action. The Parties engaged in informal discovery in connection with mediation,
18 and participated in the exchange of class data and significant records and Defendant's pertinent
19 policies and practices. Based on my review of all the documents and information, and based on
20 my experience in class action litigation, I believe this settlement to be fair, adequate, and
21 reasonable.

22 26. I am one of the primary attorneys on this matter. My qualifications are as
23 follows: I received my JD from Loyola Law School in 2017. I received the First Honors Award
24 in Legal Research and Writing, First Honors Award in Appellate Advocacy, and First Honors
25 Award in Civil Litigation Practicum I for achieving the highest grade in those classes. During
26 law school, I was a Staff Editor for Loyola Law Review. I was also an extern at the U.S. District
27 Court, Central District of California, for the Honorable Christina A. Snyder, and a certified law
28 clerk at the San Diego County District Attorney's Office, Collaborative Courts Division, and the

1 Los Angeles County District Attorney's Office, Consumer Protection and Environmental Crimes
2 Division. In 2016, I participated in Loyola Law School's Scott Moot Court Competition, where I
3 placed Top 16 and was awarded the Top Ten Brief Award. In 2017, I participated in the
4 Employment Rights Clinic, an extension of the Division of Labor Standards Enforcement created
5 to investigate retaliation complaints. Upon graduation from law school, I was admitted to the
6 California Bar in December 2017.

7 27. I am currently an associate at the law firm Diversity Law Group, P.C., an
8 employment law firm that has handled numerous wage and hour class and individual actions, on
9 both plaintiff and defense sides. The firm currently has cases in numerous state courts, including
10 the Santa Clara Superior Court, Los Angeles Superior Court, Orange County Superior Court, San
11 Diego County Superior Court, Monterey County Superior Court, as well as the United States
12 District Courts for the Central, Northern, Southern, and Eastern Districts of California.

13 28. I am currently handling and/or have handled numerous wage and hour class action
14 and PAGA lawsuits, including *Magadia v. Wal-Mart Associates, Inc., et al.* (Case Number 5:17-
15 cv-00062-LHK); *Garcia v. Wal-Mart Associates, Inc., et al.* (Case Number 3:18-cv-00500-L-
16 MDD); *Hernandez v. Wells Fargo Bank, N.A.* (Case Number 16CV299319); *Lao v. H & M*
17 *Hennes & Mauritz, L.P.* (Case Number 5:16-cv-333 EJD); *Arroyo v. Int'l Paper Company* (Case
18 Number 5:17-cv-06211-BLF); *Baker v. California Forensic Medical Group, Inc., et al.*, Judicial
19 Council Coordination Proceeding No. 4999 (Lead Case No. 17CV003723); and *Garcia v. Apex*
20 *Systems, LLC, et al.* (Case Number RG19014709).

21 29. In 2018, I argued before the California Court of Appeal, Second Appellate
22 District, in the case of *Lee v. California Commerce Club, Inc.* (California Court of Appeal Case
23 Number B276171, LASC Case Number BC596924), and *Perez v. Standard Drywall, Inc.*
24 (California Court of Appeal Case Number A146819, Alameda Sup. Ct. No. RG15761142). In
25 that same year, I also assisted the firm in successfully obtaining class certification and partial
26 summary judgment by the United States District Court, Central District of California in the case
27 of *Magadia v. Wal-Mart Associates, Inc.* (Case Number 17-CV-00062-LHK). I third chaired the
28 bench trial in that same case in December 2018.

1 30. I have also been certified under California Code of Civil Procedure § 382 or
2 FRCP 23 and/or granted approval as class counsel in numerous other wage/hour class actions.
3 Most recently, I was certified as class counsel in the cases *Garcia v. Wal-Mart Associates, Inc.*,
4 *et al.* (Case Number 3:18-cv-00500-L-MDD), *Richert v. Samaritan, LLC, et al.* (Case Number
5 17CV314186), *Song v. THC – Orange County, Inc.* (Case No. 8-17-cv-965-JLS (DFM)), and
6 *Hernandez v. Wells Fargo Bank National Ass’n, et al* (Case No. 16-CV-299319). Moreover, I
7 was granted final approval as class counsel in *California Forensic Medical Group Wage and*
8 *Hour Cases* (Case No. JCCP4999), *Valles v. Community Hospital of the Monterey Peninsula*
9 *(Case No. 17CV003452)*, *Chavez v. Hugo Boss Retail, Inc.* (Case No. 18CV322644), *Hernandez*
10 *v. Wells Fargo Bank National Ass’n, et al* (Case No. 16-CV-299319), *Mendez v. Falcon Trading*
11 *Company* (Case No. 19CV004512), and *Khan v. Amy’s Kitchen, Inc.* (Case No. SCV-266127). I
12 acted as lead counsel in these cases listed above.

13 31. I will adequately represent the Class Members in this action. Plaintiff’s Counsel
14 have and will zealously represent Plaintiff and the Class and pursue this lawsuit to its conclusion.
15 I have no conflicts with the Class and will adequately represent the Class.

16 32. On October 18, 2021, my office provided notice of the Motion and the Settlement
17 to the LWDA. Attached hereto as **Exhibit D** is a true and correct copy of the submission
18 confirmation.

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

21 Executed on this 18th day of October 2021, at Los Angeles, California.

22 
23 _____
24 Mai Tulyathan

EXHIBIT A

VAN WALKER
C/O DIVERSITY LAW GROUP
A PROFESSIONAL CORPORATION
515 S. FIGUEROA ST., SUITE 1250
LOS ANGELES, CALIFORNIA 90071
TELEPHONE (213) 488-6555
FACSIMILE (213) 488-6554

May 31, 2020

VIA ON-LINE FILING

California Labor & Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: Walker v. WFS Express Inc.

To Whom It May Concern:

This correspondence shall constitute written notice under Labor Code § 2699.3 of my claims against my former employer, WFS Express Inc. (the "Company"). I allege that the Company:

1. Violated Labor Code §§ 226.7 by failing to provide me and other aggrieved employees with off-duty rest breaks for shifts of 3.5 hours or more. Specifically, other aggrieved employees and I were required to remain on-duty and perform work when we were supposed to take our rest breaks. For example, we were required to continue to work during our rest breaks. Further, the Company also violated Labor Code §§ 201-203 by failing to pay other aggrieved employees and me all of the wages owed upon separation of employment due to the unpaid missed rest period premiums.

2. Violated Labor Code §§ 226.7 and 512 by failing to pay me and other employees our meal period premium pay for missed meal periods at our regular rates of pay as required by these provisions. Specifically, Labor Code § 226.7(c) states that "the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided." Throughout our employment with the Company, non-exempt employees and I earned non-discretionary remuneration, including Shift Premiums/Differentials. As these items are non-discretionary forms of remuneration, they should have been included in the regular rate of pay for purposes of paying me and other employees our meal period premium pay. However, whenever the Company paid me and other employees our meal period premium pay during pay periods in which we earned this non-discretionary remuneration, the meal period premium was always paid at our base rate of pay. Further, the Company also violated Labor Code §§ 201-203 by failing to pay other aggrieved employees and me all of the wages owed upon separation of employment due to the unpaid missed meal period premiums.

3. The Company failed to pay wages to me and other aggrieved employees in violation of the minimum, regular, overtime, and reporting time wage requirements, and Labor

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A PROFESSIONAL CORPORATION

California Labor & Workforce Development Agency

May 31, 2020

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Code §§ 201-204, 510, 558, 1174, 1198, and 1199. Specifically, other aggrieved employees and I were routinely required to report to work but sent home within the first 2 hours of work without being allowed to complete our entire work shift. However, we were only paid for the time we clocked in for. Further, the Company also violated Labor Code §§ 201-203 by failing to pay other aggrieved employees and me all of the wages owed upon separation of employment due to the reporting time violations.

4. The Company violated Labor Code § 226(a) by failing to provide accurate, itemized wage statements to me and/or other similarly situated aggrieved employees. Specifically, the Company failed to list the accurate total hours worked for wage statements furnished to me and/or other similarly aggrieved non-exempt employees whenever Shift Premiums/Differentials were paid. In particular, whenever Shift Premiums/Differentials were paid, the wage statements issued by the Company identified the wrong total hours worked. Finally, as a result of the meal and rest break, and reporting time violations identified above, the wage statements failed to the accurate total wages earned.

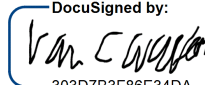
5. The Company violated Labor Code § 2802 as it failed to reimburse its employees for the costs I and other aggrieved employees incurred in using our personal cell phones for work-related purposes. Specifically, all employees were required to download and utilize an app called "Discord" for work communications purposes. However, the Company did not make any reimbursements for such required usage of our personal cell phones.

The address for the Company is:

WFS Express Inc.
JFK International Airport Cargo Area A
Building 151 East Hangar Road, Suite 337
Jamaica, NY 11430

Please contact my attorney, Larry W. Lee, at the address/telephone number listed above if you have any questions regarding this matter.

Sincerely,

DocuSigned by:

303D7B3F86E34DA...
Van Walker

DIVERSITY LAW GROUP
A PROFESSIONAL CORPORATION

California Labor & Workforce Development Agency

May 31, 2020

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cc: WFS Express Inc. (via certified mail, return receipt requested to the address above)

VAN WALKER
C/O DIVERSITY LAW GROUP
A PROFESSIONAL CORPORATION
515 S. FIGUEROA ST., SUITE 1250
LOS ANGELES, CALIFORNIA 90071
TELEPHONE (213) 488-6555
FACSIMILE (213) 488-6554

July 30, 2020

VIA ON-LINE FILING

California Labor & Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: Walker v. WFS Express Inc.

To Whom It May Concern:

This correspondence shall constitute as my supplemental written notice under Labor Code § 2699.3 of my claims against my former employer, WFS Express Inc. (the "Company"). In addition to the claims set forth in my May 31, 2020 letter to your office, I allege that the Company:

1. Violated Labor Code §§ 510, 558, and 1194 by failing to correctly calculate the regular rate of pay for purposes of paying overtime wages to myself and other non-exempt employees by not properly calculating all non-discretionary compensation into the regular rate, including without limitation, shift differential wages. Therefore, the Company owes me and other employees additional overtime pay based on the correct regular rate of pay. Further as a result of such violations, the Company violated Labor Code §§ 201-203 by not paying employees all of their wages upon separation of employment due to the underpaid overtime wages and Labor Code § 226(a) as the overtime wage rates, and net/gross wages earned shown on the wage statements were inaccurate due to the overtime violations set forth above.

