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AMÉRICA CABALLERO, and LUIS VENEGAS,
Others Similarly Situated, Other Aggrieved
Employees, and the General Public.

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

ASHLEY CABALLERO, an individual, on
behalf of herself, all other aggrieved
employees, and the general public,

Plaintiff,

v.

FIDELITONE LAST MILE, INC., a
Delaware corporation; and DOES 1 through
25, inclusive,

Defendants.

Case No. CIVSB2102002

**DECLARATION OF DAVID MARA, ESQ. IN
SUPPORT OF PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: February 10, 2022

Time: 10:00 a.m.

Judge: Hon. David S. Cohn

Dept.: S26

1 I, DAVID MARA, declare as follows:

- 2 1. I am President of Mara Law Firm, PC and counsel of record for Plaintiffs and the putative class
3 in this matter. I am duly admitted to practice before all the courts of the state of California. The
4 following facts are within my personal knowledge and, if called to testify, I could and would
5 competently testify thereto.
- 6 2. I have been practicing law in California since 2004.
- 7 3. I extensively handle employment cases which involve violations of the California Labor Code
8 and Industrial Welfare Commission Wage Orders, such as wage and hour class actions and cases
9 alleging violations of the Private Attorneys General Act of 2004 ("PAGA").
- 10 4. I was co-class counsel in *Hohnbaum v. Brinker Restaurant Corp.*, San Diego Superior Court
11 Case No. GIC834348, which was the underlying case in the California Supreme Court's
12 landmark decision in *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, in
13 which the California Supreme Court delineated the scope of employer obligations to provide, and
14 employee rights to receive, meal and rest periods under California law.
- 15 5. I wrote an Amicus brief on behalf of Consumer Attorneys Of California ("CAOC") in the recent
16 decision by the California Supreme Court in *Augustus v. ABM Security Services, Inc.* (2016) 2
17 Cal.5th 257 (rest breaks must be duty-free and time spent being on call during rest breaks is not
18 considered duty-free).
- 19 6. My firm also wrote an Amicus brief on behalf of CAOC in the recent decision by the California
20 Supreme Court in *Williams v. Superior Court* (2017) 3 Cal. 5th 531 (PAGA and wage and hour
21 class action).
- 22 7. My firm has been granted class certification in both state and federal courts.
- 23 8. I am also Plaintiff's counsel in a host of other class actions involving violations of
24 California's wage and hour laws, many of which involve the transportation industry. For
25 example, I have been and am involved as counsel for plaintiffs in the following class actions
26 involving wage and hour violations under California law: *Davis v. Apria Healthcare Group*
27 (Case No. 37-2015-00007743); *Norona v. B&G Delivery System, Inc.* (Case No. 34-2015-
28 00186826-CU-OE-GDS); *Perez v. City of San Diego* (Case No. 37-2014-00016621); *Cuellar-*
Ramirez v. US Foods, Inc. (Case No. RG15770766); *Peron v. The Vons Companies, Inc.*

(Case No. 37-2014-00006965); *Hilderbrand v. LinkUs Enterprises, LLC* (Case No. DR150155); *Belton v. Pacific Pulmonary Services* (Case No. CGC-15-547564); *Medina v. Central Cal Transportation, Inc.* (Case No. RG15770011); *Dotson v. Asbury Environmental Services* (Case No. 34-2017-00214070-CU-OE-GDS); *Spikes v. Bear Trucking, Inc.* (Case No. CIV17DS1715151); *Montes v. Coram Specialty Infusion Services, Inc.* (Case No. 37-2016-00028950-CU-OE-CTL); *Rodriguez v. Delta Sierra Beverage, LLC* (Case No. 34-2017-00206727); *Clavel v. La Jolla Beach & Tennis Club, Inc.* (Case No. 37-2017-00004802-CU-OE-CTL); *Martin v. Sysco Central California, Inc.* (Case No. 1:16-cv-00990-DAD-SAB).

9. Defendant is in the business of transporting freight for their customers. In order to transport its customers' freight, Defendant both contracts directly with entities or individuals to provide these freight delivery services ("Contract Carriers"), as well as utilizes "Drivers" and "Helpers" who work for a Contract Carrier to either drive a truck and delivered freight for Defendant or assisted a Driver on his or her route in the delivery of freight. Plaintiffs America Caballero and Ashley Caballero contracted directly with Defendant as Contractor Carriers, and Plaintiff Luis Venegas worked as a Driver and Helper.

10. On July 29, 2020, in compliance with Labor Code § 2699.3(a)(l), Plaintiff Ashley Caballero submitted written notice via online filing to the LWDA, setting forth the facts and theories of the violations alleged against Defendant, claiming that she and others were misclassified by Defendant as independent contractors. Plaintiff Ashley Caballero then filed this PAGA action against Defendant on January 7, 2021, in San Bernardino Superior Court, Case No. CIVSB2102002, entitled *Ashley Caballero v. Fidelitone Last Mile, Inc.* ("Caballero PAGA Action"). She alleged a single cause of action on behalf of herself and other Contract Carriers seeking civil penalties pursuant to PAGA.

11. Plaintiff America Caballero filed a class action against Defendant on July 31, 2020, in Alameda Superior Court, Case No. RG20069582, entitled *America Caballero v. Fidelitone Last Mile, Inc.* ("Caballero Class Action"). Claiming that she and others were misclassified by Defendant as independent contractors, she alleged causes of action on behalf of herself and other Contract Carriers for: (1) Failure to Pay Minimum Wage; (2) Failure to Pay Overtime;

(3) Failure to Reimburse Business Expenses; (4) Unlawful Deduction from Wages; (5) Failure to Provide Meal Periods; (6) Failure to Authorize and Permit Rest Periods; (7) Failure to Furnish Accurate Wage Statements; (8) Waiting Time Penalties; and (9) Violation of Unfair Competition Law.

12. On April 28, 2020, in compliance with Labor Code § 2699.3(a)(1), Plaintiff Luis Venegas submitted written notice via online filing to the LWDA, setting forth the facts and theories of the violations alleged against Defendant, claiming that he and others were misclassified by Defendant as independent contractors. Plaintiff Luis Venegas then filed his PAGA action against Defendant on August 3, 2020, in Contra Costa Superior Court, Case No. C20-01468, entitled *Luis Venegas v. Fidelitone Last Mile, Inc.* (“Venegas PAGA Action”). He alleged causes of action on behalf of himself and other Drivers and Helpers seeking civil penalties under PAGA for: (1) Failure to Pay for All Time Worked; (2) Failure to Provide Meal Periods; (3) Failure to Authorize and Permit Rest Periods; (4) Failure to Pay All Wages Due at Termination; (5) Failure to Provide Itemized Wage Statements; (6) Failure to Provide Sick Leave; and (7) Failure to Pay All Wages Owed Twice Per Month.

13. Plaintiff Luis Venegas filed a class action against Defendant on August 3, 2020, in Contra Costa Superior Court, Case No. Case No. C20-01469, entitled *Luis Venegas v. Fidelitone Last Mile, Inc.* (“Venegas Class Action”). Claiming that he and others were misclassified by Defendant as independent contractors, he alleged causes of action on behalf of himself and other Drivers and Helpers for: (1) Failure to Pay for All Time Worked; (2) Failure to Provide Meal Periods; (3) Failure to Authorize and Permit Rest Periods; (4) Failure to Provide Itemized Wage Statements; (5) Failure to Pay All Wages Due at Termination; and (6) Violation of Unfair Competition Law.

14. Shortly after the filing of the Caballero Class Action and the Venegas Class Action, Defendant removed both matters to the United States District Court, Northern District of California, on individual diversity grounds. Both Plaintiff America Caballero and Plaintiff Luis Venegas filed motions to remand the case due to lack of subject matter jurisdiction, and both cases were remanded to the Alameda Superior Court on or around December 15, 2020,

- 1 and to the Contra Costa Superior Court on or around December 16, 2020, respectively.
- 2 15. As part of the settlement process, the Parties agreed to stipulate for leave to file a First
3 Amended Complaint in this matter in order to encompass all the claims alleged in the
4 Caballero Class Action, the Venegas Class Action, and the Venegas PAGA Action. This
5 stipulation was submitted to the Court on or around October 12, 2021, but the register of
6 actions does not currently reflect it has been filed or ruled upon. The agreed upon First
7 Amended Complaint is attached to the Settlement as **Exhibit 1**. Should the Court not address
8 the Parties' stipulation by the February 10, 2022, Preliminary Approval Hearing Date,
9 Plaintiffs respectfully request that the Court deem filed the First Amended Complaint and
10 deem it answered with the answer currently on file in this action.
- 11 16. Defendant denies the allegations of the action in its entirety, deny any liability or wrongdoing
12 of any kind associated with the claims alleged in this action, and further deny that, for any
13 purpose other than settling this action, this matter is appropriate for class treatment. Defendant
14 further contends that it has complied with all applicable California laws, the California Labor
15 Code, the applicable California Wage Order(s), and the Unfair Competition Law. Defendant
16 finally contends that, if this matter were to be litigated further, it would have strong defenses
17 to oppose class certification and succeed on the merits of Plaintiffs' causes of action.
- 18 17. Through discovery, Plaintiffs sought numerous documents and substantial amounts of data
19 that were needed to evaluate the case. These documents included the contracts entered into
20 between Defendant and Contract Carriers, records detailing all of the routes driven by Class
21 Members for Defendant during the Claims Period, policies and practices in place during the
22 class period, detailing requirements and expectations for Class Members when delivering
23 freight for Defendant's customers, as well as data surrounding the number of current and
24 former employees.
- 25 18. This discovery, in conjunction with the Parties' meet and confer efforts, resulted in the
26 production of numerous documents and thousands of lines of data. Using the records detailing
27 the routes driven by Class Members and the data surrounding the number of current and
28 former Class Members, Plaintiffs' expert was able to provide numerous data points used in

1 establishing a potential exposure model in preparation for mediation.

2 19. Plaintiffs contend that Defendant can terminate Class Members with or without cause, which
3 is “the strongest evidence of the right to control...” *Ayala v. Antelope Valley Newspapers, Inc.*
4 (2014) 59 Cal.4th 522, 531. Plaintiffs further allege that Defendant also retains the ability to
5 dictate what the Class Members are and are not permitted to haul and forbids them from
6 subletting any of the deliveries provided to them from Defendant, requires Class Members to
7 wear uniforms when required by the customer, follow Defendant’s accident reporting
8 procedures, and, per the terms of the contracts, follow any and all requirements set forth by
9 the customer and/or Defendant at any time without any limitations, or risk termination.
10 Additionally, Defendant obtains the customers and enters into agreements to deliver their
11 freight, negotiates and sets the rates the customers are to pay, and assigns and dispatches the
12 Class Members to transport the freight for the customer.

13 20. Defendant contends that Plaintiffs and putative class members are not its employees, and that
14 it does not control Class Members’ hiring, firing, schedules, and/or pay. Defendant argues that
15 that Class Members have independence on how to perform their jobs. Defendant contends that
16 it does not control what Class Members do or how they perform their jobs. Defendant argues
17 that it cannot simply unilaterally decide to “terminate” Class Members at will. Defendant
18 claims they can merely terminate the agreement entered into with Contract Carriers through
19 the very terms of the agreement itself, severely limiting their ability to “terminate” Contract
20 Carriers at will. Furthermore, Defendant states they have absolutely zero control over the
21 hiring or firing of Drivers and Helpers, as those tasks are clearly delegated to the Contract
22 Carriers as a part of the agreements. Defendant also points out that the various “controls”
23 exerted on Class Members and “requirements” for how Class Members are to deliver freight
24 are set forth by the customers, not Defendant, and as such, these things cannot be considered
25 as actions undertaken by the Defendant.

26 21. While Plaintiffs believe in the strength of their arguments, they also recognize the risk that the
27 Court may determine Plaintiffs and the putative class were not employees of Defendant. **If the**
28 **Court ruled in favor of Defendant on this issue, all of Plaintiffs’ claims below would be**

1 extinguished, as they are all dependent upon the Court agreeing that Defendant is
2 Plaintiffs' and Class Members employer under California law.

3 22. Defendant requires Contract Carriers to shoulder the costs of insuring their trucks, fueling
4 their trucks, amongst various other costs. Here, as Plaintiffs allege the Contract Carriers are
5 misclassified as independent contractors when, under California law, they should be classified
6 as employees. Just as Defendant could not charge its own employee drivers the cost of fuel
7 and insurance in the furtherance of Defendant's business, it cannot do so to the Contract
8 Carriers, as they, too, are Defendant's employees under California law.

9 23. Defendant argues that because Contract Carriers are not employees and properly classified as
10 independent contractors, it does not need to reimburse them for business expenses. Defendant
11 argues that California Labor Code § 2802 only obligates an employer to indemnify its
12 employee for expenses that the employee incurred while performing his or her job duties. As
13 Defendant claims it is lawfully contracting with the Contract Carriers to facilitate the delivery
14 of the customer's freight, these expenses are properly borne by the Contract Carriers pursuant
15 to the terms of the agreements.

16 24. Defendant has no evidence they provided Class Members with meal or rest periods. They
17 have no meal or rest period policies they communicate to Class Members. They also have no
18 records of meal or rest periods. Thus, it will be fairly simple to show Defendant failed to
19 provide meal and rest periods to Class Members, who will be owed a 226.7 premium on every
20 qualifying shift.

21 25. Defendant again argues that because Class Members are not employees and properly
22 classified as independent contractors, it is under no obligation to provide Class Members with
23 meal or rest periods, as California law only requires an "employer" to provide them to its
24 "employees." Defendant claims it is lawfully engaging with and utilizing Class Members to
25 facilitate the delivery of the through the use of the agreements it enters into with the Contract
26 Carriers, and that the agreements clearly state that all of that any Class Member performing
27 work under the terms of the agreements are independent contractors, not employees.

28 26. Defendant also points out that the Federal Motor Carrier Safety Administration's (FMCSA)

December 21, 2018, determination wherein the FMCSA found that California's meal and rest break laws are preempted as applied to drivers of property-carrying commercial motor vehicles who are subject to the FMCSA's own break regulations would similarly extinguish all of Plaintiffs' meal and rest period claims. On January 15, 2021, the Ninth Circuit upheld the FMCSA's determination that federal law preempted California's meal and rest break rules. *See Int'l Bhd. of Teamsters, Local 2785 v. Fed. Motor Carrier Safety Admin.* (2021) 986 F.3d 841. As such, Defendant argues that FMCSA's December 21, 2018, determination provides affirmative preemption defenses to Plaintiffs' claims for meal and rest break violations.