The address for the Company is:

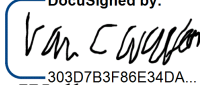
WFS Express Inc.
JFK International Airport Cargo Area A
Building 151 East Hangar Road, Suite 337
Jamaica, NY 11430

Please contact my attorney, Larry W. Lee, at the address/telephone number listed above if you have any questions regarding this matter.

DIVERSITY LAW GROUP
A PROFESSIONAL CORPORATION

California Labor & Workforce Development Agency
July 30, 2020
Page 2

Sincerely,

DocuSigned by:

303D7B3F86E34DA...
Van Walker

cc: WFS Express Inc. (via certified mail, return receipt requested to the address above)

EXHIBIT B

JOINT STIPULATION FOR CLASS ACTION SETTLEMENT

1. PREAMBLE

- 1.1 This Joint Stipulation for Class Action Settlement is made and entered by the Named Plaintiff Van Walker in the matter of *Walker v. WFS Express, Inc.* in in Superior Court of California, Sacramento County Case No. 34-2020-0028530, and on behalf of the Settlement Class, as defined below, and on behalf of Defendant WFS Express, Inc.

2. DEFINITIONS

- 2.1 The term “**Agreement**” means this Settlement Agreement.
- 2.2 The term “**Attorneys’ Fees and Costs**” means the amount of attorneys’ fees and costs and expenses to be requested by Class Counsel subject to Court approval in accordance with Subsection 5.1.3 of this Agreement.
- 2.3 The term “**Class Counsel**” means Diversity Law Group, P.C., who, subject to Court approval, shall act as counsel for the Settlement Class.
- 2.4 The term “**Court**” means the Sacramento County Superior Court, or any Court to which this matter is remanded, and any appellate court which may review any orders entered into by the trial court related to this Settlement.
- 2.5 The term “**Execution**” refers to the signing of this Agreement by all signatories hereto.
- 2.6 The term “**Final Judgment**” refers to the Final Judgment entered by the Court.
- 2.7 The term “**Litigation**” means the matter of *Walker v. WFS Express, Inc.* in the Superior Court of California, Sacramento County, Case No. 34-2020-0028530.
- 2.8 The term “**Named Plaintiff**” means the named plaintiff in the Litigation: Van Walker. The Named Plaintiff will seek to be designated as Settlement Class Representative for the Settlement Class.
- 2.9 The term “**Net Settlement Amount**” means the Total Settlement Amount (defined below) minus the combined total of any Attorneys’ Fees and Costs approved by the Court, the amount approved for Settlement Administration Costs, the approved incentive award to the Settlement Class Representative, the amount approved to be paid to the State of California under the Private Attorneys General Act.
- 2.10 The term “**Notice**” means a document substantially in the form of the Notice attached hereto as **Exhibit 1** which has been agreed to by the Parties and subject to Court approval and which the Settlement Administrator will mail to each Settlement Class Member explaining the terms of the Settlement, the data verification process, the Opt-Out procedure, and the objection procedure.

- 2.11 The term “**Notice and Administration Costs**” or “**Settlement Administration Costs**” means the reasonable costs and expenses of administration of the Settlement to be paid from the Total Settlement Amount.
- 2.12 The term “**Opt-Out Request**” means a written request by a Settlement Class Member to opt-out or exclude oneself from the Settlement. Any Settlement Class Member who submits an Opt-Out Request will be excluded from the Settlement and will not be bound by the release of claims contained in this Agreement.
- 2.13 The term “**Participating Class Member**” means any Settlement Class Member who does not opt out of the Settlement.
- 2.14 The term “**Parties**” means the Named Plaintiff and Defendant.
- 2.15 The term “**Released Claims**” means the claims, rights, penalties, demands, damages, debts, accounts, duties, Costs (other than those Costs required to be paid pursuant to this Settlement Agreement), liens, charges, complaints, causes of action, obligations, or liabilities that are set forth in section 8.1 and released, acquitted and discharged pursuant to Section 8 of this Agreement.
- 2.16 The term “**Released Parties**” means Defendant WFS Express, Inc., and any of their respective past, present, and future parents, affiliates, subsidiaries, divisions, predecessors, successors, and assigns, and each of their officers, directors, board members, trustees, shareholders, employees, agents, attorneys, auditors, accountants, experts, contractors, stockholders, representatives, partners, insurers, reinsurers, and all persons purporting to act on their behalf or purporting to assert a claim under or through him, including, but not limited to, their dependents, heirs and assigns, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, personal representatives, and successors-in-interest, whether individual, class, representative, legal, equitable, direct or indirect, or any other type or in any other capacity. Notwithstanding the above, Released Parties specifically excludes Worldwide Flight Services, Inc.
- 2.17 The term “**Response Deadline**” means the date forty-five (45) days after the Settlement Administrator mails the Notice Packets to Settlement Class Members and the last date on which Settlement Class Members may submit an Opt-Out Request or objection to the Settlement. Settlement Class Members who receive re-mailed Notice Packets will have fifteen (15) additional days to submit an Opt-Out Request or objection to the settlement (i.e., 60 calendar days from first mailing) irrespective of when the first mailing was returned as undeliverable as long as the return mailing is received within the initial forty-five (45) day Response Period.
- 2.18 [Place Holder]
- 2.19 The term “**Settlement**” means the compromise and settlement of the Litigation pursuant to the terms set forth in this Agreement.
- 2.20 The term “**Settlement Administrator**” means Phoenix Settlement Administrators, the entity agreed to by the Parties, subject to Court approval, which will perform the duties of, among

other things: (i) mailing the Notice to Class Members; (ii) tracking returned Opt-Out Requests; (iii) notifying the Parties of determinations regarding contested Claim Information Forms and Opt-Out Letters consistent with this Agreement; (iv) issuing payments; and, (v) completing any required tax paperwork.

- 2.21 The term “***Settlement Class***” means all persons who worked for WFS Express, Inc. in California as a non-exempt employee at any time during the Settlement Class Period. The Settlement Class shall not exceed 2,400 unique individuals.
- 2.22 The term “***Settlement Class Member***” means any member of the Settlement Class.
- 2.23 The term “***Settlement Class Period***” means the period of time from January 1, 2017 through July 31, 2021. The Settlement Class Period is the period of time applicable to the claims being released pursuant to section 8 hereafter.
- 2.24 The term “***Settlement Class Representative***” means Van Walker, who Class Counsel shall request be appointed by the Court as class representative of the Settlement Class.
- 2.25 The term “***Settlement Effective Date***” as used herein means the first day following the last of the following occurrences:
- 2.25.1. If there is no objection to the Settlement by a Settlement Class Member, the date of entry of Final Judgment approving the Settlement;
- 2.25.2. If a Settlement Class Member files an objection to the Settlement or Class Counsel appeals the amounts awarded by the Court for attorney’s fees and/or costs and/or the incentive awards to the Settlement Class Representative, the date the time to appeal or seek permission to appeal or seek other judicial review of the entry of a Final Judgment approving the Settlement has expired with no appeal or other judicial review having been taken or sought; or
- 2.25.3. If an appeal or other judicial review has been taken or sought: (i) the date the Final Judgment is finally affirmed by an appellate court with no possibility of subsequent appeal or other judicial review therefrom; or (ii) the date the appeal(s) or other judicial review therefrom are finally dismissed with no possibility of subsequent appeal or other judicial review; or (iii) if remanded to the Court or to a lower appellate court following an appeal or other review, the date the Final Judgment is entered by the Court after remand and the time to appeal or seek permission to appeal or seek other judicial review of the entry of that Final Judgment has expired with no further appeal or other judicial review having been taken or sought. If further appeal is sought after a remand, the time periods in this Subsection shall apply.
- 2.26 The term “***Total Settlement Amount***” means the maximum amount Defendant shall have to pay in connection with this Settlement, which shall be inclusive of Attorneys’ Fees and Costs approved by the Court, any incentive award approved by the Court, the Settlement Administration Costs, the amount paid to the State of California under the Private Attorneys General Act, amounts paid to participating Settlement Class Members, taxes,

and payroll contributions. Subject to Court approval and the terms of this Agreement, the Total Settlement Amount Defendant shall be required to pay is Nine-hundred fifty Thousand Dollars (\$950,000.00). The parties reserve the right to withdraw from this Agreement if the Court in any way modifies the Total Settlement Amount.

3. RECITALS

- 3.1 Plaintiff Van Walker commenced a putative class action lawsuit against Defendant WFS Express, Inc. on behalf of all current and former non-exempt individuals employed by Defendant within the State of California. Walkers' Class Action Complaint for Damages alleges causes of action as follows: (1) non-compliant rest periods; (2) non-compliant meal periods; (3) failure to pay overtime at the correct rate; (4) failure to pay meal period penalties; (5) paystub violations under Labor Code §226; (6) failure to reimburse employees for cell phone usage under Labor Code §2802; (7) reporting time pay; and (8) waiting time penalties under Labor Code §203. In addition, Walker is also pursuing a representative action under the Private Attorney Generals Act (PAGA) for all of the above.
- 3.2 The parties exchanged documents and information before mediating this action. Defendant produced a sample of time and pay records for class members. Defendant also provided documents of its wage and hour policies and practices during the class period, and information regarding the total number of current and former employees in its informal discovery responses.
- 3.3 After reviewing documents regarding Defendant's wage and hour policies and practices, and analyzing Defendant's time and pay records, Class Counsel was able to evaluate the probability of class certification, success on the merits, and Defendant's maximum monetary exposure for all claims. Class Counsel reviewed these records and prepared a damage analysis prior to mediation. Class Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation.
- 3.4 On April 12, 2021, the Parties, participated in a private mediation with professional neutral Michael J. Loeb, Esq. At the mediation, the Parties did not settle the matter, but continued negotiations both through the mediator as well as directly between counsel for each party. Ultimately, a settlement was reached, the terms of which are memorialized in this Agreement.
- 3.5 Named Plaintiff and his counsel believe this Litigation is meritorious based on applicable law or an extension thereof. Class Counsel represent that they have conducted a thorough investigation into the facts of this case and have diligently pursued an investigation of the claims against Defendant. Based on their own independent investigation and evaluation, Class Counsel are of the opinion that the Settlement is fair, reasonable, and adequate and is in the best interests of the Settlement Class Members in light of all known facts and circumstances, including the risk of significant delay, the defenses that could be asserted by Defendant both to certification and on the merits, trial risk, and appellate risk.
- 3.6 Defendant has also actively investigated the facts surrounding the claims brought by Named Plaintiff on behalf of the putative class, and actively and aggressively defended

themselves from said claims. Defendant denies any liability or wrongdoing of any kind associated with the claims alleged. Defendant further asserts that it has complied with all applicable provisions of California statutory and common law and have a good faith belief based on existing law that their practices were, and are, in compliance.

- 3.7 The entry of Final Judgment in this Litigation shall, as more specifically discussed herein, resolve all claims which were or reasonably could have been alleged in the operative complaints filed in the Litigation, with the exception of any claims which might be retained by the respective Settlement Class Members who exclude themselves from the Settlement. The Parties agree to cooperate and take all steps necessary and appropriate to obtain preliminary and final approval of this Settlement, and to effectuate its terms.
- 3.8 Each of the forgoing Recitals is incorporated into this Agreement as if fully set forth in the body of the Agreement.

4. CERTIFICATION OF SETTLEMENT CLASS

- 4.1 The Parties and Class Counsel agree that, if approved, certification of the Settlement Class is a conditional certification for settlement purposes only. If for any reason the Court does not grant final approval of the Settlement as negotiated by the Parties, or if final approval of the Settlement as negotiated by the Parties is not given following the appeal of any order by the Court, or if for any reason the Settlement Effective Date does not occur, the certification of the Settlement Class for settlement purposes shall be deemed null and void without further action by the Court or by any of the Parties. In such circumstances, each Party shall retain all of their respective rights and shall be returned to their relative legal positions prior to execution of this Agreement. Neither this Agreement, nor any of its accompanying exhibits or any orders entered by the Court in connection with this Agreement, shall be admissible or used for any purpose in this Litigation or any other legal proceeding, except for the enforcement of same. This is a global settlement contingent on resolution of all claims asserted by the Settlement Class.
- 4.2 The Parties and Class Counsel agree that, if approved, certification of the Settlement Class for settlement purposes is in no way an admission by Defendant that class certification is proper in any other litigation, including other wage and hour cases, pending against Defendant or that may in the future be filed against Defendant.

5. TERMS OF SETTLEMENT

- 5.1 Subject to the other terms and conditions of this Agreement, and in consideration of the contemplated pleadings and releases set forth in this Agreement, and subject to Court approval, Defendant agrees that the Total Settlement Amount shall be Nine-hundred fifty Thousand Dollars (\$950,000.00). This is a non-reversionary settlement.
- 5.1.1. All Class Members shall be eligible to receive a share of the Net Settlement Amount. The Net Settlement Amount shall be allocated as between wages, interest, and penalties as set forth in section 5.1.9 and distributed as set forth below:
- 5.1.1.1. Each Participating Class Member shall be awarded credit for each pay

period he or she worked while actively employed by Defendant as a Settlement Class Member during the Settlement Class Period.

- 5.1.1.2. Each Participating Class Member's share of the Net Settlement Amount shall be calculated by multiplying the Net Settlement Amount by a fraction, the numerator of which is the Participating Class Member's total number of credited pay periods, and the denominator of which is the total of all pay periods credited to all Participating Class Members during the Settlement Class Period. The resulting number shall be the amount that each Participating Class Member is eligible to claim.
- 5.1.2. Class Counsel may request that, subject to Court approval, the Settlement Class Representative be paid an incentive award not to exceed Ten Thousand Dollars (\$10,000.00), in addition to any pro rata recovery to which he may be entitled from the Net Settlement Amount. Defendant agrees not to oppose this request by Class Counsel.
- 5.1.3. Class Counsel may apply to the Court for an award of Attorneys' Fees and Costs, which shall be paid from the Total Settlement Amount. Defendant will not oppose Class Counsel's application for an award of Attorneys' Fees in an amount for up to 35% of the Total Settlement Amount, plus a request for reimbursement of reasonable litigation expenses not to exceed Twenty Thousand Dollars (\$20,000.00).
- 5.1.4. The Parties agree that the Court's approval or denial of any request for Attorneys' Fees and Costs or of the Settlement Class Representative's incentive award are not conditions to this Agreement, and are to be considered by the Court separately from the fairness, reasonableness, adequacy, and good faith of the Settlement. Any order or proceeding relating to the application by Class Counsel for an award of Attorneys' Fees and Costs or for the Settlement Class Representative's incentive awards shall not operate to terminate or cancel this Agreement.
- 5.1.5. The Parties agree that, subject to Court approval, payment of the sum of Forty Thousand Dollars (\$40,000.00) to the California Labor and Workforce Development Agency ("LWDA") pursuant to the claim for relief raised against Defendant pursuant to Labor Code §2698 et seq. represents a fair and equitable sum for resolution of said claims. This payment under the Private Attorneys General Act shall be paid from the Total Settlement Amount, 75% of which (xxxxxxx) will be paid to the LWDA and 25% (xxxx) will be paid to the Settlement Class. The Parties also agree to submit a copy of this settlement agreement to the LWDA at the same time it is provided to the Court pursuant to California Labor Code section 2699(l)(2).
- 5.1.6. The Parties agree that, subject to Court approval, payment of the sum of Twenty Thousand Dollars (\$20,000.00) shall serve as the maximum reasonable Settlement Administration Costs to the Settlement Administrator, an amount that shall be paid from the Total Settlement Amount. In the event the Settlement Effective Date does not occur, any portion of the Settlement Administration Costs already incurred by

the Settlement Administrator shall be paid by Named Plaintiff and Defendant equally. However, if Defendant or Named Plaintiff elects to “blow-up” the Settlement pursuant to section 14.3 below, then the party electing to “blow-up” the Settlement shall be responsible for all reasonable Settlement Administration Costs incurred by the Settlement Administrator as of that date. Any dispute relating to the Settlement Administrator’s ability and need to perform its duties shall be referred to the Court if it cannot be resolved by the Parties. The Settlement Administrator shall regularly and accurately report to the Parties, in written form when requested, on the substance of the work performed.

- 5.1.7. If the Court reduces: (i) the maximum Attorneys’ Fees and Costs; (ii) the maximum incentive award to the Settlement Class Representative; (iii) the proposed maximum Notice and Administration Costs; (iv) the proposed amount paid to the LWDA pursuant to the Private Attorneys General Act, or if any Settlement Class Member opts-out of the Settlement, such reduction(s) shall be part of the Net Settlement Amount.
- 5.1.8. The Parties agree that monies paid to Participating Class Members shall be allocated 33 1/3% as wages, 33 1/3% as penalties, and 33 1/3% as interest such that 66 2/3% of any monies distributed to Participating Class Members shall be characterized as 1099 income. Of those monies allocated as wages, any and all necessary deductions, withholdings, or taxes, whether typically employer or employee responsibility, shall be made by the Settlement Administrator and paid from the Total Settlement Amount.
- 5.1.9. The payments made to Participating Class Members pursuant to this Agreement are not being made for any other purpose and shall not be construed as creating an employment relationship in the case where the prior relationship has ended, nor shall payments be considered compensation for purposes of determining eligibility for any health and welfare benefits or unemployment compensation, and no benefit, including but not limited to pension and/or 401(k), shall increase or accrue as a result of any payment made as a result of this settlement.
- 5.1.10. Checks issued to Participating Class Members pursuant to this Agreement shall remain negotiable for a period of one hundred eighty (180) days from the date of mailing. Thereafter, the Settlement Administrator shall void any such check.
- 5.1.11. All uncashed checks will be treated pursuant to Code of Civil Procedure Section 384 as a cy pres distribution to the State Bar of California’s Justice Gap Fund. The Settlement Administrator shall reverse any tax documents issued to Class Members who did not cash his or her check and refund the Defendant’s share of employer’s taxes. In accordance with Code of Civil Procedure Section 384, the parties shall follow the procedure set for in (1) - (5) below in regard to unpaid residue:
 - 5.1.11.1. Unpaid residue (uncashed or returned checks) will be paid, with interest, to the State Bar of California’s Justice Gap Fund, 180 Howard Street, San Francisco, CA 94105;

5.1.11.2. The attorneys for the parties shall file, with the Motion for Final Approval, a stand-alone Stipulation to Amend Judgment and Proposed Stipulated Amended Judgment (Section 384) memorializing the parties' agreement to amend the judgment to adopt the administrator's determination of amount of unpaid residue, plus any interest that has accrued thereon from the date of entry of the initial judgment, to be paid to the *cy pres*;

5.1.11.3. The parties shall attach to the Stipulation a [Proposed] Stipulated Amended Judgment form with a signature line for the court and blanks for the amount of residue plus interest to be added to the judgment and the total amount of the amended judgment;

5.1.11.4. Along with the Final Report, the administrator shall file, with the court, a photocopy of the attorneys' Stipulation to Amend Judgment along with a [Proposed] Stipulated Amended Judgment form with the amount of residue plus interest to be added to the judgment and the total amount of the judgment, plus interest, filled in;

5.1.11.5. The court signs and enters the Stipulated Amended Judgment.

6. NOTICE OF THE SETTLEMENT

6.1 Within fifteen (15) calendar days after the Court grants Preliminary Approval of this Settlement, Defendant shall provide to the Settlement Administrator a listing of all Settlement Class Members, including the following information/data: (1) full name; (2) last known home mailing address; (3) last known telephone number; (4) Social Security Number; (5) dates of employment in a non-exempt position; (6) the applicable number of pay periods (*i.e.* "credits") worked by each Settlement Class Member during the Settlement Class Period in order to calculate each Settlement Class Member's respective settlement share (hereinafter the "***Class List***"). The Class List shall be based on the data kept in the ordinary course of business in Defendant's records and to the extent such information is available in Defendant's current records. The Parties agree that the contents of the Class List are confidential and shall not be shared with third parties other than the Settlement Administrator, who shall also agree to maintain the confidentiality of the Class List. The Class List minus Social Security Numbers shall also be provided to Class Counsel at the time it is provided to the Settlement Administrator so that Class Counsel may carry out their duties and obligations to the class. Moreover, Class Counsel shall be provided the current name and contact information of any Settlement Class Member who files an objection or who contests the information in his or her Settlement Information Form.

6.2 Subject to Court approval, a "Notice" substantially in the form attached as **Exhibit 1** shall be sent by the Settlement Administrator to all Settlement Class Members in English and

Spanish only by first class mail. The Notice shall describe the terms of Settlement and the claims released, the opt-out process, and shall advise Settlement Class Members of their right and the process by which to object to the Settlement, and the date set by the Court for a hearing on final approval of the Settlement.