27. Plaintiffs argue that the FMCSA's determination does not apply retroactively. Federal agency decisions and orders, like the FMCSA Order, are "subject to the presumption of prospectivity that attends true exercises of legislative authority." *Gutierrez-Brizuela v. Lynch*, 834 F.3d 1142, 1144 (10th Cir. 2016) (citing *De Niz Robles v. Lynch*, 803 F.3d 1165 (10th Cir. 2015)). Hence, as the United Supreme Court found over thirty years ago, administrative rules and orders are not retroactively applied unless "the power to promulgate retroactive rules...is conveyed by Congress in express terms." *Bowen v. Georgetown University Hospital*, 488 U.S. 204, 208 (1988). Evaluating whether the preemption decision is retroactive requires determining whether the decision explicitly states that it applies retroactively, and if it does not, determining whether the decision would have a retroactive effect on the rights of private individuals. *See In re ADC Telecoms., Inc. Sec. Litig.*, 409 F.3d 974, 976 (8th Cir. 2005). If the statute or regulation does not explicitly state that it applies retroactively, and its application would have retroactive effect, the court may not apply it retroactively. *Id.* As neither the decision nor its authorizing statute contain any explicit language on retroactivity, and because a retroactive application of the decision would detrimentally effect the right of private individuals (namely, extinguishing Plaintiffs' claims for meal and rest periods entirely), the preemption decision cannot be applied retroactively.

28. Contract Carriers are paid by the mile and by the delivery, they are not paid for time when "the wheels are not moving," but they are not stopped for a delivery, such as fueling up, sitting in traffic, for breakdowns, etc. A piece-rate pay formula that does not "compensate for

all time worked does not comply with the California Labor Code, even if, averaged out, it would pay at least minimum wage for all hours worked.” *Cardenas v. McLane Foodservices, Inc.* (C.D. Cal. 2011) 796 F.Supp.2d 1246, 1252; See also, *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 49; *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 320; *Reinhardt v. Gemini Motor Transport* (E.D. Cal.2012) 869 F.Supp.2d 1158, 1168.

29. Drivers and Helpers are paid a daily flat rate. In California, wage structures that do not compensate by the hour, like a salary or a commission, are only said to compensate for *non-overtime hours*. *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 565 (“[T]he flat sum compensates the worker for only non- overtime hours worked.”). Put differently, flat daily rates earned are only compensation for eight daily hours and forty weekly hours. For any work over 8 daily or 40 weekly, employees are receiving no compensation under the flat rate pay structure. To find otherwise, meaning piece-rate and flat rate pay structures also pay for hours in excess of eight daily or forty weekly, would mean employees paid via these compensation methods would be paid *less* money per hour for overtime work, which is an interpretation that does not favor the protection of the employee’s interest or discourage employers from imposing overtime work and cannot stand. *Id.* at 562 (“...[W]e are obligated to prefer an interpretation that discourages employers from imposing overtime work that favors the protection of the employee’s interests.”). Because these pay structures – like all non-hourly pay systems – can only pay for non-overtime hours, Drivers and Helpers are paid nothing for any hours worked in excess of eight in a single day.

30. Defendant contends that as Class Members are properly classified as independent contractors under California law, none of the authorities relied upon by Plaintiffs renders Defendant liable for any unpaid wages whatsoever. Defendant the only monetary compensation it is required to provide to the Class Members at all at any point in time is solely based on the provisions of the agreements it enters into with the Contract Carriers, which compensates them for all the hours and various tasks necessary in furtherance of the freight deliveries. Furthermore, while Defendant acknowledges that the agreements call for it to provide the Contract Carriers with certain forms of compensation pursuant to the terms of the agreements, Defendant is under no

duty to provide any form of compensation to the Drivers and the Helpers.

31. The Parties agreed to attend mediation with respected wage and hour mediator Mark Rudy on August 24, 2021. After a full day of mediation, Mr. Rudy issued a mediator's proposal, which the Parties accepted on September 7, 2021. Since then, the Parties have met and conferred regarding the terms of the settlement and finalized their agreement in the Stipulation of Settlement. The Parties seek preliminary approval of the Settlement in the instant motion.

32. In addition to being able to discover the strengths and vulnerabilities associated with Plaintiffs' claims, Defendant provided Plaintiffs with information and data points which Plaintiffs submitted to an expert to establish a representative damage model, as explained below. At the time of mediation, of the approximately 161 Class Members, 26 are Contract Carriers and 135 are Drivers and Helpers.

33. Plaintiffs allege that as a result of Defendant's misclassification of Class Members, Contract Carriers are forced to shoulder the costs of fuel and insurance in the furtherance of Defendant's business, costs which Defendant would not be permitted to pass off to employees under California law. If Plaintiffs were to prevail on this theory of liability, Contract Carriers would be entitled to the reimbursement of these costs. At the time of mediation, Plaintiffs were able to estimate that Contract Carriers each incurred approximately \$30,000 per year in insurance costs, and approximately \$2,000 per week in fuel costs. Therefore, the ***maximum potential exposure*** under this theory of liability would be **\$7,274,232** ($\$30,000 \times 17$ active primaries on average at any given time $\times 3.396$ year Claims Period¹ = \$1,731,960 in insurance costs) + ($\$2,000 \times 17$ active primaries on average at any given time $\times 48$ weeks per year $\times 3.396$ year Claims Period = \$5,542,272 in fuel costs) ($\$1,731,960 + \$5,542,272 = \$7,274,232$).

34. Defendant argues that because Contract Carriers are not employees and properly classified as independent contractors, it does not need to reimburse them for business expenses. Defendant argues that California Labor Code § 2802 only obligates an employer to indemnify its

¹ A prior settlement involving the Contract Carriers extinguished claims prior to April 2, 2018.

1 employee for expenses that the employee incurred while performing his or her job duties. As
2 Defendant claims it is lawfully contracting with the Contract Carriers to facilitate the delivery
3 of the customer's freight, these expenses are properly borne by the Contract Carriers pursuant
4 to the terms of the agreements. Furthermore, Defendant points out that Plaintiffs would be
5 unable to obtain class certification on this claim, claiming that Plaintiffs and Class Members
6 would be unable to present adequate records of these supposed costs not only making
7 damages completely unmanageable, but also calling into question the issue of liability, as
8 Plaintiffs and Class Members would be unable to establish that they actually suffered this
9 harm on a classwide basis. Should litigation continue, Plaintiffs' risk the Court siding with
10 Defendants' view, which would extinguish any potential recovery on this cause of action.

11 35. Plaintiffs contend that because Defendant misclassifies Plaintiffs and Class Members as
12 independent contractors, they are not provided with meal or rest periods, as independent
13 contractors are not entitled to the protections California law provides for employees. If
14 Plaintiffs were to prevail on this theory of liability, Class Members would be entitled to a
15 meal and rest period premium for each shift worked. For Contract Carriers, the exposure
16 under these causes of action is \$578,010 (6,069 shifts x \$47.62 average hourly rate² x 2
17 meal/rest period premiums per shift = \$578,010). For Drivers and Helpers, the exposure
18 under these causes of action is \$759,686 (17,875 shifts x \$21.25 average hourly rate³ x 2
19 meal/rest period premiums per shift = \$759,686). Therefore, the *maximum potential exposure*
20 under this theory of liability would be **\$1,337,696** (\$578,010 + \$759,686 = \$1,337,696).

21 36. Defendant again argues that because Class Members are not employees and properly
22 classified as independent contractors, it is under no obligation to provide Class Members with
23 meal or rest periods, as California law only requires an "employer" to provide them to its
24 "employees." Defendant claims it is lawfully engaging with and utilizing Class Members to

25 ² At the time of mediation, Plaintiffs estimated Contract Carriers were paid on average approximately
26 \$4,000 per week. Based on a 7 day workweek with a 12 hour average shift length, Plaintiffs estimate
the hourly average rate for Contract Carriers to be \$47.62 ($\$4,000 / 7 / 12 = \47.62).

27 ³ At the time of mediation, Plaintiffs estimated that Drivers and Helpers were paid a flat daily rate of
28 approximately \$170 on average ($\$170 / 8 \text{ hours} = \21.25).

1 facilitate the delivery of the through the use of the agreements it enters into with the Contract
2 Carriers, and that the agreements clearly state that all of that any Class Member performing
3 work under the terms of the agreements are independent contractors, not employees.
4 Additionally, Defendant again points out that the FMCSA December 21, 2018, determination
5 would similarly serve to complete extinguish these causes of action as preempted under
6 Federal law. Should the Court agree with Defendant's arguments, Plaintiffs' and Class
7 Members would be entitled to no recovery under these causes of action.

8 37. Plaintiffs further allege that Defendants have failed to pay Class Members for all hours
9 worked, as Defendant unlawfully misclassified them as independent contractors as opposed to
10 employees. Contract Carriers were paid by the mile and by the delivery, and therefore were
11 not compensated for any other time spent working. For Contract Carriers, the exposure under
12 this cause of action is \$1,372,777 (6,069 shifts x 4.75 average hours spent on other work tasks
13 per day x \$47.62 = \$1,372,777). Drivers and Helpers were paid a daily flat rate, and therefore
14 were not paid for any hours worked after 8 hours had been worked in a shift. For Drivers and
15 Helpers, the exposure under this cause of action is \$1,519,375 (17,875 shifts x 4 additional
16 hours worked per day x \$21.25 = \$1,372,777). Accordingly, Defendant's *maximum* exposure
17 under Plaintiffs' unpaid wages claim is **\$2,892,152** (\$1,372,777 + \$1,519,375 = \$2,892,152).

18 38. Further, if Plaintiffs were to prevail on their unpaid wages claims, they may also be entitled to
19 waiting time penalties. For Contract Carriers, the exposure under this cause of action is
20 \$394,293 (12 hour average day worked x \$47.62 average hourly rate x 30 days x 23 Contract
21 Carriers = \$394,293). For Drivers and Helpers, the exposure under this cause of action is
22 \$887,400 (12 hour average day worked x \$21.25 average hourly rate x 30 days x 116 former
23 Drivers and Helpers = \$887,400). Plaintiffs calculate the potential *maximum* exposure under
24 the waiting time penalties cause of action as **\$1,281,693** (\$394,293 + \$887,400).

25 39. Additionally, if Plaintiffs were to prevail on their unpaid wages claims, they may also be
26 entitled to wage statement penalties. For Contract Carriers, the exposure under this cause of
27 action is \$84,000 (21 Contract Carriers in the statutory period x \$4,000 maximum penalties =
28 \$84,000). For Drivers and Helpers, the exposure under this cause of action is \$188,000 (47

1 Drivers and Helpers in the statutory period x \$4,000 maximum penalties = \$188,000).
2 Plaintiffs calculate the potential *maximum* exposure under the wage statement cause of action
3 as **\$272,000** (\$84,000 + \$188,000).

4 40. As explained above, Defendant contends that as Class Members are properly classified as
5 independent contractors under California law, none of the authorities relied upon by Plaintiffs
6 renders Defendant liable for any unpaid wages whatsoever. Defendant the only monetary
7 compensation it is required to provide to the Class Members at all at any point in time is
8 solely based on the provisions of the agreements it enters into with the Contract Carriers,
9 which compensates them for all the hours and various tasks necessary in furtherance of the
10 freight deliveries. Furthermore, while Defendant acknowledges that the agreements call for it
11 to provide the Contract Carriers with certain forms of compensation pursuant to the terms of
12 the agreements, Defendant is under no duty to provide any form of compensation to the
13 Drivers and the Helpers. Furthermore, Defendant points out that Plaintiffs would be unable to
14 obtain class certification on this claim, claiming that Plaintiffs and Class Members would be
15 unable to present adequate records of these supposed unpaid wages not only making damages
16 completely unmanageable, but also calling into question the issue of liability, as Plaintiffs and
17 Class Members would be unable to establish that they actually suffered this harm on a
18 classwide basis.

19 41. As Plaintiffs' claims for waiting time and wage statement penalties are derivative of their
20 wage claims, Defendant argues that it would not be liable for these either. Plaintiffs had to
21 consider that the Court might disagree with their arguments and agree with the Defendant's
22 position. If this were to occur, this claim would fail.

23 42. Plaintiffs are also seeking PAGA penalties. PAGA allows the private enforcement of certain
24 California Labor Code sections relating to wage and hour violations. PAGA Section
25 2699(f)(2) provides for a standard penalty amount where a civil penalty is not otherwise
26 specified by statute:

27 [T]he civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period
28 for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay

period for each subsequent violation.

Plaintiffs allege that Defendant has six (6) violations – unlawful meal periods, unlawful rest periods, failure to pay all time worked, failure to pay wages due at termination, failure to provide accurate, itemized wage statements, and for the Contract Carriers, failure to reimburse business expenses – of the Labor Code sections which give rise to PAGA penalties. The statute of limitations for PAGA violations goes back one year. Plaintiffs calculated Defendants’ potential maximum exposure under PAGA as follows:

$\$100 \times 6 \text{ PAGA violations} \times 699 \text{ pay periods during the one-year statutory period} = \$419,400$
for Contract Carriers

$\$100 \times 5 \text{ PAGA violations} \times 1,441 \text{ pay periods during the one-year statutory period} =$
 $\$720,500 \text{ for the Drivers and Helpers}$

$\$419,400 + \$720,500 = \$1,139,900$

43. Not taking into account any of their defenses or arguments, Defendant’s total exposure if Plaintiffs were successful in their core claims would be approximately \$11,504,080 [\$7,274,232 (reimbursement exposure) + \$1,337,696 (meal and rest period exposure) + \$2,892,152 (unpaid wages exposure) = \$11,504,080]. If Plaintiffs’ are successful in their unpaid wages claims, they may also be entitled to damages for waiting time penalties in the amount of \$1,281,693 and wage statement penalties in the amount of \$272,000. If all of Plaintiffs’ claims are successful, they may also be entitled to PAGA penalties in the maximum amount of \$1,139,900.

44. In light of the risks Plaintiffs’ claims faced, Plaintiffs and their Counsel believe that the settlement amount of \$1,000,000 – **with an average settlement share amount estimated at \$3,333.54** – is a reasonable and fair settlement amount.

45. A true and correct copy of the Settlement Agreement is attached hereto as **Exhibit 1**. A true and correct copy of the proposed First Amended Complaint is attached to **Exhibit 1** as **Exhibit 1**, and the proposed Class Notices are attached to **Exhibit 1** as **Exhibit 3**.

46. A true and correct copy of the filing receipt from Plaintiff’s upload of their preliminary

1 approval motion and supporting documents to the LWDA's website is attached as **Exhibit 2**.

2 47. A true and correct copy of the confirmation that the upload of Plaintiff's preliminary approval
3 motion was received by the LWDA is attached as **Exhibit 3**.

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

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7 Dated: January 19, 2022

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David Mara

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Exhibit 1

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10 Attorneys for Defendant
11 FIDELITONE LAST MILE, INC.

12 (Additional Counsel Listed on Next Page)

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **IN AND FOR THE COUNTY OF SAN BERNADINO**

15 ASHLEY CABALLERO, AMERICA
16 CABALLERO, and LUIS VENEGAS,
17 individuals, on behalf of themselves, all
18 others similarly situated, all other aggrieved
19 employees, and the general public,

20 Plaintiff,

21 vs.

22 FIDELITONE LAST MILE, INC., a
23 Delaware corporation; and DOES 1 through
24 20, Inclusive,

25 Defendant.

Case No. CIVSB2102002

**STIPULATION OF SETTLEMENT AND
PLAINTIFFS' REQUEST TO CERTIFY THE
CLASS FOR SETTLEMENT PURPOSES**

Attachments:

Exhibit 1 – First Amended Complaint

Exhibit 2 – (Proposed) Order of Preliminary
Approval

Exhibit 3 – (Proposed) Notice of Class Action
Settlement and related forms

Exhibit 4 – (Proposed) Order Granting Final
Approval to Class Action Settlement

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Attorneys for Plaintiffs, on behalf of
themselves and all others similarly situated

1 This Stipulation of Settlement is intended to resolve all class action, representative action,
2 and individual claims set forth in the above-captioned action and the Related Cases, as defined
3 below.

4 **1. DEFINITIONS.**

5 **1.1 “Action”** means the above-captioned action pending in the Superior Court of the
6 State of California, San Bernadino County, Case No. CIVSB2102002.

7 **1.2 “Aggrieved Employee”** means: (a) all individuals who worked for Fidelitone as
8 Contract Carriers, Drivers and/or Helpers in the State of California (but excluding acknowledged
9 employees of Fidelitone) during the PAGA Period, and (b) all entities owned and controlled by
10 Contract Carriers which contracted directly with Fidelitone to perform freight delivery services
11 during the Claims Period.

12 **1.3 “Aggrieved Employee Payment”** means that portion of the PAGA Settlement
13 Amount which shall be paid to the Aggrieved Employees, i.e., Twelve Thousand Five Hundred
14 Dollars (\$12,500).

15 **1.4 “Agreement,” “Settlement,” or “Settlement Agreement”** means the instant
16 Stipulation of Settlement.

17 **1.5 “Class Counsel”** means Boyamian Law, Inc., Kizirian Law Firm, P.C., and Mara
18 Law Firm, PC, and their respective attorneys of record as identified in the caption above.

19 **1.6 “Claims Period”** means the period from July 31, 2016, through November 6, 2021.

20 **1.7 “Class Member”** means: (a) all individuals who worked for Fidelitone as Contract
21 Carriers, Drivers and/or Helpers in the State of California (but excluding acknowledged employees
22 of Fidelitone) during the Claims Period, and (b) all entities owned and controlled by Contract
23 Carriers which contracted directly with Fidelitone to perform freight delivery services during the
24 Claims Period.

25 **1.8 “Class Notice” or “Notice Packet”** means the Notice of Class Action Settlement and
26 IRS W-9 Form (or equivalent), substantially similar to the forms attached hereto as Exhibit “3”.
27

1 **1.9 “Class Representative Enhancement”** means the sum to be paid to each of the
2 Plaintiffs as an enhancement for his or her role and participation as a representative of the class and
3 aggrieved employees and for the risks attendant to such role and participation.

4 **1.10 “Contract Carrier”** means an entity or individual Class Member with whom
5 Fidelitone contracted directly to provide freight delivery services within the State of California
6 during the Claims Period.

7 **1.11 “Court”** means the Superior Court of California in and for the County of San
8 Bernadino.

9 **1.12 “Driver”** means an individual Class Member who worked for a Contract Carrier and
10 who, according to Fidelitone’s records, drove a truck and delivered freight for Fidelitone within the
11 State of California during the Claims Period.

12 **1.13 “Fidelitone”** means Fidelitone Last Mile, Inc., a Delaware corporation, its parent,
13 subsidiaries and affiliates.

14 **1.14 “Final Approval”** means the date on which the Court’s Judgment becomes final,
15 which shall be deemed to be the last to occur of the following:

16 (a) if there are no objections to the Settlement, then the date of final approval of the
17 Settlement by the Court;

18 (b) if there are objections to the Settlement, the day immediately following the expiration
19 of the time period for filing an appeal, request for review or writ; or

20 (c) if an appeal, review or writ is sought from the Judgment, the day after the Judgment is
21 affirmed or the appeal, review or writ is dismissed or denied, and the Judgment is no longer subject
22 to further judicial review.

23 **1.15 “Final Approval Order”** means the (Proposed) Order Granting Final Approval to
24 Class Action Settlement, substantially in the form attached hereto as “Exhibit 4.”

25 **1.16 “First Mailing Date”** means the date on which the Settlement Administrator sends
26 the first Class Notice to any Class Member.

1 **1.17 “Gross Settlement Fund”** means the total consideration to be paid by Fidelitone for
2 the Settlement in the amount of One Million Dollars (\$1,000,000) from which all Individual
3 Settlement Share payments (excluding Fidelitone’s payroll taxes on the wage portions thereof),
4 PAGA Settlement Share payments, Class Counsel’s attorneys’ fees and costs, the Class
5 Representative Enhancements, the PAGA Settlement Amount, and Settlement Administrator Costs
6 shall be paid.

7 **1.18 “Helper”** means an individual Class Member who worked for a Contract Carrier and
8 who, according to Fidelitone’s records, assisted a Driver on his or her route in the delivery of freight
9 for Fidelitone within the State of California during the Claims Period.

10 **1.19 “Individual Settlement Share”** means the payment to each Settlement Class
11 Member of his or her share of the Net Settlement Amount as calculated by the Settlement
12 Administrator.

13 **1.20 “Judgment”** means the entry of judgment upon Final Approval of the Settlement.
14 The Court shall retain jurisdiction over the Parties to enforce the Judgment and terms of the
15 Settlement pursuant to Code of Civil Procedure § 664.6.

16 **1.21 “LWDA”** means the California Labor and Workforce Development Agency

17 **1.22 “LWDA Payment”** means that portion of the PAGA Settlement Amount which shall
18 be paid to the LWDA, i.e., Thirty-Seven Thousand Five Hundred Dollars (\$37,500).

19 **1.23 “Net Settlement Amount”** means the Gross Settlement Fund minus Class Counsel’s
20 attorneys’ fees and costs, the Settlement Administrator Costs, the Class Representative Enhancement
21 payments, and the PAGA Settlement Amount.

22 **1.24 “PAGA” or PAGA Penalties** refers to the California Labor Code Private Attorneys
23 General Act, California Labor Code section 2698, *et seq.* and/or any civil penalties recoverable
24 under that statutory scheme.

25 **1.25 “PAGA Period”** means the period from April 28, 2019, through November 6, 2021.

1 **1.26 “PAGA Settlement Amount”** means that portion of the Gross Settlement Fund
2 which is allocated to the compromise and release of Plaintiffs’ claims in the Action and Related
3 Cases for PAGA Penalties, i.e., Fifty Thousand Dollars (\$50,000).

4 **1.27 “PAGA Settlement Share”** means the payment to each Aggrieved Employee of his
5 or her share of the PAGA Settlement Amount as calculated by the Settlement Administrator.

6 **1.28 “Parties”** means Plaintiffs and Fidelitone.

7 **1.29 “Plaintiffs”** means America Caballero, Ashley Caballero, and Luis Venegas.

8 **1.30 “Preliminary Approval Order”** means the Court’s order granting Preliminary
9 Approval of the Settlement substantially in the form attached hereto as Exhibit “2.”

10 **1.31 “Related Cases”** means each and all of the following entitled actions: (1) *Luis*
11 *Venegas v. Fidelitone Last Mile, Inc. (PAGA Action)*, Superior Court of the State of California,
12 Contra Costa County, Case No. C20-01468; (2) *Luis Venegas v. Fidelitone Last Mile, Inc. (Class*
13 *Action)*, Superior Court of the State of California, Contra Costa County, Case No. C20-01469;
14 and (3) *America Caballero v. Fidelitone Last Mile, Inc. (Class Action)*, Superior Court of the
15 State of California, Alameda County, Case No. RG20069582.

16 **1.32 “Settlement Administrator”** means the firm of Phoenix Class Action Administration
17 Solutions or another mutually agreed upon third-party administrator which shall be responsible for
18 the administration of the Settlement under this Agreement.

19 **1.33 “Settlement Administrator Costs”** means the total fees, costs, and expenses to be
20 paid from the Gross Settlement Fund to the Settlement Administrator for its services in the
21 administration of the Settlement, which shall not exceed \$20,000.

22 **1.34 “Settlement Class” or “Settlement Class Members”** means all persons who are
23 Class Members who did not validly request exclusion (i.e., by submitting a Timely Written Request
24 to Opt Out) from the Settlement in the manner provided by this Agreement and the Class Notice.

25 **1.35 “Timely Written Objection”** means a written objection to the Settlement, that
26 complies with Section 6.3, and that is submitted to the Settlement Administrator and served on
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counsel for all of the Parties no later than 45 days after the Settlement Administrator mails the Class Notice.

1.36 “Timely Written Request To Opt-Out” means a written request to opt-out of the Settlement, that complies with Section 6.4, and that is received by the Settlement Administrator and post-marked no later than 45 days after the Settlement Administrator mails the Class Notice.

1.37 “Workweek” means any week in which, according to Fidelitone’s records, a Class Member performed work for Fidelitone as a Contract Carrier, Driver, or Helper in the State of California during the Claims Period.

2. SCOPE, PURPOSE AND BENEFITS OF THE SETTLEMENT.

2.1 This Agreement is intended to and does effectuate the full, final, and complete resolution of all claims and allegations that were asserted in the Action and Related Cases by Plaintiffs on behalf of the Class Members.

2.2 Although neither Plaintiffs nor Fidelitone abandon their positions taken in the Action and Related Cases, the Parties believe that continued litigation would be protracted, expensive, uncertain, and contrary to their respective best interests. In light of these realities, the Parties believe that this Settlement is the best way to resolve the disputes between them at this time.

3. JURISDICTION.

The Court retains jurisdiction over the Parties and the subject matter of the Action pursuant to California Code of Civil Procedure Section 664.6. The Parties submit to the jurisdiction of the Court for the purpose of effectuating this Settlement. The Action includes claims that, while Fidelitone denies them in their entirety, would, if proven, authorize the Court to grant relief pursuant to the statutes cited or relied upon therein.

4. STATEMENT OF NO ADMISSION.

4.1 Denial of Liability. Fidelitone denies any and all liability for Plaintiffs’ causes of action and claims for relief asserted in the Action and Related Cases. This Agreement does not constitute, and is not intended to constitute, and will not be deemed to constitute, an admission by

1 Fidelitone as to the merits, validity, or accuracy of any of the claims or allegations made against it in
2 the Action or Related Cases.

3 **4.2 Use of Evidence.** Nothing in this Agreement, or any action taken to implement it,
4 nor any statements, discussions or communications, nor any materials exchanged during the course
5 of the negotiations leading to the Agreement, is intended by the Parties to, nor will any of the
6 foregoing constitute, be introduced, be used or be admissible in any way in this Action or any other
7 judicial, arbitral, administrative, investigative or other forum or proceeding, as evidence of any
8 violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or
9 any obligation or duty at law or in equity. Notwithstanding the foregoing, this Agreement may be
10 used in any proceeding in the Court that has as its purpose the interpretation, implementation, or
11 enforcement of the Agreement or any orders or judgments of the Court entered into in connection
12 therewith.

13 **4.3 No Admission of Liability.** No evidence produced or created by Plaintiffs or any
14 Class Member in connection with the prosecution, settlement or administration of the Settlement
15 shall constitute, and will not be deemed to constitute, an admission by Fidelitone of any violation of
16 any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any
17 obligation or duty at law or in equity.

18 **4.4 Propriety of Class Certification.** Plaintiffs seek class certification under the terms
19 of this Agreement solely for the purpose of effectuating the Settlement. Nothing in this Agreement
20 will be construed as a request, admission or acknowledgment of any kind by Fidelitone that any
21 class should be certified in the Action, in any of the Related Cases, or in any other action or
22 proceeding. Further, neither this Agreement nor the Court's actions with regard to this Agreement,
23 nor the actions of any Class Member with respect to this Agreement, will be admissible in any court
24 or other tribunal regarding the propriety of class certification. In the event that this Agreement is not
25 approved by the Court or any appellate court, or is terminated, or otherwise fails to be enforceable,
26 Fidelitone will not be deemed to have waived, limited, or affected in any way, any of its objections
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1 or defenses in the Action or any Related Cases, including, but not limited to, its opposition to the
2 certification of any class or subclass for the purpose of litigation.

3 **4.5 No Preclusive Effect.** Neither Plaintiffs nor Fidelitone concede the merits of the
4 other's contentions regarding the suitability of the Action or Related Cases for class certification
5 under the Code of Civil Procedure, but have agreed to resolve the Action and Related Cases through
6 this Settlement in recognition of the expense and risk of continuing with the Action and Related
7 Cases and in the belief that the Settlement is fair, adequate, and reasonable. Therefore, in entering
8 into this Agreement, it is the Parties' mutual intention and agreement that if the Settlement does not
9 become final as a consequence of any appeal taken from the Court's grant of Final Approval, the
10 class certification for purposes of this Settlement will be vacated, the Parties will retain all of their
11 respective rights to support or oppose certification for the purposes of litigation, and any certification
12 arising from the Court's Final Approval of this Settlement may not be used by the Parties in support
13 of any argument for or against certification of any class or subclass. Neither the provisional
14 certification nor, if ultimately approved, the certification of the Class to consummate this Settlement
15 constitutes a determination by the Court that a plaintiff class should be certified for purposes of trial.
16 Thus, if any appeal is successful in the Court of Appeal, the Court's certification of the class for
17 settlement purposes shall be deemed void *nunc pro tunc*. This Agreement is explicitly conditioned
18 on the Court's confirmation that its approval of class certification for settlement purposes pursuant to
19 this Agreement shall not be accorded *res judicata*, judicial estoppel, collateral estoppel, or any other
20 form of preclusive effect concerning the suitability of the Action or Related Cases for certification
21 under the California Code of Civil Procedure in the event that the Settlement does not become final
22 as a consequence of any appeal from the Court's Order of Final Approval. In the event that the Court
23 fails to adopt the foregoing acknowledgement in its orders, Fidelitone shall be entitled, in its sole
24 discretion, to withdraw from this Settlement and the Parties shall return to the *status quo ante* as
25 though they had not entered into this Agreement.

26 **5. WAIVER AND RELEASE.**

27 **5.1 Settlement Release and Waiver of Claims.** Plaintiffs, on behalf of themselves and
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1 all Settlement Class Members, and their respective heirs, executors and assigns, hereby waive,
2 release, and discharge all claims, rights, demands or causes of action against Fidelitone under any
3 California statutory or common law that were asserted in the Action or Related Cases, or that
4 reasonably could have been asserted in the Action or Related Cases based upon any acts or
5 omissions occurring during the Claims Period as alleged in the operative Complaints and/or LWDA
6 notices filed therein, as follows:

7 Any and all claims for: unpaid minimum wages; unpaid overtime wages; unlawful
8 deductions from wages; failure to reimburse work-related expenses; failure to provide meal periods
9 or pay premium wages in lieu thereof; failure to authorize and permit rest periods or pay premium
10 wages in lieu thereof; failure to furnish accurate itemized wage statements; failure to pay all final
11 wages due upon termination; and unfair, unlawful or fraudulent business acts or practices;
12 conversion; common count; fraud; breach of contract; unjust enrichment; as well as any and all
13 remedies available at law or equity on any of the foregoing claims, including without limitation,
14 compensatory damages, wages, penalties, liquidated damages, interest, costs, attorneys' fees,
15 restitution, punitive damages, declaratory relief, and injunctive relief, but only to the extent that such
16 causes of action or claims for relief were asserted or reasonably could have been asserted by
17 Plaintiffs or Class Members in the Action and/or Related Cases based upon any of the conduct
18 alleged therein which arose out of their work for Fidelitone in the State of California during the
19 Claims Period (collectively "**Released Class Claims**").