- 6.3 The Notice shall contain, among other things, information about the Settlement Class Member's individual number of pay periods worked during the Settlement Class Period, as provided by Defendant, and an estimate of the Settlement Class Member's individual settlement payment. The Notice shall explain how each Settlement Class Member can dispute the number of pay periods worked for which they have been credited for purposes of assigning their *pro rata* share of the settlement.
- 6.4 Within ten (10) calendar days of receiving the Class List, the Settlement Administrator will complete the mailing of the Notice (the "**Notice Packet**"), to all Settlement Class Members.
- 6.5 Prior to mailing the Notice Packet, the Settlement Administrator shall process the Class List against the National Change of Address ("NCOA") Database maintained by the United States Postal Service ("USPS"). It shall be conclusively presumed that if the Notice Packet is not returned as "undeliverable," the Settlement Class Member received the Notice Packet.
- 6.6 With respect to Notice Packets that are returned as undeliverable, if a forwarding address is provided by the USPS, the Settlement Administrator shall re-mail the Notice Packet within three (3) business days. If a Notice Packet is "undeliverable" and no forwarding address is provided, the Settlement Administrator shall employ standard skip-tracing to obtain updated address information and shall re-mail the Notice Packet to those Settlement Class Members. All re-mailings to skip traced Settlement Class Members shall be performed periodically during the notice and opt-out period and must be completed no later than ten (10) days prior to the Response Deadline. If the Notice Packet is returned after one set of skip-tracing and re-mailing occurs, there shall be no further skip-tracing and it shall be presumed that the Settlement Class Member cannot be located meaning that, as a result of the inability to locate individual Settlement Class Member(s), the Claims Administrator is to not use this individual's or those individuals' information in calculating the Net Settlement Amount payable to those Settlement Class members to whom a check is issued pursuant to paragraph 5.1.10, above.
- 6.7 To the extent that Class Counsel becomes aware of new contact information for any Settlement Class Member, Class Counsel shall promptly communicate that information to the Settlement Administrator. Within two (2) business days of receiving such information, the Settlement Administrator shall cause a Notice Packet to be mailed to the Settlement Class Member's new address.
- 6.8 Along with the motion for final approval, the Settlement Administrator shall provide an estimated high and low for individual settlement payments, along with Named Plaintiff's individual payouts.

7. WORKWEEK DISPUTES, OPT-OUT, OBJECTION, AND DISTRIBUTION

PROCESS

- 7.1 The amount that each Settlement Class Member is eligible to receive under this Settlement shall be determined in accordance with the formula set forth in Subsection 5.1.1.
- 7.2 Each Settlement Class Member will have the opportunity, should he or she disagree with Defendant's records regarding the number of pay periods worked during the applicable Settlement Class Period as stated on the Notice, to provide documentation and/or an explanation postmarked or to be received by the Settlement Administrator within forty five (45) days of the mailing of the Notice Packet in support of his or her claim of a different number of workweeks. Settlement Class Members who receive re-mailed Notice Packets will have fifteen (15) additional days to submit an Opt-Out Request or objection to the settlement. If there is a dispute related to the number of pay periods, the Settlement Administrator will consult with Class Counsel and Defendant's counsel to determine whether an adjustment is warranted. The Settlement Administrator's final determination of the amount of pay period credits that each Settlement Class Member is eligible to receive under this Settlement shall be binding upon the Participating Class Members and the Parties. In the absence of circumstances indicating fraud, manipulation, or destruction, Defendant's records will be given a rebuttable presumption of accuracy.
 - 7.2.1. The Parties shall file with the Court all disputes submitted by Settlement Class Members, the evidence submitted, and the resolution of those disputes. The Court shall have the right to review and reverse any decision made by the Settlement Administrator regarding a claim dispute.
- 7.3 Within fifteen (15) business days of the Response Deadline, the Settlement Administrator shall provide a spreadsheet to Class Counsel and to Defendant's Counsel that contains information sufficient to determine: the amount proposed to be paid to each Participating Class Member and the names, addresses, and last four digits of the Social Security Numbers of any Settlement Class Members who opted-out of the Settlement. The Settlement Administrator will keep originals, including postmarked envelopes of all documents associated with disputes over the credited workweeks and make copies of them available to Defendant and/or Class Counsel upon reasonable request.
- 7.4 Defendant will provide the Settlement Administrator with the Total Settlement Amount by bank wire within twenty-one (21) calendar days of the Settlement Effective Date. The Settlement Administrator will maintain the funds in an account that enables the funds to accrue interest. Within ten (10) calendar days from receipt of the funds, the Settlement Administrator shall then disburse the funds as approved per this Agreement.
- 7.5 Within five (5) calendar days after the final hearing on their application for Attorneys' Fees and Costs, Class Counsel shall deliver to the Settlement Administrator written instructions that describe the manner and mode of payment of such Attorneys' Fees And Costs (and, in the absence of such instructions, such Attorneys' Fees And Costs shall be sent by U.S. Mail), and a fully-executed Form W-9 with respect to the entity(ies) to whom the Attorneys' Fees And Costs shall be paid. The Settlement Administrator will issue to Class Counsel an IRS Form 1099 for such amounts paid for attorneys' fees under this Settlement.

Notwithstanding the foregoing, Class Counsel shall not apply for, and shall not be awarded, attorneys' fees and/or costs in any amounts that are in excess of the amounts set forth in this Agreement.

- 7.6 Payments to Participating Class Members, Class Counsel, the Class Representative, and the California Labor and Workforce Development Agency shall be made by the Settlement Administrator within ten (10) business days from the Settlement Administrator's receipt of the Total Settlement Amount from Defendant.
- 7.7 Opt-Out Requests.
- 7.7.1.A Settlement Class Member who wishes to exclude himself or herself from this Settlement, and from the release of claims contained in this Agreement, must submit an Opt-Out Request directly to the Settlement Administrator, postmarked by the Response Deadline. The Settlement Administrator shall promptly send a copy of any Opt-Out Requests to both Class Counsel and Defendant's Counsel. For an Opt-Out Requests to be accepted, it must be timely and valid. To be timely it must be postmarked by the Response Deadline. To be valid, the Opt-Out Request shall contain a statement that clearly conveys the Settlement Class Member's request to be excluded from the Settlement, his/her full name and the last four digits of the Settlement Class Member's Social Security Number on record with Defendant, and it must be signed and dated.
- 7.7.2.A Settlement Class Member who submits an Opt-Out Request is not eligible to recover a pro rata share of the Net Settlement Amount. A Settlement Class Member who submits an Opt-Out Request will be precluded from objecting to this Settlement.
- 7.7.3.The Settlement Administrator shall maintain a list of persons who have excluded themselves and shall provide such list to the Parties upon request. The Settlement Administrator shall retain the originals of all Opt-Out Request (including the envelopes with the postmarks) received from Settlement Class Members, and shall make copies available to Defendant or Class Counsel upon request.
- 7.7.4. Defendant acknowledges that California law prohibits them from retaliating against any Settlement Class Member for participating in the Settlement. Defendant will not induce any current or former employee to opt out of or object to the Settlement.
- 7.8 A Settlement Class Member who wishes to object to the Settlement must submit to the Settlement Administrator a written brief or statement of objection. The objection must (1) state the full name of the Settlement Class Member; (2) be signed by the Settlement Class Member; (3) state the grounds for the objection; and (4) be postmarked by the Response Deadline and returned to the Settlement Administrator at the address specified on the Notice. With the motion for final approval, Named Plaintiff will present a full report to the Court on all exclusions and objections received.
- 7.9 In the event that Final Approval of this Settlement is not granted by the Court, neither the Settlement, nor any documents related to this Settlement or negotiations leading to the

Settlement may be used as evidence for any purpose, and Defendant shall retain the right to challenge all claims and allegations in the Litigation and assert all applicable defenses.

- 7.10 Should the Court decline to approve this Agreement in any material respect, except for approval of the award of Class Counsel's Attorneys' Fees and Costs or the Settlement Class Representative's incentive award, Defendant shall have no obligation to make any payment under this Agreement, and in the event that Defendant has made any such payment, such monies shall be returned promptly to Defendant (minus any Settlement Administration Costs already reasonably incurred by the Settlement Administrator). Any party who elects to "*blow-up*" the Settlement pursuant to section 14.3 shall solely be responsible for all reasonable Settlement Administration Costs incurred by the Settlement Administrator as of that date.

7.11 Payment of Taxes

7.11.1. The Settlement Administrator shall be responsible for calculating and timely paying any and all payroll tax deductions to be withheld from the wages portion of the Net Settlement Amount to the appropriate tax authorities, as required under this Agreement and applicable law. This includes any and all applicable taxes, whether traditionally the responsibility of employer or employee. The Settlement Administrator's responsibilities include the following: (a) filing all Federal, state and local employment tax returns, tax withholding returns, and any other tax returns associated with the taxes, (b) timely and proper filing of all required Federal, state and local information returns (e.g., 1099s, W-2s, etc.) with the appropriate taxing authorities, and (c) completion of any other steps necessary for compliance with any tax obligations of the settlement fund under Federal, state and/or local law. To verify the Settlement Administrator's compliance with the foregoing withholding and reporting requirements, as soon as administratively practicable, the Settlement Administrator shall furnish Class Counsel and Defendant's Counsel with copies of all filed tax returns and information returns (including all 1099 and W-2 information returns), and a final accounting adequate to demonstrate full compliance with all tax withholding, payment, deposit and reporting obligations.

7.11.2. Each party to this Agreement (for purposes of this section, the "Acknowledging Party"; and each party to this Agreement other than the Acknowledging Party, and "Other Party") acknowledges and agrees that (1) no provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended); (2) the Acknowledging Party (a) has relied exclusively upon his, her or its own, independent legal and tax advisers for advice (including tax advice) in connection with this Agreement, (b) has not entered into this Agreement based upon the recommendation of any other party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or advisor to any other party to

avoid any tax penalty that may be imposed on the Acknowledging Party; and (3) no attorney or adviser to any other party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the Acknowledging Party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

8. COMPREHENSIVE RELEASE

8.1 If finally approved by the Court, each Settlement Class Member who does not request exclusion from the Settlement will be bound by all of the terms of the Settlement, including a release of all claims that were or reasonably could have been asserted or alleged in the Litigation that accrued during the Settlement Class Period based on the facts pleaded in the operative complaint on file, including: any and all claims and damages arising from any of the facts alleged in Plaintiff's operative complaints for damages, including Defendant's alleged violation of the California Business and Professions Code sections 17200, *et seq.* for, *inter alia*, failure to pay overtime and minimum wages, provide meal and rest periods and associated premium payments, timely pay wages during employment and upon termination, provide compliant wage statements, maintain complete and accurate payroll records, and reimburse necessary business-related expenses, as well as all claims for failure to pay minimum wage, failure to pay overtime wages, failure to provide meal and rest periods, failure to issue accurate itemized wage statements, and Defendant's alleged unfair business practices stemming from these alleged Labor Code violations. ("Released Claims").