20 For the avoidance of doubt, the Released Class Claims covered by this Settlement include
21 any and all claims, rights, demands or causes of action that were brought or could have been brought
22 in the Action or Related Cases on behalf of Plaintiffs, all Settlement Class Members, and the entities
23 owned and controlled by Contract Carriers which contracted with Fidelitone to perform services
24 during the Claims Period, under any state or local statutory or common law, including, but not
25 limited to, California Labor Code §§ 201-204, 205.5, 210, 221-223, 226, 226.7, 226.8, 510, 512,
26 558, 1174, 1194, 1197, 1197.1, 1199, and 2802; all related provisions of the California Industrial
27 Welfare Commission Wage Orders, California Business and Professions Code §§ 17200 *et seq.*,
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1 California Code of Civil Procedure § 1021.5, and the laws of contract, torts and equity that relate to
2 the claims asserted in the Action and Related Cases.

3 **5.2 PAGA Release.** Plaintiffs, on behalf of themselves and all Aggrieved Employees,
4 and their respective heirs, executors and assigns, hereby waive, release, and discharge all claims,
5 rights, demands or causes of action against Fidelitone for civil penalties pursuant to the PAGA as
6 alleged in the operative Complaints and LWDA notices filed therein, as follows:

7 Any and all claims for: unpaid minimum wages; unpaid overtime wages; unlawful
8 deductions from wages; failure to reimburse work-related expenses; failure to provide meal periods
9 or pay premium wages in lieu thereof; failure to authorize and permit rest periods or pay premium
10 wages in lieu thereof; failure to furnish accurate itemized wage statements; failure to pay all final
11 wages due upon termination; and unfair, unlawful or fraudulent business acts or practices;
12 conversion; common count; fraud; breach of contract; and unjust enrichment, based upon any of the
13 conduct alleged therein which arose out of their work for Fidelitone in the State of California during
14 the PAGA Period (collectively “**Released PAGA Claims**”).

15 For the avoidance of doubt, the Released PAGA Claims covered by this Settlement include
16 any and all claims for civil penalties that were brought in the Action or Related Cases on behalf of
17 Plaintiffs, all Aggrieved Employees, and the entities owned and controlled by Contract Carriers
18 which contracted with Fidelitone to perform services during the PAGA Period, under any state or
19 local statutory or common law, including, but not limited to, California Labor Code §§ 201-204,
20 205.5, 210, 221-223, 226, 226.7, 226.8, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1199, 2698, et
21 seq., and 2802; all related provisions of the California Industrial Welfare Commission Wage Orders,
22 California Business and Professions Code §§ 17200 *et seq.*, California Code of Civil Procedure §
23 1021.5, and the laws of contract, torts and equity that relate to the claims asserted in the Action and
24 Related Cases. Aggrieved Employees have no rights to opt-out of the PAGA Settlement Amount and
25 will release the Released PAGA Claims regardless of any submission of a Timely Written Request
26 To Opt-Out.

1 **5.3 Plaintiffs' General Release and Waiver of Claims.** With respect to the Plaintiffs
2 only, the Released Claims include, in addition to the above, any and all causes of action, claims for
3 relief, lawsuits, allegations, charges, complaints, debts, liens, contracts, agreements, promises,
4 liabilities, demands, damages, losses, rights, benefits, obligations, attorneys' fees, costs or expenses
5 of any kind or nature whatsoever, in law, equity or otherwise, whether known or unknown, whether
6 or not pending before a court, administrative agency, government authority, or otherwise, which
7 Plaintiffs now have, may claim to have, or at any time heretofore have had or claimed to have had,
8 against Fidelitone, including, without limiting the general nature of the foregoing, any and all such
9 claims which arose out of or in any way are related to Plaintiffs' relationships with and work for
10 Fidelitone at any time from the start of the Claims Period through and including the dates they each
11 sign this Agreement. This general release and waiver of claims by Plaintiffs encompasses both
12 known and unknown claims as described above, and therefore, Plaintiffs agree to waive the
13 provisions of California Civil Code section 1542 which states as follows:

14 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT
15 THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR
16 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
17 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.

18 **5.4 Releasees and Released Parties.** Upon Final Approval of the Settlement, the waiver
19 and release of claims by Plaintiffs, Settlement Class Members, and Aggrieved Employees, shall be
20 binding on Plaintiffs, all Settlement Class Members, and all Aggrieved Employees, including each of
21 their respective agents, spouses, registered domestic partners, executors, representatives, guardians
22 ad litem, heirs, successors, and assigns. Further, all waivers and releases of claims in this Section 5
23 shall inure to the benefit of Fidelitone and its predecessors and successors, as well as all of its
24 current, former and future subsidiaries, affiliates, and parent companies, and each of their respective
25 officers, directors, shareholders, members, partners, insurers, agents, administrators, executors and
26 assigns (collectively, "**Released Parties**").

1 **5.5 Covenant Not to Sue.** Plaintiffs and all Settlement Class Members agree not to sue
2 or otherwise make any individual claims against Fidelitone or any of the Released Parties for any of
3 the Released Claims identified in this Section 5 of the Agreement, as applicable to them, if they do
4 not submit a Timely Written Request To Opt-Out.

5 **6. NOTICE, OBJECTIONS, AND OPPORTUNITY TO OPT-OUT.**

6 **6.1 Class Notice.** Within ten (10) business days after entry by the Court of the
7 Preliminary Approval Order, Fidelitone shall submit to the Settlement Administrator, in electronic
8 form, a list which sets forth the following information (to the extent known by Fidelitone) pertaining
9 to each Class Member and Aggrieved Employee: (a) full name; (b) current or last known residence
10 or mailing address; (c) social security number; (d) current or last known telephone number; and (e)
11 number of Workweeks worked during the Claims Period and PAGA Period. Within thirty (30) days
12 of Preliminary Approval of this Settlement, the Settlement Administrator will send all Class
13 Members and Aggrieved Employees by First Class Mail, at their current or last known address, the
14 Court-approved Class Notice in the form attached hereto as Exhibit “3.” Before mailing this Notice,
15 the Settlement Administrator shall conduct a “national change of address search.” The Settlement
16 Administrator will use reasonable efforts, including tracing, to identify the correct address and re-
17 mail all returned, undelivered mail within five (5) days of receiving notice that a Class Notice was
18 undeliverable. The Parties agree to cooperate with the Settlement Administrator to locate Class
19 Members and Aggrieved Employees, if necessary.

20 **6.2 Class Notice Content to Settlement Class Members and Aggrieved Employees**
21 **for Whom the Settlement Administrator Lacks a TIN.** The Class Notice to these Settlement Class
22 Members and Aggrieved Employees should include the following information: (1) the contact
23 information of Class Counsel; (2) a website address maintained by the Settlement Administrator
24 with links to the Class Notice, Preliminary Approval Motion, Final Approval Motion, Attorney’s
25 Fees Motion, and any other important documents; (3) instructions on how to access the case docket
26 on the Court website or in person at the Court; (4) the date of the Final Approval hearing, clearly
27 stating that the date may change without further notice to Settlement Class Members and Aggrieved
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1 Employees, and that Settlement Class Members and Aggrieved Employees should check the
2 settlement website for confirmation of the date; (5) be provided in Spanish and English; and (6)
3 information explaining the Action and the Settlement; (7) the opt-out and objection procedures and
4 consequences of choosing these procedures; (8) explanation of the Released Claims; and (9) an
5 estimate of the Settlement Class Member's Individual Settlement Share and Aggrieved Employee's
6 PAGA Settlement Share as calculated by the Settlement Administrator. The Notice to these Class
7 Members and Aggrieved Employees shall also explain that, because the Settlement Administrator
8 does not have their Taxpayer Identification Number (TIN), the Settlement Class Members and
9 Aggrieved Employees will have to submit to the Settlement Administrator an IRS W-9 Form (or
10 equivalent) within the time frames specified in this Agreement in order to receive their Individual
11 Settlement Share. The W-9 Form (or equivalent) will be included with the Notice Packet provided to
12 these Settlement Class Members and Aggrieved Employees.

13 **6.3 Objections to Settlement.** All objections to the Settlement must be submitted to the
14 Settlement Administrator no later than 45 days after the Settlement Administrator's First Mailing
15 Date of the Class Notice. If the Settlement Administrator performs the duties that it is required to
16 perform pursuant to this Settlement, the deadline to file Timely Written Objections shall be enforced
17 notwithstanding any assertion that the Class Notice was not received. Any and all Timely Written
18 Objections received by the Settlement Administrator shall be forwarded to the Parties' counsel
19 within two (2) business days of the Settlement Administrator's receipt of the objection. Submitting a
20 Timely Written Objection is not the equivalent of opting out.

21 **6.4 Opportunity to Opt-Out.** To opt-out of the Settlement Class, a Class Member must
22 provide the Settlement Administrator with a Timely Written Request To Opt Out (*i.e.*, it must be
23 postmarked no later than 45 days after the First Mailing Date). Within ten (10) days following the
24 last day to opt out, the Settlement Administrator shall provide by email or facsimile to counsel for
25 the Parties the names and addresses of those Class Members who have submitted opt-out requests.
26 In order to be valid, a Timely Written Request to Opt Out must state the Class Member name,
27 contain the last four digits of his/her social security number, be dated and signed by the Class
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Member and be timely received by the Settlement Administrator. All Class Members shall be bound by all of the terms of the Settlement Agreement and Judgment unless a Timely Written Request to Opt Out is received by the Settlement Administrator. Aggrieved Employees have no rights to opt-out of the PAGA Settlement Amount and will release the Released PAGA Claims regardless of any submission of a Timely Written Request To Opt-Out.

6.5 Opportunity to Withdraw from Settlement. If the number of Class Members who submit a Timely Written Request to Opt Out of the Settlement Class exceeds five percent (5%) of the total number of Class Members, then Fidelitone shall have the right and option to unilaterally withdraw from and rescind the Settlement. To withdraw from the Settlement, Fidelitone first must provide written notice to Class Counsel within ten (10) calendar days after receipt of the above-described facsimile notice from the Settlement Administrator that identifies the Class Members who have submitted Timely Written Requests to Opt Out of the Settlement.

6.6 Timeliness. Opt-outs and/or objections postmarked after the time periods set forth in Sections 6.3 and 6.4 are conclusively untimely and invalid.

6.7 No Solicitations. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit objections to the Settlement, requests to opt out of the Settlement, or appeal from the Final Approval Order and Judgment.

7. PAGA PENALTIES.

Class Counsel represent and warrant that the LWDA was duly notified of the alleged Labor Code violations asserted in the Action as required by PAGA, and that the LWDA did not respond to said notices with an expressed intention to investigate within the time period prescribed by law. Subject to review and approval by the Court as required by California Labor Code section 2699(1), the Parties have agreed that the sum of Fifty Thousand Dollars and No Cents (\$50,000) shall be paid from the Gross Settlement Sum in full and final satisfaction of any and all PAGA claims, including PAGA Penalties, asserted in the Action and Related Cases, and that 75% of such amount, or Thirty-Seven Thousand Five Hundred Dollars (\$37,500), shall be paid to the LWDA as required by Labor Code section 2699(i) (the "LWDA Payment"), with the remaining 25%, Twelve Thousand Five

1 Hundred Dollars (\$12,500), to be distributed to all Aggrieved Employees as the Aggrieved
2 Employee Payment.

3 **8. ADMINISTRATION.**

4 **8.1 Opt Out Settlement.** Class Members and Aggrieved Employees are not required to
5 file claims to be paid the payments provided by this Agreement. Rather, all Class Members and
6 Aggrieved Employees shall be paid the amounts calculated pursuant to Section 9 below from the Net
7 Settlement Amount unless they submit a Timely Written Request to Opt Out in accordance with
8 Section 6.4 above.

9 **8.2 Settlement Administrator.** The Settlement Administrator will mail the Class Notice
10 to the Class Members and Aggrieved Employees. The Settlement Administrator will date stamp all
11 incoming written communications from Class Members and Aggrieved Employees, including but
12 not limited to, objections and opt-outs. The Settlement Administrator will also disburse and
13 calculate the Individual Settlement Shares to be paid from the Net Settlement Amount. All
14 Settlement Administrator Costs shall be paid from the Gross Settlement Fund.

15 **8.3 Determination of Individual Settlement Shares.** Individual Settlement Shares to be
16 paid from the Net Settlement Amount to Settlement Class Members shall be determined based upon
17 information from Fidelitone's records (*e.g.*, identification of Class Members and number of
18 Workweeks worked by each Class Member during the Claims Period) and calculated pursuant to
19 Section 9 below. Fidelitone shall provide to the Settlement Administrator the information required
20 by this Agreement in electronic form. The Settlement Administrator shall perform the required
21 calculations pursuant to Section 9 below and shall provide Class Counsel and Fidelitone, in
22 electronic form, the proposed Individual Settlement Share payments that were calculated pursuant to
23 Section 9 below.

24 **8.4 Determination of PAGA Settlement Shares.** PAGA Settlement Shares to be paid
25 from the PAGA Settlement Amount to Aggrieved Employees shall be determined based upon
26 information from Fidelitone's records (*e.g.*, identification of Aggrieved Employees and number of
27 Workweeks worked by each Aggrieved Employee during the PAGA Period) and calculated pursuant
28

1 to Section 9 below. Fidelitone shall provide to the Settlement Administrator the information required
2 by this Agreement in electronic form. The Settlement Administrator shall perform the required
3 calculations pursuant to Section 9 below and shall provide Class Counsel and Fidelitone, in
4 electronic form, the proposed PAGA Settlement Share payments that were calculated pursuant to
5 Section 9 below

6 **8.5 Payment of Individual and PAGA Settlement Shares.** Individual and PAGA
7 Settlement Share payments to Class Members and Aggrieved Employees shall be sent by United
8 States mail, first class, postage prepaid, to the Settlement Class Member's and/or Aggrieved
9 Employee's last known mailing address. Notwithstanding the foregoing, no payment shall be mailed
10 to any Class Member or Aggrieved Employee whose Notice Packet was returned to the Settlement
11 Administrator after fully complying with Section 6 above. Checks issued to Settlement Class
12 Members and Aggrieved Employees shall contain a legend that they are in accord and satisfaction of
13 all claims alleged in the Action and Related Cases and shall be valid for 120 days. Individual and
14 PAGA Settlement Share checks may be negotiated in any lawful manner subject to applicable law
15 and the requirements of the institution that is negotiating such checks. The funds represented by any
16 checks that were not issued because a current address could not be obtained for a Class Member
17 and/or Aggrieved Employee by the Settlement Administrator, or checks that were mailed but not
18 timely cashed, shall be deemed residue. If the total amount of the residue funds equals or exceeds
19 Ten Thousand Dollars (\$10,000), the Settlement Administrator shall re-distribute the residue to
20 Settlement Class Members and Aggrieved Employees in accordance with Section 9.1.1. If the total
21 amount of the residue funds is less than Ten Thousand Dollars (\$10,000), those funds shall be
22 distributed in accordance with Section 384 of the California Code of Civil Procedure to Legal Aid at
23 Work, the cy pres recipient selected by the Parties, subject to Court approval.