8.1.1. These Releases also include a release of all claims against Defendant for attorneys' fees and costs incurred by Releasing Settlement Class Members or by Class Counsel in connection with the Litigation and the Settlement of the Litigation, except as otherwise set forth in this Agreement.

8.1.2. The forgoing releases do not include any attorney's fees and costs incurred by Plaintiff and Class Counsel for enforcing or determining rights or obligations under this Agreement in a subsequent proceeding alleging a material breach of the same.

8.2 General Release of Claims by Named Plaintiff Van Walker: Upon the ***Settlement Effective Date*** and in consideration of the payment to the Settlement Class Representative of the incentive awards of \$10,000, Plaintiff and all persons purporting to act on their behalf or purporting to assert a claim under or through him, including, but not limited to, their dependents, heirs and assigns, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, personal representatives, and successors-in-interest, whether individual, class, representative, legal, equitable, direct or indirect, or any other type or in any other capacity, and each of them, hereby release, acquit, and forever discharge ***Released Parties***, and each and all of them, of and from any and all obligations, debts, claims, liabilities, demands, and causes of action of every kind, nature and description whatsoever, whether or not now known, suspected or claimed, which they ever had, now have, or may hereafter acquire by reason, accruing from the beginning of time

until the date that the final approval of the Settlement is granted, including all claims, known or unknown. The foregoing release shall be effective as a bar to any and all claims of any character, nature or kind, known or unknown, suspected or unsuspected specified herein. Settlement Class Representatives expressly waive any and all rights and benefits conferred upon them by the provisions of Section 1542 of the California Civil Code or similar provisions of applicable law which are as follows:

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

8.2.1. Plaintiff also agrees that they will not submit a Request for Exclusion from the Settlement. Plaintiff agrees that their employment with Defendant has irrevocably terminated and neither will apply for or seek reemployment with Defendant.

9. DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL

- 9.1 Upon execution of this Agreement, Class Counsel shall apply to the Court for the entry of an order granting preliminary approval of the Settlement, substantially in the following form:
- 9.1.1. Certifying the Settlement Class for settlement purposes in accordance with Section 4 of this Agreement;
 - 9.1.2. Scheduling a final fairness hearing on the question of whether the proposed Settlement should be finally approved as fair, reasonable, and adequate as to the proposed Settlement Class;
 - 9.1.3. Approving as to form and content the proposed Notice;
 - 9.1.4. Directing the mailing of the Notice Packet by first class mail to the Settlement Class Members;
 - 9.1.5. Preliminarily approving the Settlement;
 - 9.1.6. Approving Diversity Law Group, P.C. as Class Counsel;
 - 9.1.7. Approving Van Walker as Settlement Class Representative; and
 - 9.1.8. Approving Phoenix Settlement Administrators as the Settlement Administrator.
- 9.2 Defendant shall cooperate with Class Counsel as necessary to obtain preliminary approval, except that it need take no affirmative position as the award of Attorneys' Fees and Costs.

- 9.3 The Parties agree that neither Plaintiff nor Plaintiff's counsel will communicate the terms of this settlement or otherwise publicize the terms of or fact of this settlement prior to the filing of the Motion for Preliminary Approval, except that Plaintiff's counsel shall be permitted to file the necessary documents with the court to obtain approval of the settlement and advise class members.

10. DUTIES OF THE PARTIES FOLLOWING PRELIMINARY COURT APPROVAL

- 10.1 Following preliminary approval by the Court of the Settlement, Class Counsel will submit a proposed Final Judgment. The proposed Final Judgment shall:
- 10.1.1. Approve the Settlement, adjudging the terms thereof to be fair, reasonable, and adequate and directing consummation of its terms and provisions;
 - 10.1.2. Approve an award of Attorneys' Fees and Costs to Class Counsel;
 - 10.1.3. Approve any incentive awards to the Settlement Class Representative; and
 - 10.1.4. Approve an award to the Labor and Workforce Development Agency.
- 10.2 Defendant shall cooperate with Class Counsel as necessary to obtain final approval and the Court's final judgment.

11. MUTUAL FULL COOPERATION

- 11.1 The Parties agree to cooperate fully with each other to accomplish the terms of this Settlement, including but not limited to, execution of all necessary documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement. The Parties shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate the terms of this Settlement. As soon as practicable after execution of this Settlement, Class Counsel shall, with the assistance and cooperation of Defendant and its counsel, take all necessary steps to secure entry of the Final Judgment.
- 11.2 If a Party cannot reasonably comply with an obligation under this Agreement by the deadline set forth herein applicable to that obligation, that Party may apply to the Court for a reasonable extension of time to fulfill that obligation. Consent to such a request for an extension will not be unreasonably withheld by the other Party.

12. STATEMENT OF NO ADMISSION

- 12.1 Nothing contained in this Agreement shall be construed or deemed an admission of liability, culpability, or wrongdoing on the part of Defendant, and Defendant denies liability therefore. Nor shall this Agreement constitute an admission by Defendant as to any interpretation of laws or as to the merits, validity, or accuracy of any claims made against it in the Litigation. Likewise, nothing in this Agreement shall be construed or deemed an admission with regards to the validity of any of Defendant's defenses or affirmative defenses. Each of the Parties has entered into this Settlement with the intention

to avoid further disputes and litigation, uncertainty, delays, all with the attendant inconvenience and expenses.

- 12.2 This Agreement, and all related documents, and all other actions taken in implementation of the Settlement, including any statements, discussions, or communications, and any materials prepared, exchanged, issued, or used during the course of the negotiations leading to this Agreement are settlement documents and shall be inadmissible in evidence and shall not be used for any purpose in any judicial, arbitral, administrative, investigative, or other court, tribunal, forum, or proceeding, including any wage and hour or other litigation against Defendant, for any purpose, except in an action or proceeding to approve, interpret, or enforce the terms of this Agreement.
- 12.3 The Notices, Opt-Out Requests, and any other evidence produced or created by any Settlement Class Member in connection with the settlement procedures pursuant to this Agreement, and any actions taken by Defendant in response to such Notices, Opt-Out Requests, or the calculations by the Settlement Administrator, or other evidence, do not constitute, are not intended to constitute, and will not be deemed to constitute an admission by Defendant of any violation of any federal, state, or local law, statute, ordinance, regulation, rule, or executive order, or any obligation or duty at law or in equity.
- 12.4 In the event that this Agreement is not approved by the Court or any appellate court, or otherwise fails to become effective and enforceable, or is terminated, Defendant will not be deemed to have waived, limited, or affected in any way any of their objections or defenses in the Litigation, including to conditional class certification.

13. BREACHES OF THE AGREEMENT

- 13.1 If, prior to entry of Judgment, a party materially breaches the Agreement, the non-breaching party may either (1) declare the Settlement terminated, and continue to prosecute or defend the action; or (2) request that the Court enter judgment pursuant to California Code of Civil Procedure section 664.6. A reasonable variation from the deadlines contained herein shall not constitute a material breach, absent a finding of the Court to the contrary.
- 13.2 In the event of breach of this agreement or an action for enforcement of this agreement, the prevailing party is entitled to reasonable attorney's fees and costs.

14. VOIDING THE AGREEMENT

- 14.1 In the event that this Settlement is not approved by the Court, or if for any reason the Settlement Effective Date does not occur, the Settlement shall be deemed null, void and unenforceable and shall not be used nor shall it be admissible in any subsequent proceedings either in this Court or in any other judicial, arbitral, administrative, investigative, or other court, tribunal, forum, or other proceeding, including without limitation any wage and hour, or other litigation against Defendant.
- 14.2 In the event that the Court does not approve the Attorneys' Fees and Costs in the amount

requested by Class Counsel, or in the event that the Attorneys' Fees and Costs requested by Class Counsel is reduced, that finding shall not be a basis for rendering the entire Agreement null, void, or unenforceable. Class Counsel retains their right to appeal any decision by the Court regarding the Attorneys' Fees and Costs.

- 14.3 If ten percent (10%) or more of the Settlement Class Members submit Opt-Out Requests, Defendant at its sole option may withdraw from this Settlement by giving written notice to Class Counsel and the Settlement Administrator within ten (10) business days of the Response Deadline.

15. PARTIES' AUTHORITY

- 15.1 The respective signatories to this Agreement each represent that they are fully authorized to enter into this Settlement and bind the respective Parties to its terms and conditions.

16. NO PRIOR ASSIGNMENTS

- 16.1 The Parties represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or right released and discharged in this Settlement.

16. NOTICES

- 16.1 Unless otherwise specifically provided herein, all notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of: (i) the date given, if given by hand delivery; (ii) within one business day, if sent by overnight delivery services such as Federal Express or similar courier; or (iii) the third business day after mailing by United States registered or certified mail, return receipt requested, (iv) the date given if delivered by email. All notices given under this Agreement shall be addressed as follows:

16.1.1. To the Class:

Larry W. Lee, Esq.
Mai Tulyathan, Esq.
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
Tel: (213) 488-6555
Fax: (213) 488-6554
Email: lwlee@diversitylaw.com
ktulyathan@diversitylaw.com

16.1.2. To Defendant WFS Express, Inc.:

Daniel H. Handman, Esq.
Benjamin J. Treger, Esq.

HIRSCHFELD KRAEMER LLP
233 Wilshire Boulevard Suite 600
Santa Monica, California 90401
Tel: (310) 255-0705
Fax: (310) 255-0986
Email: dhandman@hkemploymentlaw.com
btreger@hkemploymentlaw.com

17. CONFIDENTIALITY

- 17.1 The negotiations, terms and existence of this Settlement will remain strictly confidential and shall not be discussed with anyone other than the Parties of record, their accountants and financial or tax advisors, counsel of record, or their retained consultants.
- 17.2 Any confidentiality associated with the terms of this Settlement shall expire upon the filing by Class Counsel of the Motion for Preliminary Approval with the Court, except that the negotiations and discussions preceding submission of the Settlement to the Court for preliminary approval, and any further negotiations and discussions between the time of preliminary approval and final approval shall remain strictly confidential, unless otherwise agreed to by the Parties or unless otherwise ordered by the Court.