24 **8.6 Weekly Status Reports.** The Settlement Administrator shall provide the Parties,
25 through counsel, a weekly status report wherein it will inform Class Counsel and Fidelitone's
26 counsel of the number of Class Notices mailed, the number of Class Notices returned as
27
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undeliverable, the number of Class Notices re-mailed, the number of requests for exclusion or objections received, and the number of IRS Form W-9s (or equivalent) received.

9. COMPUTATION AND DISTRIBUTION OF PAYMENTS.

9.1 Distribution Formula for Individual and PAGA Settlement Shares. Each Settlement Class Member will receive as compensation for the claims alleged in the Action and Related Cases, and for the waiver and release of claims set forth above in Section 5, an Individual Settlement Share in an amount determined by the Settlement Administrator in accordance with the following formulas:

9.1.1 Division of Net and PAGA Settlement Amounts. The Net and PAGA Settlement Amounts shall be divided, for distribution to Settlement Class Members and Aggrieved Employees, into two parts as follows: (a) 55% to those Settlement Class Members and Aggrieved Employees who worked for Fidelitone during the Claims Period and/or PAGA Period as Contract Carriers; and (b) 45% to those Settlement Class Members and Aggrieved Employees who worked for Fidelitone during the Claims Period and/or PAGA Period as Drivers and/or Helpers. Each of the aforementioned portions of the Net and PAGA Settlement Amounts shall be allocated and paid to Settlement Class Members and Aggrieved Employees in accordance with formula specified in Section 9.1.2 and 9.1.3 of this Agreement below.

9.1.2 Calculation of Individual Settlement Shares. The Parties recognize that the damages and penalty claims in the Action and Related Cases are difficult to determine with any certainty for any given worker or time period, and are subject to myriad different methods of potential calculation and formulas. The Parties have agreed that, from each of the two portions of the Net Settlement Amount identified in Section 9.1.1 above, the Settlement Administrator will calculate the amount of the Individual Settlement Share due to each Settlement Class Member based on the Workweeks of Settlement Class Member during the Claims Period, as reflected in Fidelitone's records. Specifically, each Settlement Class Member's Settlement Award will be calculated by multiplying the fraction x/y by the total of the applicable portion of Net Settlement Amount (*i.e.*, 55% for Contract Carriers or 45% for Drivers/Helpers, as applicable), where "x"

1 equals the total number of Workweeks for each Settlement Class Member, and “y” equals the total
2 number of Workweeks in which all Settlement Class Members worked for Fidelitone. The Parties
3 agree that this formula is reasonable and that the payments provided for herein are designed to
4 provide a fair settlement to all Settlement Class Members, in light of the uncertainties concerning the
5 compensation claimed to be owed to Settlement Class Members and the calculation of such amounts.

6 **9.1.3 Calculation of PAGA Settlement Shares.** The Parties recognize that the
7 penalty claims in the Action and Related Cases are difficult to determine with any certainty for any
8 given worker or time period, and are subject to myriad different methods of potential calculation and
9 formulas. The Parties have agreed that, from each of the two portions of the PAGA Settlement
10 Amount identified in Section 9.1.1 above, the Settlement Administrator will calculate the amount of
11 the PAGA Settlement Share due to each Aggrieved Employee based on the Workweeks of
12 Aggrieved Employee during the PAGA Period, as reflected in Fidelitone’s records. Specifically,
13 each Aggrieved Employee’s Settlement Award will be calculated by multiplying the fraction x/y by
14 the total of the applicable portion of Aggrieved Employee Payment (*i.e.*, 55% for Contract Carriers
15 or 45% for Drivers/Helpers, as applicable), where “x” equals the total number of Workweeks for
16 each Aggrieved Employee, and “y” equals the total number of Workweeks in which all Aggrieved
17 Employees worked for Fidelitone. The Parties agree that this formula is reasonable and that the
18 payments provided for herein are designed to provide a fair settlement to all Aggrieved Employees,
19 in light of the uncertainties concerning the penalties claimed to be owed to Aggrieved Employees
20 and the calculation of such amounts.

21 **9.2. Tax Withholdings on Individual Settlement Shares.** Each Settlement Class
22 Member’s Individual Settlement Share will be apportioned as follows: 40% wages, 30% interest, and
23 30% penalties. The amounts paid as wages shall be subject to all tax withholdings customarily made
24 from an employee’s wages and all other authorized and required withholdings and shall be reported
25 on IRS W-2 Forms issued by the Settlement Administrator on behalf of the qualified settlement
26 fund. Fidelitone shall pay the employer portion of all such tax withholdings on the Individual
27 Settlement Share amounts paid as wages separate from, and in addition to, the Gross Settlement
28

1 Fund. Payments of all amounts will be made subject to backup withholding unless a duly executed
2 W-9 form is received from the payee(s). The Individual Settlement Share amounts paid as penalties
3 and interest shall be subject to all authorized and required withholdings other than the tax
4 withholdings customarily made from employees' wages and shall be reported on IRS 1099 Forms
5 issued by the Settlement Administrator on behalf of the qualified settlement fund. Only the
6 employee share of payroll tax withholdings shall be withheld from each Settlement Class Member's
7 Individual Settlement Share.

8 **9.3. Tax Withholdings on PAGA Settlement Shares.** Each Aggrieved Employee's
9 PAGA Settlement Share will be apportioned as follows: 100% penalties. The PAGA Settlement
10 Share amounts shall be reported on IRS 1099 Forms issued by the Settlement Administrator on
11 behalf of the qualified settlement fund.

12 **9.4. Reporting of Settlement Class and Settlement Payments.** Within 21 days prior to
13 the Court hearing on Final Approval of the Settlement, the Settlement Administrator shall file with
14 the Court a declaration stating the number of Class Notices mailed, undeliverable Class Notices,
15 Class Notices forwarded, address traces performed, Class Notices re-mailed, and Class Member opt-
16 out requests and/or objections. Within fifteen (15) business days after entry of the Final Approval
17 Order, Fidelitone shall fund the Settlement by wiring the Gross Settlement Fund amount into an
18 account established by the Settlement Administrator. Within fifteen (15) business days after wiring
19 of the funds, the Settlement Administrator will distribute all payments due under the Settlement
20 (other than the Settlement Administrator Costs).

21 **9.5. Maintenance of Records.** The Settlement Administrator shall maintain complete,
22 accurate, and detailed records regarding the administration of the Gross Settlement Fund, including
23 but not limited to, any and all receipts by and disbursements from the Gross Settlement Fund. The
24 Settlement Administrator shall make such records available to counsel for the Parties or to their
25 designee upon reasonable request and at reasonable times. The documentation maintained by the
26 Settlement Administrator shall be sufficient to audit the administration of the Settlement including,
27 without limitation, the addresses to which Class Notice Packets and/or checks were sent and a list of
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1 Individual and PAGA Settlement Share checks that were sent to Settlement Class Members and
2 Aggrieved Employees, but not cashed. Upon request, the Settlement Administrator shall provide
3 such records to counsel for the Parties in electronic form. The Settlement Administrator shall also
4 provide counsel for the Parties with periodic reports of the number of opt out requests received from
5 Class Members. The Settlement Administrator shall maintain all records for a period of not less than
6 four (4) years after the date of entry of the Final Approval Order.

7 **10. CLASS REPRESENTATIVE ENHANCEMENTS**

8 **10.1 Amount of Class Representative Enhancement Payments.** The Parties agree that,
9 subject to Court approval, each of the Plaintiffs will receive, in addition to his or her individual
10 settlement award, a separate Class Representative Enhancement payment of Ten Thousand Dollars
11 (\$10,000.00), to be deducted from the Gross Settlement Fund, for his or her time and effort in
12 prosecuting the Action or Related Cases on behalf of the Class Members, for assuming the risk of
13 paying Fidelitone's costs in the event of an unsuccessful outcome, and in consideration for his or her
14 grant of a separate general release and waiver of all known and unknown claims against Fidelitone.
15 In the event the Court approves a Class Representative Enhancement to any Plaintiff in an amount
16 less than identified above, the balance amount shall be included in the Net Settlement Amount for
17 distribution among all Settlement Class Members.

18 **10.2 Tax Treatment.** An IRS 1099 Form will be issued to each of the Plaintiffs for his or
19 her Class Representative Enhancement. Plaintiffs hereby agree that they are solely responsible for
20 the payment of all taxes and other related contributions, if any, due as a result of the Class
21 Representative Enhancements paid pursuant to this Agreement. The Parties warrant, represent and
22 agree that no one has provided tax advice to the other and that any responsibility or liability for any
23 tax matters relating to any payments made under this Agreement including, but not limited to, the
24 withholding of, or reporting of taxes, on any payment to Plaintiffs or other Settlement Class Member
25 and Aggrieved Employee. Each Settlement Class Member and Aggrieved Employee is advised to
26 consult with his or her own tax advisor concerning the tax consequences of the Settlement to him or
27 her.

1 **11. ATTORNEYS' FEES AND COSTS.**

2 The Settlement Administrator shall pay from the Gross Settlement Fund the following
3 attorneys' fees and costs:

4 **11.1 Attorneys' Fees.** In connection with the Final Approval Motion, Class Counsel shall
5 file a motion with the Court seeking approval of an award of attorneys' fees for all past and future
6 work necessary to prosecute, settle and administer the Action and Related Cases and this Settlement
7 in an amount not greater than 33 1/3 % of the Gross Settlement Fund, or Three Hundred Thirty-
8 Three Thousand and Three Hundred Dollars and No Cents (\$333,300). The "future" aspect of this
9 amount includes, without limitation, all time expended by Class Counsel in defending the Settlement
10 and securing Final Approval (including any appeals thereof) and assisting in the administration of
11 the Settlement as necessary. Any and all such future work shall be performed at no additional
12 charge to either the Class Members or Fidelitone. Fidelitone agrees not to oppose such motion. Any
13 attorneys' fees awarded by the Court to Class Counsel shall be paid to Class Counsel and such
14 payment may be wired or mailed. Fidelitone shall not be responsible for, or liable in connection
15 with any dispute over, the apportionment of attorney's fees between the Class Counsel law firms. In
16 the event the Court approves an award of attorneys' fees in an amount less than the maximum
17 amount stated above, the balance amount shall revert to the Net Settlement Amount for distribution
18 among all Settlement Class Members.

19 **11.2 Costs.** In connection with the Final Approval Motion, Class Counsel shall file a
20 motion with the Court seeking approval of an award of actual and reasonable costs in an aggregate
21 amount that does not exceed the sum of \$30,000. Fidelitone agrees not to oppose such motion and,
22 subject to Court approval, such sums shall be paid from the Gross Settlement Fund as approved by
23 the Court. Any costs awarded by the Court to Class Counsel shall be paid to Class Counsel and
24 may be wired or mailed. In the event the Court approves an award of attorneys' fees to Class
25 Counsel in an amount less than the maximum amount stated above, the balance amount shall revert
26 to the Net Settlement Amount for distribution among all Settlement Class Members.

1 **12. COURT APPROVAL.**

2 **12.1** This Agreement is contingent upon Preliminary Approval and Final Approval of the
3 Settlement (including any appeals thereof) and the non-withdrawal of Fidelitone from the Settlement
4 as authorized by Section 6.5 above.

5 **12.2** The Parties agree to take all steps as may be reasonably necessary to secure approval
6 of the Settlement, to the extent not inconsistent with the terms of this Agreement and any other
7 agreement by and between Plaintiffs and Class Counsel, and will not take any action adverse to each
8 other in obtaining Court approval, and, if necessary, appellate approval, of the Settlement in all
9 respects. Plaintiffs and Class Counsel expressly agree that they will not file any objection (as
10 opposed to request for correction) to the terms of this Agreement or assist or encourage any person
11 or entity to file any such objection or to opt-out of the Settlement.

12 **13. FINAL ACCOUNTING.**

13 **13.1 Final Accounting.** No later than 30 calendar days after the occurrence of both the
14 Final Approval and the distribution of all payments to be made pursuant to the terms of this
15 Agreement, the Settlement Administrator shall submit to the Parties and file with the Court a final
16 accounting of all monies paid from the Gross Settlement Fund.

17 **13.2 No Further Obligations.** Upon receipt of the final accounting referenced in Section
18 13.1 and the payment of the monies required to be paid from the Gross Settlement Fund, Fidelitone
19 shall have no obligation to provide further any funding pursuant to this Agreement.

20 **14. NOTICES.**

21 **14.1 Designated Recipients.** Unless otherwise specified in this Agreement or agreed to in
22 writing by the Party receiving such communication, all notices, requests, or other required
23 communications hereunder shall be in writing and shall be sent by one of the following methods: (a)
24 first class mail, postage prepaid; (b) by pdf/email, with the original by first class mail, postage
25 prepaid; or (c) by personal delivery (including by Federal Express or other courier service). All such
26 communications shall be sent to the undersigned persons at their respective addresses as set forth
27 herein.

Class Counsel:

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michael@boyamianlaw.com
BOYAMIAN LAW, INC.
550 North Brand Boulevard, Suite 1500
Glendale, California 91203
Telephone: (818) 547-5300
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Armand R. Kizirian, SBN 293992
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Telephone: (818) 221-2800
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David Mara, SBN 230498
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Matthew Crawford, SBN 310230
mcrawford@maralawfirm.com
MARA LAW FIRM, PC
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San Diego, CA 92108
Telephone: (619) 234-2833
Facsimile: (619) 234-4048

Fidelitone's Counsel:

Seth L. Neulight
sneulight@nixonpeabody.com
NIXON PEABODY LLP
One Embarcadero Center, Suite 1800
San Francisco, CA 94111
Telephone: (415) 984-8200
Facsimile: (415) 984-8300

14.2 Changes in Designated Recipients. Any Party may re-designate the person to receive notices, requests, demands, or other communications required or permitted by this Agreement by providing written notice to the other Parties and the Settlement Administrator.

15. MISCELLANEOUS PROVISIONS.

15.1 Stay of Action. The Parties agree to a stay of the Action, except as to obtain Preliminary Approval and Final Approval of the Settlement from the Court, to complete the Class

1 Notice and settlement administration, and to obtain all things necessary to complete this Settlement,
2 pending Final Approval of the Settlement.

3 **15.2 Interpretation of the Agreement/Continuing Jurisdiction.** The Agreement will be
4 interpreted and enforced under the laws of the State of California. The Court shall retain jurisdiction
5 with respect to the interpretation, implementation and enforcement of the terms of this Agreement
6 and all orders and judgments entered in connection therewith, and the Parties and their counsel
7 submit to the exclusive jurisdiction of the Court and consent to the personal jurisdiction of this Court
8 over each of them for the purpose of interpreting, implementing and enforcing the settlement
9 embodied in this Agreement and all orders and judgments entered in connection therewith.

10 **15.3 Final Agreement.** The terms and conditions of this Agreement constitute the
11 exclusive and final understanding and expression of all agreements between the Parties with respect
12 to the resolution of the Action and Related Cases. Plaintiffs, on their own behalves and on behalf of
13 the class and aggrieved employees they represent, and Fidelitone, have agreed to enter into this
14 Agreement based solely upon its terms and not in reliance upon any representations or promises
15 other than those contained in this Agreement. Notwithstanding the foregoing, this Agreement may
16 be amended or modified by a written instrument signed by counsel for all Parties or their successors-
17 in-interest, subject to approval by the Court.

18 **15.4 Counterparts.** This Agreement may be executed in one or more counterparts, all of
19 which will be considered one and the same instrument and all of which will be considered duplicate
20 originals. Copies of the executed agreement shall be effective for all purposes as though the
21 signatures contained therein were original signatures. The execution of this Agreement by digital or
22 electronic signatures, and/or by a PDF file copy attached to an email exchanged by the Parties'
23 attorneys shall have the same force and effect as the signing of an original, and any such digital,
24 electronic or PDF file email signature shall be deemed an original and valid signature.

25 **15.5 Authority.** Counsel for the Parties warrant and represent that they are expressly
26 authorized by the Parties whom they represent to negotiate this Agreement and to take all
27 appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to
28

1 effectuate its terms, and to execute any other documents required to effectuate the terms of this
2 Agreement. Each individual signing below warrants that she or he has the authority to execute this
3 Agreement on behalf of the Party for whom or which that individual signs.

4 **15.6 No Third-Party Beneficiaries.** The individual Plaintiffs, Class Members and
5 attorneys for Plaintiffs, and Fidelitone, are direct beneficiaries of this Agreement, but there are no
6 third-party beneficiaries.

7 **15.7 Costs of Administration.** The Class Members and Class Counsel shall not have any
8 responsibility or liability with respect to any administrative costs incurred in connection with the
9 administration of this settlement. All charges for administration shall be paid from the Gross
10 Settlement Fund as required by this Agreement.

11 **15.8 No Continuing Liability.** No person shall have any claim against Fidelitone, the
12 Class Members, Plaintiffs or Class Counsel, based on distributions or payments made in accordance
13 with this Agreement.

14 **15.9 Lapse.** If this Agreement is not approved, or is terminated, rescinded, canceled, or
15 fails to become effective for any reason, and Final Approval does not occur, then no funds shall be
16 paid from the Gross Settlement Fund and any previously paid monies, except Settlement
17 Administrator Costs, shall be returned to Fidelitone.

18 **15.10 Injunctive Relief.** As part of this Agreement, Fidelitone shall not be required to
19 enter into any consent decree, nor shall Fidelitone be required to agree to any provision for
20 injunctive or prospective relief.

21 **15.11 Confidentiality.** Until this Agreement is submitted to the Court for Preliminary
22 Approval, Plaintiffs and Class Counsel may not disclose the specific terms of this Agreement except
23 that they may, if required by law or if necessary to effectuate the terms of this Agreement, comment
24 regarding the specific terms of this Agreement. In all other cases, whether oral, written or electronic,
25 Plaintiffs and Class Counsel agree to limit their statements regarding the terms of this Agreement to
26 say that the Action and Related Cases have been settled and that the Plaintiffs and Class Counsel are
27 satisfied with the Settlement terms. Neither Plaintiffs nor Class Counsel shall issue any press release
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1 or hold any press conference disclosing the terms of this Agreement. Nothing contained in this
2 Paragraph shall limit or restrict Class Counsels' ability to file a declaration with any court that
3 identifies this case by name and case number and provides any information about this case and the
4 Settlement in such declaration reasonably necessary to the filing with such court.

5 **15.12 Exhibits.** The terms of this Agreement include the terms set forth in any of the
6 attached Exhibits "1" through "4", which are incorporated by this reference as though fully set forth
7 herein. The Exhibits to this Agreement are an integral part of the Agreement. In the event of any
8 conflict between the Agreement and the Exhibits, the terms of the Agreement shall control (until
9 such time as the Exhibits constituting Court orders are entered by the Court, in which event said
10 orders shall control).

11 **15.13 Further Acts.** The Parties and their respective counsel will cooperate with each
12 other and use their best efforts to effect the implementation of the Agreement. In the event the
13 Parties are unable to reach agreement on the form or content of any document needed to implement
14 the Agreement, or on any supplemental provisions that may become necessary to effectuate the
15 terms of this Agreement, the Parties may seek the assistance of the Court to resolve such
16 disagreement.

17 **15.14 Construction.** All Parties cooperated in the drafting and preparation of this
18 Agreement. Hence, any construction of this Agreement shall not be construed against any of the
19 Parties and before declaring any provision of this Agreement invalid, the Court shall first attempt to
20 construe the provisions valid to the fullest extent possible consistent with applicable precedents so as
21 to render all provisions of this Agreement valid and enforceable.

22 **15.15 Fidelitone's Costs.** All of Fidelitone's attorney's fees and costs incurred in the
23 Action and Related Cases shall be borne by Fidelitone from its separate funds and not paid from the
24 Gross Settlement Fund.

25 **15.16 Plaintiffs' Duties.** Plaintiffs agree to sign this Agreement, and by doing so, to be
26 bound by its terms.

27 **[Signatures Appear On Next Page]**

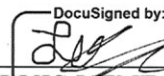
Dated:

By: _____
ASHLEY CABALLERO

Dated:

By: _____
AMERICA CABALLERO

Dated: 12/7/2021 | 7:44:23 PM PST

By:  _____
LUIS VENEGAS

Dated: 12/21/2021

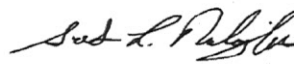
FIDELITONE LAST MILE, INC.

By:  _____
Title: CFO

APPROVED AS TO FORM:

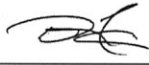
Dated: December 16, 2021

NIXON PEABODY LLP

By:  _____
SETH L. NEULIGHT
Attorneys for Defendant
Fidelitone Last Mile, Inc.

Dated:

MARA LAW FIRM, PC

By:  _____
David Mara
Attorneys for Plaintiff Luis Venegas

Dated:

KIZIRIAN LAW FIRM, P.C.

By: _____
Armand R. Kizirian
Attorneys for Plaintiffs America Caballero
and Ashley Caballero

Dated:

BOYAMIAN LAW, INC.

By: _____
Michael H. Boyamian
Attorneys for Plaintiff America Caballero
and Ashley Caballero

1
2 Dated:

By: _____
ASHLEY CABALLERO

4 Dated:

By: _____
AMERICA CABALLERO

6 Dated:

By: _____
LUIS VENEGAS

8 Dated:

FIDELITONE LAST MILE, INC.

9 By: _____
Title: _____

10 APPROVED AS TO FORM:

11 Dated:

NIXON PEABODY LLP

13 By: _____
SETH L. NEULIGHT
Attorneys for Defendant
Fidelitone Last Mile, Inc.

15 Dated:

MARA LAW FIRM, PC

17 By: _____
David Mara
Attorneys for Plaintiff Luis Venegas

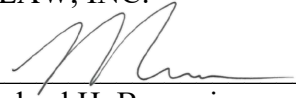
19 Dated: December 15, 2021

KIZIRIAN LAW FIRM, P.C.

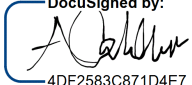
20 By: 
Armand R. Kizirian
Attorneys for Plaintiffs America Caballero
and Ashley Caballero

23 Dated: December 15, 2021

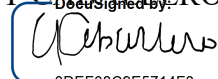
BOYAMIAN LAW, INC.

24 By: 
Michael H. Boyamian
Attorneys for Plaintiff America Caballero
and Ashley Caballero

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2 Dated: 12/15/2021

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By: 
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ASHLEY CABALLERO

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4 Dated: 12/6/2021

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By: 
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AMERICA CABALLERO

5
6 Dated:

By: _____
LUIS VENEGAS

7
8 Dated:

FIDELITONE LAST MILE, INC.

9
By: _____
Title: _____

10 APPROVED AS TO FORM:

11
12 Dated:

NIXON PEABODY LLP

13
14 By: _____
SETH L. NEULIGHT
Attorneys for Defendant
Fidelitone Last Mile, Inc.

15
16 Dated:

MARA LAW FIRM, PC

17
18 By: _____
David Mara
Attorneys for Plaintiff Luis Venegas

19 Dated:

KIZIRIAN LAW FIRM, P.C.

20
21 By: _____
Armand R. Kizirian
Attorneys for Plaintiffs America Caballero
and Ashley Caballero

22
23 Dated:

BOYAMIAN LAW, INC.

24
25 By: _____
Michael H. Boyamian
Attorneys for Plaintiff America Caballero
and Ashley Caballero

Exhibit 1

BOYAMIAN LAW, INC.

Michael H. Boyamian, SBN 256107
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Others Similarly Situated, Other Aggrieved
Employees, and the General Public

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

ASHLEY CABALLERO, AMERICA
CABALLERO, and LUIS VENEGAS,
individuals, on behalf of themselves, all
others similarly situated, all other
aggrieved employees, and the general
public,

Plaintiffs,

vs.

FIDELITONE LAST MILE, INC., a
Delaware corporation; and DOES 1
through 25, inclusive,

Defendants.

CASE NO. CIVSB2102002

CLASS ACTION

- 1. FAILURE TO PAY MINIMUM WAGES**
- 2. FAILURE TO PAY OVERTIME
COMPENSATION**
- 3. REIMBURSEMENT OF EMPLOYMENT
EXPENSES**
- 4. UNLAWFUL DEDUCTIONS FROM WAGES**
- 5. FAILURE TO PROVIDE MEAL PERIODS**
- 6. FAILURE TO AUTHORIZE AND PERMIT
REST PERIODS**
- 7. FAILURE TO FURNISH ACCURATE WAGE
STATEMENTS**
- 8. WAITING TIME PENALTIES**
- 9. UNFAIR COMPETITION**
- 10. CIVIL PENALTIES UNDER LABOR CODE
PRIVATE ATTORNEYS GENERAL ACT OF
2004, LABOR CODE 2698, ET. SEQ**

1 Plaintiffs ASHLEY CABALLERO, AMERICA CABALLERO, and LUIS VENEGAS
2 (“Plaintiffs”), individually, on behalf of all similarly situated individuals, and on behalf of all other
3 aggrieved employees, allege as follows :

4 **GENERAL ALLEGATIONS**

5 1. This is a proposed class action brought against Defendant FIDELITONE LAST MILE,
6 INC. and DOES 1 through 25, inclusive (collectively, “Defendants” or “Fidelitone”), on behalf of
7 Plaintiffs and all other non-employee workers who worked in California as a Contract Carrier, Driver,
8 and/or Helper (hereinafter collectively referred to as “Delivery Drivers”) for Defendants at any time
9 during the four years preceding April 6, 2020¹, and continuing while this action is pending (“Class
10 Period”), who were denied the benefits and protections required under the California Labor Code and
11 other statutes and regulations applicable to California employees.

12 2. During the Class Period, Defendants:

- 13 a. unlawfully misclassified Delivery Drivers as independent contractors;
- 14 b. failed to pay wages for all hours worked by Delivery Drivers;
- 15 c. failed to pay Delivery Drivers the applicable legal minimum wage;
- 16 d. failed to pay overtime wages due to Delivery Drivers;
- 17 e. failed to provide meal and rest periods due to Delivery Drivers;
- 18 f. failed to provide the Delivery Drivers with timely and accurate wage and
19 hour statements;
- 20 g. failed to pay the Delivery Drivers compensation in a timely manner upon
21 their termination or resignation;
- 22 h. failed to maintain complete and accurate payroll records for the Delivery
23 Drivers;
- 24 i. wrongfully withheld wages and compensation due to the Delivery Drivers;
- 25 j. committed unfair business practices in an effort to increase profits and to gain
26 an unfair business advantage at the expense of the Delivery Drivers and the

27 _____
28 ¹ Pursuant to California Emergency Rule of Court 9, the statute of limitations for this matter was tolled beginning on
April 6, 2020 and, as of the date of filing of this Complaint, remains in effect.

1 public; and

2 k. committed violations of the Private Attorneys General Act of 2004 (“PAGA”)

3 3. The foregoing acts and other acts by Defendants - committed throughout California
4 and San Bernardino County - violated provisions of the California Labor Code, including sections
5 201, 202, 203, 204, 210, 226, 226.7, 226.8, 246, 510, 512, 515, 551, 552, 558, 1194, 1198, and 2802
6 (collectively, “Employment Laws”), violated the applicable Wage Orders issued by California’s
7 Industrial Welfare Commission, including Wage Orders 9-2001 during the Class Period
8 (“Regulations”), violated California’s Unfair Business Practices Act, California Business &
9 Professions Code sections 17200 *et seq.*, and violated Plaintiff’s rights.

10 **JURISDICTION AND VENUE**

11 4. Venue is proper in this Judicial District and the County of San Bernadino because work
12 was performed by Plaintiffs and other members of the Class for Defendants in the County of San
13 Bernardino, California, and Defendants’ obligations under the Employment Laws and Regulations to
14 pay overtime wages, to provide meal and rest periods and accurate wage statements to Plaintiffs and
15 other members of the Class arose and were breached in California, including the County of San
16 Bernardino.

17 5. The California Superior Court has jurisdiction in this matter because Plaintiffs are
18 residents of California, and Defendants are corporations qualified to do business in California and
19 regularly conduct business in California. Further, no federal question is at issue as the claims are
20 based solely on California law.

21 6. Plaintiffs are informed and believe and on that basis alleges that Defendant
22 FIDELITONE LAST MILE, INC., as a foreign corporation, has not designated any county in
23 California as its principal place of business. As such, venue is proper in any county in California.

24 **THE PARTIES**

25 7. Plaintiffs ASHLEY CABALLERO, AMERICA CABALLERO, and LUIS VENEGAS
26 are, and at all relevant times were, competent adults residing in California. Plaintiffs brings suit on
27 behalf of themselves and all similarly situated individuals pursuant California Code of Civil Procedure
28 section 382, and California Business & Professions Code sections 17200, *et seq.* Plaintiffs were

1 unlawfully classified by Defendant Fidelitone Last Mile, Inc. as an independent contractor and worked
2 as a Driver and/or Helpers in California.

3 8. Defendant FIDELITONE LAST MILE, INC. is, and at all relevant times was, a
4 Delaware corporation registered with the State of California's Secretary of State. Fidelitone provides
5 logistics and delivery services to its retail merchants like Pottery Barn, Williams-Sonoma, and others,
6 to deliver product and services to their clients' customers. Fidelitone utilizes Delivery Drivers to pick
7 up the merchandise at the merchants' stores or warehouses and to deliver and install them at the
8 customers' homes or businesses. FIDELITONE is therefore a provider of managed transportation
9 services including the planning and execution for "last mile" delivery of its retail merchant clients.
10 FIDELITONE has engaged in unlawful employment practices addressed in this Complaint throughout
11 California and in San Bernardino County.

12 9. Plaintiffs are informed and believe and based thereon alleges that Defendants uniformly
13 apply their pay practices, and overtime policies to all Drivers and Driver Assistants. Plaintiffs are
14 currently unaware of the true names and capacities of the defendants sued in this action by the fictitious
15 names DOES 1 through 25, inclusive, and therefore sue those defendants by such fictitious names.