18. DOCUMENTS AND DISCOVERY

- 18.1 Within sixty (60) days after the Settlement Effective Date, each of Class Counsel shall take steps necessary to destroy or erase all confidential documents and data produced by Defendant to Class Counsel in connection with this Litigation and which are currently in Class Counsel's possession, custody or control, including documents and data in the possession, custody or control of any retained experts and consultants. Class Counsel may keep one archival copy of all confidential documents and data. Class Counsel shall certify to Defendant their good faith efforts to comply with this provision.

19. MISCELLANEOUS PROVISIONS

- 19.1 Construction. The Parties agree that the terms and conditions of this Agreement are the result of lengthy, intensive arms-length negotiations between the Parties and that this Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or his or her or its counsel participated in the drafting of this Agreement.
- 19.2 Captions and Interpretations. Paragraph titles or captions contained in this Agreement are a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any provision. Each term of this Agreement is contractual and not merely a recital.
- 19.3 Modification. This Settlement may not be changed, altered, or modified, except in a writing signed by the Parties, and approved by the Court. Notwithstanding the foregoing, the Parties agree that any dates contained in this Agreement may be modified by agreement of the Parties in writing without Court approval if the Parties agree and cause exists for

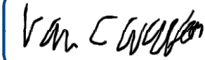
such modification. This Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties.

- 19.4 Integration Clause. This Agreement, the Exhibits hereto, and any other documents delivered pursuant hereto contain the entire agreement between the Parties relating to the resolution of the Litigation, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged in this Agreement. No rights under this Settlement may be waived except in writing and signed by the Party against whom such waiver is to be enforced.
- 19.5 Attorneys' Fees. If a Party to this Settlement institutes any legal action, arbitration, or other proceeding against any other Party or Parties to enforce the provisions of this Settlement Agreement or to declare rights or obligations under this Settlement Agreement, then the prevailing Party shall recover from the non-prevailing Party, reasonable attorneys' fees and costs. Steven Serratore will act as the mediator on any disputes that arise during the process of finalizing the settlement documents, at his own discretion.
- 19.6 Binding on Assigns. This Settlement shall be binding upon, and inure to the benefit of, the Parties and their respective heirs, trustees, executors, administrators, successors, and assigns.
- 19.7 Class Counsel and Settlement Class Representative Signatories. It is agreed that because the Settlement Class Members are so numerous, it is impossible or impractical to have each Settlement Class Member execute this Settlement. The Notice will provide all Settlement Class Members with a summary of the Settlement, and will advise all Settlement Class Members of the binding nature of the release. Excepting only those Settlement Class Members who timely submit an Opt-Out Request, the Notice shall have the same force and effect as if this Settlement were executed by each Settlement Class Member.
- 19.8 Counterparts and Electronic Signatures. This Agreement may be executed by facsimile signature, pdf signature, or signature in compliance with the Uniform Electronic Transaction Act, and in any number of counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one and the same Agreement, which shall be binding upon and effective as to all Parties.
- 19.9 Applicable Law. This Agreement shall be governed by California law without regard to its choice of law or conflicts of law principles or provisions. The parties agree that the Orange County Superior Court, Civil Complex Center, shall maintain jurisdiction to enforce the terms of this Agreement, and that all litigation arising out of this Agreement or any breach thereof shall be filed and constructed before the Los Angeles County Superior Court, unless the Parties agree in writing to an alternative venue of litigation.

On Behalf of Plaintiff Van Walker and the Class:

Dated: 08/17/2021, 2021

DocuSigned by:



303E733F84E34DA
Van Walker, Plaintiff

On Behalf of Defendant WFS Express, Inc.:

Dated: _____, 2021

Name: Baron Oursler
Title: Sr. Vice President, General Counsel –
North America

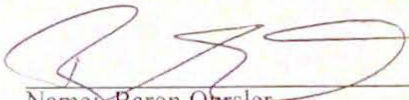
On Behalf of Plaintiff Van Walker and the Class:

Dated: _____, 2021

Van Walker, Plaintiff

On Behalf of Defendant WFS Express, Inc.:

Dated: August 18, 2021



Name: Baron Oursler
Title: Sr. Vice President, General Counsel –
North America

Approved as to form:

Dated: August 17, 2021

HIRSCHFELD KRAEMER LLP

By: 
Daniel H. Handman
Benjamin J. Treger
Attorneys for Defendant
WFS Express, INC.

Dated: August 17, 2021

DIVERSITY LAW GROUP, P.C.

By: 
Larry W. Lee
Mai Tulyathan
Attorneys for Plaintiff
Van Walker

EXHIBIT A

[CLASS MEMBER NAME]

Van Walker v. WFS Express, Inc.

**Superior Court of the State of California, County of Sacramento
Case No.: 34-2020-00285301**

If you are a current or former employee of WFS Express, Inc. (“WFS Express” or “Defendant”), a class action lawsuit may affect your rights and you may be entitled to benefits under the settlement.

You are not being sued. A court authorized this notice. This is not a solicitation from a lawyer.

**PLEASE READ THIS NOTICE CAREFULLY. IT CONTAINS IMPORTANT
INFORMATION ABOUT YOUR RIGHTS.**

**YOUR ESTIMATED TOTAL INDIVIDUAL SETTLEMENT PAYMENT AMOUNT
FROM THIS CLASS ACTION SETTLEMENT IS \$ [REDACTED].**

According to WFS Express’ records, the total number of pay periods that you worked as a non-exempt employee for WFS Express in California between January 1, 2017 through and July 31, 2021 is [REDACTED]. Based on this number, your individual settlement payment amount is estimated to be \$[REDACTED].

- This lawsuit involves a class defined as: All persons who worked for WFS Express, Inc. in California as a non-exempt employee at any time during the period of January 1, 2017, through July 31, 2021.
- You are receiving this Notice because the records reflect that you may be a class member.
- The settlement resolves a lawsuit in which Plaintiff Van Walker (“Plaintiff”) alleged that WFS Express failed to: (1) pay overtime wages at the regular rate of pay; (2) to provide proper meal and rest breaks; (3) provide accurate wage statements; (4) reimburse business-related expenses; (5) pay reporting time pay; and (6) pay waiting time penalties. WFS Express denies any and all liability as to all claims alleged in this lawsuit. The settlement avoids the costs and risks from continuing the lawsuit, pays money to employees, and releases WFS Express from liability for the alleged violations
- There has been a settlement that affects your rights. Although the Court has authorized the Parties to provide this notice of the proposed settlement, the Court has expressed no opinion on the merits of Plaintiff’s claims or WFS Express’ defenses.
- You will not be penalized or retaliated against by WFS Express for participating in this

settlement. If you are currently employed by WFS Express, your employment will not be affected in any way. Current employees of WFS Express who choose to participate in the settlement will not be required to resign and can continue to work for WFS Express.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
You Can Do Nothing	You need not take any action if you wish to receive your settlement payment. If the settlement is approved by the Court and you do nothing, you will automatically be mailed a settlement check for your share of the settlement at the address on file with the Settlement Administrator. In exchange for this settlement check, you will release or give up any rights to sue WFS Express separately for the same legal claims that were pled in this lawsuit (see Section 8 for an explanation of the claims you are giving up). If you move, you must notify the Settlement Administrator of your new address.
You Can Exclude Yourself	If you ask to be excluded from the settlement, you will get no payment from the settlement, but you will keep any rights to sue WFS Express for the same legal claims that are part of this lawsuit. This is the only option that allows you to be part of any other lawsuit against WFS Express asserting the same legal claims that were settled in this case. You cannot ask to be excluded <u>and</u> still get a settlement payment. If you ask to be excluded from the settlement, you cannot object to the settlement.
You Can Object To The Settlement	If you do not agree with the settlement, you can submit a written objection to the settlement according to the procedures described below on page 5. The Court may or may not agree with your objection. If the Court does not agree with your objection, you will still be bound by the terms of the settlement and will receive a settlement payment. Objecting to the settlement will <u>not</u> exclude you from the settlement.

To opt out or object, you must act by **[45 days after initial mailing]**.

1. Why did I get this notice?

A proposed settlement has been reached in a class action lawsuit that was brought on behalf of WFS Express' non-exempt employees. You have received this notice because WFS Express' records indicate that you are a member of the settlement class.

2. What is this lawsuit about?

This lawsuit was filed on August 5, 2020 on behalf of individuals who are employed or have been employed by WFS Express as non-exempt employees in the State of California. The complaint alleges class and representative claims under the Private Attorneys General Act, California Labor Code § 2698 *et seq.* (“PAGA”) against WFS Express for several violations of the California Labor Code and California Business & Professions Code. First, the complaint alleges that WFS Express failed to pay overtime wages at the regular rate of pay. The complaint also alleges that WFS Express failed to provide proper meal and rest breaks. Third, the complaint alleges that WFS Express failed to pay reporting time pay. Additionally, Plaintiff also alleges in this lawsuit that WFS Express failed to reimburse business-related expenses in connection with the use of personal cell phones for work-related purposes.

3. Has the Court decided who is right?

No. The Court has made no decision regarding the merits of Plaintiff’s allegations or WFS Express’ defenses.

4. Why did this case settle?

The Parties reached a settlement in order to avoid the risk, inconvenience, and expense of further litigation. Plaintiff and his attorneys believe the proposed settlement is fair, adequate and in the best interest of the class members to whom it applies given the outcome of their investigation, and the consumption of time and resources required in connection with further litigation. Although WFS Express disputes Plaintiff’s claims and asserts that it has complied with all of its legal obligations toward its employees, WFS Express has also concluded that further litigation would be expensive and would divert management and employee time.

5. What are the terms of the settlement and how much will I receive?

The Total Settlement Amount is \$950,000. Under the proposed settlement, the following amounts will be deducted before any payments are made to employees, subject to final approval by the Court:

- Attorneys’ fees: \$332,500.00
- Litigation Costs: \$20,000.00
- Settlement Administration Costs: \$20,000.00
- Class Representative Service Award to Class Representative: \$10,000.00
- PAGA Payment to the Labor and Workforce Development Agency (“LWDA”): \$30,000.00, representing its share of the settlement payment for the PAGA claims made pursuant to Labor Code § 2699.

After these deductions, and to the extent that the Court approves these amounts, approximately \$537,500.00 is estimated to be available for payment to the class members receiving this notice (“Net Settlement Amount”). These amounts may change and are subject to Court approval.