16 10. Plaintiffs will amend this Complaint to allege the true names and capacities of such
17 fictitiously named defendants when they are ascertained.

18 11. Plaintiffs are informed and believe and based thereon alleges that each defendant sued
19 in this action, including each defendant sued by the fictitious names DOES 1 through 25, inclusive, is
20 responsible in some manner for the occurrences, controversies and damages alleged below.

21 12. Plaintiffs are informed and believe and based thereon alleges that DOES 1 through 25,
22 inclusive were the agents, servants and/or employees of Defendants and, in doing the things hereinafter
23 alleged and at all times, were acting within the scope of their authority as such agents, servants and
24 employees, and with the permission and consent of Defendants.

25 13. Plaintiffs are informed and believe and based thereon alleges that Defendants ratified,
26 authorized, and consented to each and all of the acts and conduct of each other as alleged herein.

27 14. Plaintiffs are informed and believe and based thereon alleges that Defendants, and each
28 of them, were their employer under California law, that Defendants did acts consistent with the

1 existence of an employer-employee relationship with Plaintiffs despite their unlawful classification of
2 Plaintiffs as independent contractor.

3 **FACTS COMMON TO ALL CAUSES OF ACTION**

4 15. Defendants unlawfully classified Plaintiffs and other similarly situated individuals as
5 independent contractors when, in fact, they were heavily regulated through a series of work-related
6 restrictions and directives through Defendants.

7 16. Specifically, Fidelitone secures truck owners and contracts with such truck owners for
8 purposes of delivering, installing, and picking up of merchandise and products to Fidelitone's clients'
9 customers. These truck owners go to the warehouses of Fidelitone's clients and go through a hiring
10 process with Fidelitone's employees who are officed at the same site. Truck owners are hired by
11 Fidelitone. Truck owners then bring on drivers and driver assistants who are also evaluated by
12 Fidelitone for hiring purposes. Delivery Drivers provide "last mile" delivery, installation, and haul
13 away services. These services are integral and essential to Fidelitone's core business.

14 17. Fidelitone's "Carrier/Independent Contractor Agreement" ("Agreement") with
15 Delivery Drivers, states that the Delivery Drivers are independent contractors. The Agreements are
16 contracts of adhesion that are drafted exclusively by Fidelitone and/or on its behalf by its agents. The
17 terms of the Agreement are non-negotiable. Through this agreement, Fidelitone reserves and actually
18 exercises the right to control the manner and means by which the Delivery Drivers perform their duties
19 for Fidelitone.

20 18. Fidelitone has a series of directives that Delivery Drivers must abide by despite the fact
21 that Fidelitone unlawfully classifies them as independent contractors. Fidelitone reserves the right to
22 determine the locations where the Delivery Drivers pick up and drop off the merchandise assigned to
23 them; the time of day when they must report to work; and the order and timing of their deliveries.
24 Fidelitone provides each Delivery Driver a daily manifest of work assignments that includes the
25 delivery address, the "service window" time when the delivery must be made, and whether the
26 Delivery Driver is required to call the customer 30 minutes ahead of arrival to give notice of when he
27 will make the delivery. The Delivery Drivers must complete all of the work assigned to them and are
28 not allowed to refuse assignments. Fidelitone reserves the right to control the Delivery Drivers'

1 physical appearance, including requiring them to wear Fidelitone uniforms. Fidelitone also reserves
2 the right to require the Delivery Drivers to know and follow Fidelitone's customer service standards
3 in performing their work, and conduct surveys to determine whether customers are satisfied with the
4 Delivery Drivers' work.

5 19. Fidelitone further reserves the right to require the Delivery Drivers to follow certain
6 work methods related to, for example, how to move and install the appliances and how to interact with
7 customers. Fidelitone determines the year, branding, and other specifications of the vehicles that the
8 Delivery Drivers use to perform their work. Fidelitone prescribes how the Delivery Drivers document
9 their work and require the Delivery Drivers to contact Fidelitone upon arrival at each stop and then
10 again after the delivery is completed. Fidelitone also reserves the right to require the Delivery Drivers
11 to call each customer 30 minutes before making the delivery to let the customers know they are on
12 their way. Fidelitone employs a variety of managerial and supervisory employees who instruct the
13 Delivery Drivers on their job performance and their delivery assignments. The Delivery Drivers
14 interact with Fidelitone's personnel on a daily basis. Fidelitone's managerial and supervisory
15 employees also hold regular in-person and/or telephonic meetings where the Delivery Drivers'
16 attendance is mandatory.

17 20. The Delivery Drivers are paid each week by Fidelitone a flat amount for each delivery,
18 or for each day or week of work, in amounts that are unilaterally determined by Fidelitone. Fidelitone
19 makes deductions from the Delivery Drivers' pay for reasons including customer complaints, late
20 deliveries, and damaged items and property. Fidelitone requires Delivery Drivers to pay for payroll
21 administration services from Contractor Management Services LLC d/b/a Openforce and deducts
22 money from Delivery Drivers' weekly pay for these services. This "flat rate" constitutes an unlawful
23 piece-rate compensation system because Delivery Drivers had no control over how many hours they
24 worked and could do nothing to change the amount of pay through their own efficiencies.

25 21. Fidelitone requires the Delivery Drivers to purchase multiple forms of insurance
26 coverage in amounts determined by Fidelitone through insurance plans specified and sometimes
27 negotiated by Fidelitone, and to name Fidelitone and its clients as additional "insureds." Fidelitone
28 further requires the Delivery Drivers to purchase or rent from Fidelitone's clients, certain tools and

1 equipment.

2 22. Fidelitone directs Delivery Drivers to engage helpers to deliver the assigned
3 merchandise. Fidelitone prohibits the Delivery Drivers from working with helpers who have not been
4 screened, qualified, and approved in advance by Fidelitone. Fidelitone expects helpers to follow the
5 same work methods and standards it requires the Delivery Drivers to follow and to comply with all
6 other requirements communicated by Fidelitone, including attendance at meetings held by Fidelitone
7 management.

8 23. Fidelitone permits Delivery Drivers to engage other Drivers and/or Helpers at their own
9 expense who have been screened, qualified, and approved by Fidelitone. Delivery Drivers may engage
10 such Drivers and/or Helpers so that they are able to take a day off from work, such as for example
11 when they are unable to come to work due to illness or so that they may have a day of rest. Fidelitone
12 expects Drivers and/or Helpers to follow the same work methods and standards it requires the Delivery
13 Drivers to follow and to comply with all other requirements communicated by Fidelitone, including
14 following instructions given by Fidelitone managers and attending mandatory meetings.

15 24. The Delivery Drivers are economically dependent for their financial livelihood on
16 Fidelitone, and Fidelitone is entirely dependent on the Delivery Drivers for the retail merchandise
17 delivery service provided by Fidelitone to its clients. The Delivery Drivers are terminable at will. They
18 may be terminated upon fifteen- or thirty-days written notice without cause or immediately for alleged
19 breaches of the broadly-worded standards and obligations described in the Agreement.

20 25. The Agreements typically remain in effect for one year and are automatically renewed
21 at the end of that period for another one-year term, unless either party gives notice of termination.
22 Most of the Delivery Drivers have worked, or did work, for Fidelitone for several years. Despite
23 Fidelitone's pervasive control over all aspects of its delivery service operation, including the details
24 of the Delivery Drivers' work, Fidelitone has classified and treated the Delivery Drivers as
25 "independent contractors." Fidelitone's classification and treatment of the Delivery Drivers as
26 "independent contractors" rather than as "employees" is and during all relevant times has been
27 unlawful.

28 \\\

CLASS ACTION ALLEGATIONS

26. Plaintiffs bring these claims as a class action pursuant to Code of Civil Procedure § 382 and Business and Professions Code §§ 17203 & 17204. Plaintiffs bring this action on Plaintiffs' own behalf and on behalf of the following class of individuals (the "Class" or "Class Members"):

All individuals employed by, or formerly employed by, Defendants as Contract Carriers, Drivers, and/or Helpers who worked in the State of California from April 6, 2016, and continuing while this action is pending.

27. All Delivery Drivers, i.e., Contract Carriers, Drivers, and Helpers, including Plaintiffs, are putative class members.

28. During the Class Period, by virtue of unlawfully classifying Plaintiffs and Class Members as independent contractors and compensating Class Members with a "flat rate" Defendants have routinely failed to compensate Delivery Drivers all of the wages they are due ("off-the-clock" work).

29. During the Class Period, Plaintiffs and Delivery Drivers were subject to Defendants' unlawful company practice of classifying them as independent contractors and paying them a daily flat sum of money when in fact they were subjected to the pervasive control of Defendants. All who were subject to this unlawful classification and compensation scheme suffered damages. Defendants applied this illegal wage device uniformly to all Delivery Drivers to the disadvantage of Class Members.

30. As a result, during the Class Period, Defendants have failed to provide Drivers and Helpers with accurate wage and hour statements since the daily "flat rate" did not fully compensate Delivery Drivers for all hours worked. Defendants have failed to provide Delivery Drivers with accurate wage and hour statements since the gross hours earned, total hours worked, all deductions made, net wages earned, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate.

31. During the Class Period, Plaintiffs and Delivery Drivers have been required to work more than eight hours per day and more than forty hours per workweek. Defendants have routinely failed to compensate Delivery Drivers all of the overtime wages they are due.

1 32. During the Class Period, Defendants have failed to pay accrued wages and other
2 compensation due immediately to Delivery Drivers who were terminated, and Defendants have failed
3 to pay accrued wages and other compensation due within seventy-two hours to Delivery Drivers who
4 ended their employment.

5 33. The proposed class is ascertainable in that its members can be identified using
6 information contained in Defendants' payroll and personnel records.

7 34. Numerosity. The Delivery Drivers are so numerous, conservatively estimated to
8 include over 40 Delivery Drivers, that joinder of each individual Class Member would be
9 impracticable, and the disposition of their claims in a class action, rather than numerous individual
10 actions, will benefit the parties, the Court and the interests of justice.

11 35. Commonality. There is a well-defined community of interest in the questions of law
12 and fact involved in this action, because Defendants' failure to pay Delivery Drivers their wages or
13 afford them the protections required under the Employment Laws and Regulations affects all Class
14 Members. Common questions of law and fact predominate over questions that affect only individual
15 Delivery Drivers, because all Delivery Drivers were subject to the uniform, unlawful pay practices
16 and policies. The predominate questions of law and fact include, but are not limited to:

17 a. Whether Defendants devised a scheme and/or plan to circumvent California
18 wage and hour laws;

19 b. Whether Defendants' conduct was fraudulent and/or deceitful;

20 c. Whether Defendants' conduct violated the Employment Laws and
21 Regulations; and

22 (i) failed to compensate Plaintiffs and the Class Members
23 for all hours worked;

24 (ii) failed to compensate Plaintiffs and the Class Members at the
25 applicable and legally-mandated minimum hourly rate then
26 in effect;

27 (iii) failed to provide Plaintiffs and the Class Members with
28 timely and accurate wage and hour statements; and

(iv) failed to maintain complete and accurate payroll records for Plaintiffs and the Class Members;

d. Whether Defendants' systematic acts and practices violate, *inter alia*, California Business & Professions Code section 17200, *et seq.*

36. Typicality. Plaintiffs' claims are typical of those of the other Delivery Drivers because all Delivery Drivers share the same or similar employment duties and activities, all are automatically classified as independent contractors, and all have been denied the benefits and protections of the Employment Laws and Regulations in the same manner. Since Defendants have uniformly applied the same pay practices and policies to each Delivery Driver, Plaintiffs' claims are typical of the claims of all Delivery Drivers. Plaintiffs' claims are also typical because Plaintiffs have suffered the same damages as those suffered by all Class Members.

37. Adequacy of Representation. Plaintiffs can fairly and adequately represent and protect the interests of all Delivery Drivers in that Plaintiffs do not have disabling conflicts of interest which are antagonistic to those of all other Delivery Drivers. Plaintiffs seek no relief which is antagonistic or adverse to the other Class Members, and the infringement of their rights and the damages they have suffered are typical of all other Class Members. Plaintiffs' counsel is competent and experienced in litigating class actions in California based on large employers' violations of the Employment Laws and Regulations.

38. As mentioned above, to the extent that any Delivery Drivers entered into any arbitration agreement with any Defendant and such agreement purports to require arbitration, such agreement is void and unenforceable. Even if such agreement is deemed enforceable, however, class-wide arbitration is appropriate and should be utilized to obtain class-wide relief.

39. Superiority of Class Action. The nature of this action and the nature of laws available to Plaintiffs and the other Delivery Drivers in the putative Class make use of the class action a particularly efficient and effective procedure because:

a. For many of the Delivery Drivers, individual actions or other individual remedies would be impracticable and litigating individual actions would be too costly;

- 1 b. The action involves a large corporate employer or employers (Fidelitone) and
2 a large number of individual employees (Plaintiffs and the other Class
3 Members), many with relatively small claims and all with common issues of
4 law and fact;
- 5 c. If the Delivery Drivers are forced to bring individual lawsuits, the
6 corporate defendants would necessarily gain an unfair advantage, the
7 ability to exploit and overwhelm the limited resources of individual
8 Class Members with vastly superior financial and legal resources;
- 9 d. The costs of individual suits would likely consume the amounts
10 recovered;
- 11 e. Requiring each Class Member to pursue an individual remedy would
12 also discourage the assertion of lawful claims by current employees
13 of Defendants, who would be disinclined to pursue an action against
14 their present and/or former employer due to an appreciable and
15 justified fear of retaliation and permanent damage to their immediate
16 and/or future employment; and
- 17 f. Common business practices Plaintiffs experienced are representative of
18 those experienced by all Delivery Drivers and can establish the right of all
19 Delivery Drivers to recover on the alleged claims.

20 **FIRST CAUSE OF ACTION**

21 **FAILURE TO PAY MINIMUM WAGE**

22 **(CAL. LABOR CODE §§ 1182.11, 1194 ET SEQ.; IWC WAGE ORDER NO. 9;**
23 **MINIMUM WAGE ORDER)**

24 40. The allegations of each of the preceding paragraphs are realleged and incorporated
25 herein by reference, and Plaintiff alleges as follows a claim of relief.

26 41. At all times relevant to this complaint, Cal. Labor Code §§ 1182.11, 1182.12, and 1197,
27 IWC wage order No. 9, and the Minimum Wage Order were in full force and effect and required that
28 Defendant's California nonexempt employees receive the minimum wage for all hours worked

1 irrespective of whether nominally paid on an hourly, piece rate, or any other basis, at the rate of ten
2 dollars (\$10) per hour for work performed up through January 1, 2017, ten dollars and fifty cents
3 (\$10.50) per hour for work performance up through January 1, 2018, eleven dollars (\$11) per hour for
4 work performed up through January 1, 2019, twelve dollars (\$12) per hour for work performed up
5 through January 1, 2020, and thirteen dollars (\$13) per hour for work performed thereafter.