According to WFS Express' records, the total number of pay periods that you worked as a non-exempt employee for WFS Express in California between January 1, 2017 through and July 31, 2021 (the "Class Period") is [REDACTED]. Based on this number, your individual settlement payment amount is estimated to be \$[REDACTED].

The actual individual settlement payment amount that you receive could end up being more or less than this amount, depending on the final settlement terms approved by the Court.

If you disagree with the above pay period information and would like someone to look into the matter, please follow the procedure below in Section 6.

All individual settlement payments will be treated as follows: 33 1/3% as wages to be reported by IRS W-2 forms, and 33 1/3% as penalties and 33 1/3% as interest to be reported by IRS 1099 forms. Settlement class members are responsible for the appropriate payment of any federal, state, and/or local income or payroll taxes due on the individual settlement payments they receive. The tax issues for each settlement class member are unique to that settlement class member. You are advised to obtain tax advice from your own tax advisor with respect to any payments resulting from this settlement. This Notice does not constitute legal or tax advice regarding any federal, state, or local tax issue, and nothing in this Notice is intended to or should be used by any person for the purpose of avoiding any tax liability or tax penalties.

6. What if I disagree with information or the number of pay periods shown above?

If you believe the information in the notice is incorrect regarding the number of pay periods listed above, you can provide documentation and/or explanation to the Settlement Administrator to support your claim of a different number of pay periods. You may attach any relevant documentation in support thereof. You must mail or fax your letter to:

[INSERT SETTLEMENT ADMINISTRATION INFORMATION]

You must submit such information by [45 days from initial mailing]. The Settlement Administrator will consult with Class Counsel and WFS Express' Counsel in good faith to determine whether an adjustment to the number of pay periods is warranted. The Settlement Administrator's determination on the amount of pay periods attributed to each settlement class member for purposes of this settlement will be binding on settlement class members. All disputes submitted to the Settlement Administrator, the evidence submitted therewith, and any resolution of those disputes will be filed with the Court. The Court will have the right to review and reverse any decision made by the Settlement Administrator.

7. What do I have to do to receive a share of the settlement?

If you would like to receive an award under the terms of this settlement, **you do not have to do anything**. However, it is advisable to confirm your current mailing address with the Settlement Administrator in order to ensure you receive your settlement share. If you move, you must notify the Settlement Administrator of your new address. You will be covered by the release summarized in Section 8, below.

8. What rights am I giving up?

The claims you will release by doing nothing and participating in the settlement include the claims based on the facts pled in the complaint in this lawsuit, including without limitation, failure to pay overtime and minimum wages, provide meal and rest periods and associated premium payments, timely pay wages during employment and upon termination, provide compliant wage statements, maintain complete and accurate payroll records, and reimburse necessary business-related expenses. Specifically, the release states as follows:

If finally approved by the Court, each Settlement Class Member who does not request exclusion from the Settlement will be bound by all of the terms of the Settlement, including a release of all claims that were or reasonably could have been asserted or alleged in the Litigation that accrued during the Settlement Class Period based on the facts pleaded in the operative complaint on file, including: any and all claims and damages arising from any of the facts alleged in Plaintiff's operative complaints for damages, including Defendant's alleged violation of the California Business and Professions Code sections 17200, *et seq.* for, *inter alia*, failure to pay overtime and minimum wages, provide meal and rest periods and associated premium payments, timely pay wages during employment and upon termination, provide compliant wage statements, maintain complete and accurate payroll records, and reimburse necessary business-related expenses, as well as all claims for failure to pay minimum wage, failure to pay overtime wages, failure to provide meal and rest periods, failure to issue accurate itemized wage statements, and Defendant's alleged unfair business practices stemming from these alleged Labor Code violations. ("Released Claims").

This release also includes a release of all claims for attorneys' fees and costs incurred by settlement class members or by Class Counsel in connection with the lawsuit and the settlement, except as otherwise set forth in the settlement agreement.

9. What if I do not wish to be involved?

Anyone not wishing to participate in the settlement may exclude himself or herself ("opt out") by completing, signing, and mailing/faxing a letter indicating that they do not want to participate in the settlement to the Settlement Administrator, [insert name of administrator], at the following address by [45 days from initial mailing].

[INSERT SETTLEMENT ADMINISTRATION INFORMATION]

Your letter must include (1) your full name and the last four digits of your Social Security Number; (2) a statement clearly indicating your request to be excluded from the settlement; (3) your signature; and (4) be postmarked or fax stamped on or before [45 days from initial mailing].

If your exclusion/opt out request is postmarked or fax stamped after [45 days from initial mailing], it will be rejected as untimely, and you will be considered a settlement class member and be bound

by the settlement terms and release. Anyone who submits a timely and valid exclusion/opt out request shall not be deemed a settlement class member and will not receive any payment as part of this settlement. Such individuals will keep any right to sue WFS Express separately for the same claims made in this lawsuit.

10. What if I have an objection?

A class member may object to the settlement in writing. Written objections and all supporting briefs or other materials must be submitted to the Settlement Administrator by mail or fax no later than [45 days from initial mailing]. For written objections to be valid, you must state (1) your full name, (2) the grounds/basis of your objection; and (3) your signature.

The Court will decide on the objections at the Final Approval Hearing. If your objection is overruled at the Final Approval Hearing, you will still be bound by the terms of this settlement and will receive a settlement payment. The Final Approval Hearing will be held in Dept. 37 of the Sacramento County Superior Court, Gordon D. Schaber Courthouse, located at 720 Ninth Street, Sacramento, California on [REDACTED], 2021, at XXX (Pacific Time).

11. Do I need a lawyer? Who are the lawyers in this case?

You do not need to hire your own lawyer because Class Counsel is working on your behalf. However, if you want your own lawyer, you are free to hire one at your own expense.

The below are Class Counsel:

Larry W. Lee (State Bar No. 228175)
Mai Tulyathan (State Bar No. 316704)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa St., Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile

12. What happens next in the case?

The settlement has only been preliminarily approved. The Court will hold a hearing in Dept. 37 of the Sacramento County Superior Court, Gordon D. Schaber Courthouse, located at 720 Ninth Street, Sacramento, California on [REDACTED], 2021, at XXX (Pacific Time), to rule on the objections and determine whether the settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for attorneys' fees and costs, Plaintiff's service award, and the costs of settlement administration. At the Final Approval Hearing, the Court will hear arguments for and against the proposed settlement. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, at your own expense, or to enter an appearance and represent yourself. The hearing may be continued without further notice to you. It is not necessary for you to appear at this hearing.

13. How can I receive more information?

This notice is a summary of the basic terms of the settlement. For further information, you may telephone the [INSERT SETTLEMENT ADMINISTRATION INFORMATION], or Class Counsel (listed above). You may also review the settlement agreement, which is on file with the Clerk of the Sacramento County Superior Court, Gordon D. Schaber Courthouse, 720 Ninth Street, Sacramento, California, and may also be reviewed online for a small fee through the Court's Public Case Access System at <https://services.saccourt.ca.gov/PublicCaseAccess/>.

ALL INQUIRIES REGARDING THIS LITIGATION SHOULD BE MADE TO PLAINTIFF'S ATTORNEYS: Larry W. Lee and Mai Tulyathan of Diversity Law Group, P.C., 515 S. Figueroa Street, Suite 1250, Los Angeles, CA 90071, Phone: (213) 488-6555.

Please do not telephone the Court, the Office of the Clerk, or WFS Express' counsel for information regarding this settlement.

EXHIBIT C

[CLASS MEMBER NAME]

Van Walker v. WFS Express, Inc.

**Superior Court of the State of California, County of Sacramento
Case No.: 34-2020-00285301**

If you are a current or former employee of WFS Express, Inc. (“WFS Express” or “Defendant”), a class action lawsuit may affect your rights and you may be entitled to benefits under the settlement.

You are not being sued. A court authorized this notice. This is not a solicitation from a lawyer.

**PLEASE READ THIS NOTICE CAREFULLY. IT CONTAINS IMPORTANT
INFORMATION ABOUT YOUR RIGHTS.**

**YOUR ESTIMATED TOTAL INDIVIDUAL SETTLEMENT PAYMENT AMOUNT
FROM THIS CLASS ACTION SETTLEMENT IS \$ [REDACTED].**

According to WFS Express’ records, the total number of pay periods that you worked as a non-exempt employee for WFS Express in California between January 1, 2017 through and July 31, 2021 is [REDACTED]. Based on this number, your individual settlement payment amount is estimated to be \$[REDACTED].

- This lawsuit involves a class defined as: All persons who worked for WFS Express, Inc. in California as a non-exempt employee at any time during the period of January 1, 2017, through July 31, 2021.
- You are receiving this Notice because the records reflect that you may be a class member.
- The settlement resolves a lawsuit in which Plaintiff Van Walker (“Plaintiff”) alleged that WFS Express failed to: (1) pay overtime wages at the regular rate of pay; (2) to provide proper meal and rest breaks; (3) provide accurate wage statements; (4) reimburse business-related expenses; (5) pay reporting time pay; and (6) pay waiting time penalties. WFS Express denies any and all liability as to all claims alleged in this lawsuit. The settlement avoids the costs and risks from continuing the lawsuit, pays money to employees, and releases WFS Express from liability for the alleged violations
- There has been a settlement that affects your rights. Although the Court has authorized the Parties to provide this notice of the proposed settlement, the Court has expressed no opinion on the merits of Plaintiff’s claims or WFS Express’ defenses.
- You will not be penalized or retaliated against by WFS Express for participating in this

settlement. If you are currently employed by WFS Express, your employment will not be affected in any way. Current employees of WFS Express who choose to participate in the settlement will not be required to resign and can continue to work for WFS Express.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
You Can Do Nothing	You need not take any action if you wish to receive your settlement payment. If the settlement is approved by the Court and you do nothing, you will automatically be mailed a settlement check for your share of the settlement at the address on file with the Settlement Administrator. In exchange for this settlement check, you will release or give up any rights to sue WFS Express separately for the same legal claims that were pled in this lawsuit (see Section 8 for an explanation of the claims you are giving up). If you move, you must notify the Settlement Administrator of your new address.
You Can Exclude Yourself	If you ask to be excluded from the settlement, you will get no payment from the settlement, but you will keep any rights to sue WFS Express for the same legal claims that are part of this lawsuit. This is the only option that allows you to be part of any other lawsuit against WFS Express asserting the same legal claims that were settled in this case. You cannot ask to be excluded <u>and</u> still get a settlement payment. If you ask to be excluded from the settlement, you cannot object to the settlement.
You Can Object To The Settlement	If you do not agree with the settlement, you can submit a written objection to the settlement according to the procedures described below on page 5. The Court may or may not agree with your objection. If the Court does not agree with your objection, you will still be bound by the terms of the settlement and will receive a settlement payment. Objecting to the settlement will <u>not</u> exclude you from the settlement.