6 42. Defendants failed to pay Plaintiffs and putative class members for all hours worked at
7 the statutory minimum wage rate, as required by law, including for work time spent at mandatory
8 meetings; work time spent waiting to receive assignments and merchandise at Defendant's client's
9 stores or warehouses; work time spent picking up and transporting "haul away" merchandise; and
10 work time spent returning paperwork to Defendant's client's stores at the end of the workday.

11 43. At various times throughout the relevant statutory period, Defendants have caused
12 Plaintiffs and putative class members to incur expenses and deductions that contributed to Defendants'
13 failing to pay minimum wages for all hours worked, as required by law.

14 44. As a direct and proximate result of the acts and/or omissions of Defendants, Plaintiffs
15 and putative class members have been deprived of minimum wages due in amounts to be determined
16 at trial, and to additional amounts as liquidated damages, pursuant to Cal. Labor Code §§ 1194 and
17 1194.2.

18 45. By violating Cal. Labor Code §§ 1182.11, 1182.12, and 1197, IWC wage order No. 9,
19 § 4, and the Minimum Wage Order, Defendants are also liable for civil penalties, interest and
20 reasonable attorneys' fees and costs under Cal. Labor Code §§ 558, 1194, 1197.1.

21 46. Plaintiffs request relief as described below.

22 **SECOND CAUSE OF ACTION**

23 **FAILURE TO PAY OVERTIME COMPENSATION**

24 **(CAL. LABOR CODE §§ 510, 1194 ET SEQ.; IWC WAGE ORDER NO. 9.)**

25 47. The allegations of each of the preceding paragraphs are realleged and incorporated
26 herein by reference, and Plaintiffs allege as follows a claim of relief.

27 48. Defendants have been required, pursuant to Cal. Labor Code § 510 and IWC wage
28 order No. 9, § 3, to pay Plaintiffs and putative class members overtime compensation at a rate of 1.5

1 times their regular rates of pay for all hours worked in excess of eight in a day and in excess of 40 in
2 a week, and at a rate of two times their regular rates of pay for all hours worked in excess of 12 in a
3 day.

4 49. Defendants failed to pay Plaintiffs and putative class members daily or weekly
5 overtime compensation in violation of Cal. Labor Code § 510 and IWC wage order No. 9, § 3.

6 50. As a result of Defendants' unlawful acts, Plaintiffs and putative class members have
7 been deprived of overtime compensation in an amount to be determined at trial, and are entitled to
8 recovery of such amounts, plus interest thereon, and attorneys' fees and costs, under Cal. Labor Code
9 § 1194.

10 51. By violating Cal. Labor Code § 510, Defendants are liable for civil penalties and
11 attorneys' fees and costs under Cal. Labor Code §§ 558, 1194, and 1197.1.

12 52. Plaintiffs request relief as described below.

13 **THIRD CAUSE OF ACTION**

14 **REIMBURSEMENT OF EMPLOYMENT EXPENSES**

15 **(CAL. LABOR CODE § 2802)**

16 53. The allegations of each of the preceding paragraphs are realleged and incorporated
17 herein by reference, and Plaintiffs allege as follows a claim of relief.

18 54. Cal. Labor Code § 2802 provides: "An employer shall indemnify his or her employee
19 for all necessary expenditures or losses incurred by the employee in direct consequence of the
20 discharge of his or her duties, or of his or her obedience to the directions of the employer . . . [which
21 includes] all reasonable costs, including, but not limited to, attorney's fees incurred by the employee
22 enforcing the rights granted by this section."

23 55. As a direct consequence of discharging their duties for Defendants and/or obeying
24 Defendants' directions, Plaintiffs and putative class members have necessarily incurred expenses for
25 which they have not been indemnified by Fidelitone, including the purchase and/or lease and
26 depreciation of vehicles; fuel, maintenance, and other vehicle operating costs; various forms of
27 insurance; wages paid to Delivery Drivers; costs associated with lost or damaged merchandise and
28 other property damage; Fidelitone proprietary uniforms; certain tools and equipment Defendants have

1 required Plaintiffs and class members to purchase or rent from Fidelitone's clients; other
2 miscellaneous equipment including moving pads and blankets, dollies, hand tools, installation
3 supplies, GPS navigational equipment, and cellular telephones; fees for payroll administration
4 services; expenses associated with a cash bond or fund; and the attorneys' fees incurred to enforce
5 Plaintiffs' and putative class members' rights under Cal. Labor Code § 2802.

6 56. Defendants have failed to indemnify or in any manner reimburse Plaintiffs and putative
7 class members for these expenditures and losses.

8 57. By requiring Plaintiffs and putative class members to pay expenses and cover losses
9 that they incurred in direct consequence of the discharge of their duties for Defendants and/or in
10 obedience of Defendants' direction, Defendants have violated and continues to violate Cal. Labor
11 Code § 2802.

12 58. As a direct and proximate result of Defendants' conduct, Plaintiffs and putative class
13 members have suffered substantial losses according to proof, as well as pre-judgment interest, costs,
14 and attorneys' fees for the prosecution of this action, which losses are compensable under Cal. Labor
15 Code §2802.

16 59. Plaintiffs request relief as described below.

17 **FOURTH CAUSE OF ACTION**

18 **UNLAWFUL DEDUCTIONS FROM WAGES**

19 **(CAL. LABOR CODE §§ 221 & 223; IWC WAGE ORDER NO. 9)**

20 60. The allegations of each of the preceding paragraphs are realleged and incorporated
21 herein by reference, and Plaintiffs allege as follows a claim of relief.

22 61. Cal. Labor Code § 221 provides: "It shall be unlawful for any employer to collect or
23 receive from an employee any part of wages theretofore paid by said employer to said employee."

24 62. Cal. Labor Code § 223 provides: "Where any statute or contract requires an employer
25 to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while
26 purporting to pay the wage designated by statute or by contract."

27 63. IWC wage order No. 9, § 8 provides that the only circumstance under which an
28 employer can make a deduction from an employee's wage due to cash shortage, breakage, or loss of

1 equipment is if the employer can show that the shortage, breakage, or loss was the result of the
2 employee's gross negligence or dishonest or willful act.

3 64. These and related statutes, along with California's fundamental public policy
4 protecting wages and wage scales, prohibit employers from subjecting employees to unanticipated or
5 unpredicted reductions in their wages; making employees the insurers of their employer's business
6 losses; otherwise passing the ordinary business losses of the employer onto the employee; taking
7 deductions from wages for business losses in any form unless the employer can establish that the loss
8 was caused by a dishonest or willful act, or gross negligence of the employee; or taking other
9 unpredictable deductions that may impose a special hardship on employees.

10 65. Defendants have violated Cal. Labor Code §§ 221 and 223 and IWC wage order No. 9,
11 § 8 by unlawfully taking deductions from Plaintiffs' and putative class members' compensation to
12 cover certain ordinary business expenses of Defendants, including various forms of insurance;
13 uniforms; payment services; equipment and tools; losses associated with lost or damaged merchandise
14 and other property damage; gift cards and other payments given or reimbursed to customers who
15 complain or are dissatisfied with service they received; and "charge-back" items Defendants claim to
16 reserve the right to deduct from Plaintiff's and putative class members' pay.

17 66. Defendants have further violated Cal. Labor Code §§ 221 and 223 and IWC wage order
18 No. 9, § 8 by unlawfully taking deductions from Plaintiffs' and putative class members' compensation
19 for the purpose of establishing a reserve account to draw upon to cover ordinary business expenses,
20 including compensation to customers complaining of damages to their merchandise or to their homes.

21 67. Because Defendants made unlawful deductions from Plaintiffs' and putative class
22 members' compensation, they are liable to Plaintiffs and putative class members for the compensation
23 that should have been paid but for the unlawful deductions, pursuant to Cal. Labor Code §§ 221 and
24 223 and IWC wage order No. 9, § 8.

25 68. By unlawfully deducting wages and failing to pay Plaintiffs and putative class
26 members, Defendants are also liable for penalties, interest and reasonable attorneys' fees and costs
27 under Cal. Labor Code §§ 218.5 and 1194.

28 69. Plaintiffs request relief as described below.

1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE MEAL PERIODS**

3 **(CAL. LABOR CODE §§ 226.7, 512; IWC WAGE ORDER NO. 9)**

4 70. The allegations of each of the preceding paragraphs are realleged and incorporated
5 herein by reference, and Plaintiffs allege as follows a claim of relief.

6 71. Plaintiffs and putative class members have regularly worked in excess of five (5) hours
7 in a workday without being provided at least a half-hour meal period in which they were relieved of
8 all duties, as required by Cal. Labor Code §§ 226.7 and 512, and IWC Wage Order No. 9, § 11(A).

9 72. Because Defendants failed to provide proper meal periods, they are liable to Plaintiffs
10 and putative class members for one hour of additional pay at the regular rate of compensation for each
11 workday that the proper meal periods were not provided, pursuant to Cal. Labor Code § 226.7(b) and
12 IWC wage order No. 9, § 11(B).

13 73. By violating Cal. Labor Code §§ 226.7 and 512, and IWC wage order No. 9, § 11,
14 Defendants are also liable for penalties, reasonable attorneys' fees, and costs under Cal. Labor Code
15 §§ 218.5 and 1194.

16 74. Plaintiffs request relief as described below.

17 **SIXTH CAUSE OF ACTION**

18 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

19 **(CAL. LABOR CODE § 226.7; IWC WAGE ORDER NO. 9)**

20 75. The allegations of each of the preceding paragraphs are realleged and incorporated
21 herein by reference, and Plaintiffs allege as follows a claim of relief.

22 76. Plaintiffs and putative class members have regularly worked in excess of four (4) hours
23 in a workday without Defendant's authorizing and permitting them to take at least a ten minute rest
24 period, as required by Cal. Labor Code § 226.7 and IWC wage order No. 9, § 12.

25 77. Because Defendants failed to authorize and permit proper rest periods, Defendants are
26 liable to Plaintiffs and putative class members for one hour of additional pay at the regular rate of
27 compensation for each workday that the proper rest periods were not authorized and permitted,
28 pursuant to Cal. Labor Code § 226.7(b) and IWC wage order No. 9, § 12(B).

1 78. By violating Cal. Labor Code §§ 226.7 and 512, and IWC wage order No. 9, §11,
2 Defendants are also liable for penalties, reasonable attorneys' fees, and costs under Cal. Labor Code
3 §§ 218.5 and 1194.

4 79. Plaintiffs request relief as described below.

5 **SEVENTH CAUSE OF ACTION**

6 **FAILURE TO FURNISH ACCURATE WAGE STATEMENTS**

7 **(CAL. LABOR CODE §§ 226, 226.3; IWC WAGE ORDER NO. 9)**

8 80. The allegations of each of the preceding paragraphs are realleged and incorporated
9 herein by reference, and Plaintiffs allege as follows a claim of relief.

10 81. Cal. Labor Code § 226(a) and IWC wage order No. 9, § 7(B) require employers semi-
11 monthly or at the time of each payment of wages to furnish each California employee with a statement
12 itemizing, among other things, the total hours worked by the employee. Cal. Labor Code § 226(b)
13 provides that if an employer knowingly and intentionally fails to provide a statement itemizing, among
14 other things, the total hours worked by the employee, then the employee is entitled to recover the
15 greater of all actual damages or fifty dollars (\$50) for the initial violation and one hundred dollars
16 (\$100) for each subsequent violation, up to four thousand dollars (\$4,000).

17 82. Defendants knowingly and intentionally failed to furnish Plaintiffs and putative class
18 members with timely, itemized statements that accurately report the total hours worked, as required
19 by Cal. Labor Code § 226(a) and IWC wage order No. 9, § 7(B). As a result, Defendants are liable to
20 Plaintiffs and putative class members for the amounts provided by Cal. Labor Code § 226(b), including
21 an award of costs and reasonable attorneys' fees.

22 83. Plaintiffs request relief as described below.

23 **EIGHTH CAUSE OF ACTION**

24 **WAITING TIME PENALTIES**

25 **(CAL. LABOR CODE §§ 201, 202, 203)**

26 84. The allegations of each of the preceding paragraphs are realleged and incorporated
27 herein by reference, and Plaintiffs allege as follows a claim of relief.

28 85. Cal. Labor Code § 201 requires an employer who discharges a California employee to

1 pay all compensation due and owing to that employee immediately upon discharge.

2 86. Cal. Labor Code § 202 requires an employer to pay all compensation due and owing to
3 a California employee who quits within 72 hours of that employee's quitting, unless the employee
4 provides at least 72 hours' notice of quitting, in which case all compensation is due at the end of the
5 employee's final day of work.

6 87. Cal. Labor Code § 203 provides that if an employer willfully fails to pay compensation
7 promptly upon discharge, as required by § 201 or § 202, then the employer is liable for waiting time
8 penalties in the form of continued compensation of up to 30 work days.

9 88. Defendants willfully failed to timely pay compensation and wages, including unpaid
10 minimum wage, unpaid overtime pay, unreimbursed expenses and unreimbursed reserve accounts,
11 unpaid premium pay for missed meal periods, and unpaid premium pay for missed rest periods to
12 Plaintiffs and similarly situated putative class members no longer in Defendants' employ, upon
13 termination of their employment. As a result, Defendants are liable to Plaintiffs and similarly situated
14 putative class members for waiting time penalties, together with interest thereon and reasonable
15 attorneys' fees and costs, under Cal. Labor Code §§ 203 and 256.

16 89. Plaintiffs request relief as described below.

17 **NINTH CAUSE OF ACTION**

18 **VIOLATIONS OF THE CALIFORNIA UNFAIR COMPETITION ACT**

19 **(CAL. BUSINESS & PROFESSIONS CODE §§ 17200-17209)**

20 90. The allegations of each of the preceding paragraphs are realleged and incorporated
21 herein by reference, and Plaintiffs allege as follows a claim of relief.

22 91. California Business & Professions Code § 17200 prohibits unfair competition in the
23 form of any unlawful, unfair, or fraudulent business act or practice.

24 92. California Business & Professions Code § 17204 allows "any person acting for the
25 interests of itself, its members or the general public" to prosecute a civil action for violation of the
26 Unfair Competition Law.

27 93. Beginning at an exact date unknown to Plaintiff, but at least four years prior to the
28 filing of this action, Defendants committed unlawful, unfair, and/or fraudulent business acts and

practices as defined by California Business & Professions Code § 17200, by engaging in the following:

- a. Failing to pay California minimum wage and overtime compensation to Plaintiffs and putative class members;
- b. Failing to provide adequate off-duty meal periods to Plaintiffs and putative class members, and failing to pay them premium pay for missed meal periods;
- c. Failing to authorize and permit adequate rest periods to Plaintiffs and putative class members, and failing to pay them premium pay for missed rest periods;
- d. Failing to indemnify Plaintiffs and putative class members for employment-related business expenses and losses;
- e. Improperly and unlawfully making deductions from Plaintiffs' and plaintiff class members' compensation to cover certain ordinary business expenses and losses of Defendant, which were not attributable to Plaintiffs' and putative class members' dishonest or willful act, or to their gross negligence, as described above;
- f. Improperly and unlawfully demanding a cash bond from Plaintiffs and putative class members, and making deductions from such bonds in violation of the Employee Bond Law, Cal. Labor Code §§ 