To opt out or object, you must act by [45 days after initial mailing].

1. Why did I get this notice?

A proposed settlement has been reached in a class action lawsuit that was brought on behalf of WFS Express' non-exempt employees. You have received this notice because WFS Express' records indicate that you are a member of the settlement class.

2. What is this lawsuit about?

This lawsuit was filed on August 5, 2020 on behalf of individuals who are employed or have been employed by WFS Express as non-exempt employees in the State of California. The complaint alleges class and representative claims under the Private Attorneys General Act, California Labor Code § 2698 *et seq.* (“PAGA”) against WFS Express for several violations of the California Labor Code and California Business & Professions Code. First, the complaint alleges that WFS Express failed to pay overtime wages at the regular rate of pay. The complaint also alleges that WFS Express failed to provide proper meal and rest breaks. Third, the complaint alleges that WFS Express failed to pay reporting time pay. Additionally, Plaintiff also alleges in this lawsuit that WFS Express failed to reimburse business-related expenses in connection with the use of personal cell phones for work-related purposes.

3. Has the Court decided who is right?

No. The Court has made no decision regarding the merits of Plaintiff’s allegations or WFS Express’ defenses.

4. Why did this case settle?

The Parties reached a settlement in order to avoid the risk, inconvenience, and expense of further litigation. Plaintiff and his attorneys believe the proposed settlement is fair, adequate and in the best interest of the class members to whom it applies given the outcome of their investigation, and the consumption of time and resources required in connection with further litigation. Although WFS Express disputes Plaintiff’s claims and asserts that it has complied with all of its legal obligations toward its employees, WFS Express has also concluded that further litigation would be expensive and would divert management and employee time.

5. What are the terms of the settlement and how much will I receive?

The Total Settlement Amount is \$950,000. Under the proposed settlement, the following amounts will be deducted before any payments are made to employees, subject to final approval by the Court:

- Attorneys’ fees: \$332,500.00
- Litigation Costs: \$20,000.00
- Settlement Administration Costs: \$20,000.00
- Class Representative Service Award to Class Representative: \$10,000.00
- PAGA Payment to the Labor and Workforce Development Agency (“LWDA”): \$30,000.00, representing its share of the settlement payment for the PAGA claims made pursuant to Labor Code § 2699.

After these deductions, and to the extent that the Court approves these amounts, approximately \$537,500.00 is estimated to be available for payment to the class members receiving this notice (“Net Settlement Amount”). These amounts may change and are subject to Court approval.

According to WFS Express' records, the total number of pay periods that you worked as a non-exempt employee for WFS Express in California between January 1, 2017 through and July 31, 2021 (the "Class Period") is [REDACTED]. Based on this number, your individual settlement payment amount is estimated to be \$[REDACTED].

The actual individual settlement payment amount that you receive could end up being more or less than this amount, depending on the final settlement terms approved by the Court.

If you disagree with the above pay period information and would like someone to look into the matter, please follow the procedure below in Section 6.

All individual settlement payments will be treated as follows: 33 1/3% as wages to be reported by IRS W-2 forms, and 33 1/3% as penalties and 33 1/3% as interest to be reported by IRS 1099 forms. Settlement class members are responsible for the appropriate payment of any federal, state, and/or local income or payroll taxes due on the individual settlement payments they receive. The tax issues for each settlement class member are unique to that settlement class member. You are advised to obtain tax advice from your own tax advisor with respect to any payments resulting from this settlement. This Notice does not constitute legal or tax advice regarding any federal, state, or local tax issue, and nothing in this Notice is intended to or should be used by any person for the purpose of avoiding any tax liability or tax penalties.

6. What if I disagree with information or the number of pay periods shown above?

If you believe the information in the notice is incorrect regarding the number of pay periods listed above, you can provide documentation and/or explanation to the Settlement Administrator to support your claim of a different number of pay periods. You may attach any relevant documentation in support thereof. You must mail or fax your letter to:

[INSERT SETTLEMENT ADMINISTRATION INFORMATION]

You must submit such information by [45 days from initial mailing]. The Settlement Administrator will consult with Class Counsel and WFS Express' Counsel in good faith to determine whether an adjustment to the number of pay periods is warranted. The Settlement Administrator's determination on the amount of pay periods attributed to each settlement class member for purposes of this settlement will be binding on settlement class members. All disputes submitted to the Settlement Administrator, the evidence submitted therewith, and any resolution of those disputes will be filed with the Court. The Court will have the right to review and reverse any decision made by the Settlement Administrator.

7. What do I have to do to receive a share of the settlement?

If you would like to receive an award under the terms of this settlement, **you do not have to do anything**. However, it is advisable to confirm your current mailing address with the Settlement Administrator in order to ensure you receive your settlement share. If you move, you must notify the Settlement Administrator of your new address. You will be covered by the release summarized in Section 8, below.

8. What rights am I giving up?

The claims you will release by doing nothing and participating in the settlement include the claims based on the facts pled in the complaint in this lawsuit, including without limitation, failure to pay overtime and minimum wages, provide meal and rest periods and associated premium payments, timely pay wages during employment and upon termination, provide compliant wage statements, maintain complete and accurate payroll records, and reimburse necessary business-related expenses. Specifically, the release states as follows:

If finally approved by the Court, each Settlement Class Member who does not request exclusion from the Settlement will be bound by all of the terms of the Settlement, including a release of all claims that were or reasonably could have been asserted or alleged in the Litigation that accrued during the Settlement Class Period based on the facts pleaded in the operative complaint on file, including: any and all claims and damages arising from any of the facts alleged in Plaintiff's operative complaints for damages, including Defendant's alleged violation of the California Business and Professions Code sections 17200, *et seq.* for, *inter alia*, failure to pay overtime and minimum wages, provide meal and rest periods and associated premium payments, timely pay wages during employment and upon termination, provide compliant wage statements, maintain complete and accurate payroll records, and reimburse necessary business-related expenses, as well as all claims for failure to pay minimum wage, failure to pay overtime wages, failure to provide meal and rest periods, failure to issue accurate itemized wage statements, and Defendant's alleged unfair business practices stemming from these alleged Labor Code violations. ("Released Claims").

This release also includes a release of all claims for attorneys' fees and costs incurred by settlement class members or by Class Counsel in connection with the lawsuit and the settlement, except as otherwise set forth in the settlement agreement.

9. What if I do not wish to be involved?

Anyone not wishing to participate in the settlement may exclude himself or herself ("opt out") by completing, signing, and mailing/faxing a letter indicating that they do not want to participate in the settlement to the Settlement Administrator, [insert name of administrator], at the following address by [45 days from initial mailing].

[INSERT SETTLEMENT ADMINISTRATION INFORMATION]

Your letter must include (1) your full name and the last four digits of your Social Security Number; (2) a statement clearly indicating your request to be excluded from the settlement; (3) your signature; and (4) be postmarked or fax stamped on or before [45 days from initial mailing].

If your exclusion/opt out request is postmarked or fax stamped after [45 days from initial mailing], it will be rejected as untimely, and you will be considered a settlement class member and be bound

by the settlement terms and release. Anyone who submits a timely and valid exclusion/opt out request shall not be deemed a settlement class member and will not receive any payment as part of this settlement. Such individuals will keep any right to sue WFS Express separately for the same claims made in this lawsuit.

10. What if I have an objection?

A class member may object to the settlement in writing. Written objections and all supporting briefs or other materials must be submitted to the Settlement Administrator by mail or fax no later than [45 days from initial mailing]. For written objections to be valid, you must state (1) your full name, (2) the grounds/basis of your objection; and (3) your signature.

The Court will decide on the objections at the Final Approval Hearing. If your objection is overruled at the Final Approval Hearing, you will still be bound by the terms of this settlement and will receive a settlement payment. The Final Approval Hearing will be held in Dept. 37 of the Sacramento County Superior Court, Gordon D. Schaber Courthouse, located at 720 Ninth Street, Sacramento, California on [REDACTED], 2021, at XXX (Pacific Time).

11. Do I need a lawyer? Who are the lawyers in this case?

You do not need to hire your own lawyer because Class Counsel is working on your behalf. However, if you want your own lawyer, you are free to hire one at your own expense.

The below are Class Counsel:

Larry W. Lee (State Bar No. 228175)
Mai Tulyathan (State Bar No. 316704)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa St., Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile

12. What happens next in the case?

The settlement has only been preliminarily approved. The Court will hold a hearing in Dept. 37 of the Sacramento County Superior Court, Gordon D. Schaber Courthouse, located at 720 Ninth Street, Sacramento, California on [REDACTED], 2021, at XXX (Pacific Time), to rule on the objections and determine whether the settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for attorneys' fees and costs, Plaintiff's service award, and the costs of settlement administration. At the Final Approval Hearing, the Court will hear arguments for and against the proposed settlement. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, at your own expense, or to enter an appearance and represent yourself. The hearing may be continued without further notice to you. It is not necessary for you to appear at this hearing.

13. How can I receive more information?

This notice is a summary of the basic terms of the settlement. For further information, you may telephone the [INSERT SETTLEMENT ADMINISTRATION INFORMATION], or Class Counsel (listed above). You may also review the settlement agreement, which is on file with the Clerk of the Sacramento County Superior Court, Gordon D. Schaber Courthouse, 720 Ninth Street, Sacramento, California, and may also be reviewed online for a small fee through the Court's Public Case Access System at <https://services.saccourt.ca.gov/PublicCaseAccess/>.

ALL INQUIRIES REGARDING THIS LITIGATION SHOULD BE MADE TO PLAINTIFF'S ATTORNEYS: Larry W. Lee and Mai Tulyathan of Diversity Law Group, P.C., 515 S. Figueroa Street, Suite 1250, Los Angeles, CA 90071, Phone: (213) 488-6555.

Please do not telephone the Court, the Office of the Clerk, or WFS Express' counsel for information regarding this settlement.

EXHIBIT D

Subject: Thank you for your Proposed Settlement Submission

Date: Monday, October 18, 2021 at 11:46:16 AM Pacific Daylight Time

From: FormAssembly on behalf of DIR PAGA Unit

To: Christine Choo

10/18/2021 11:46:01 AM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm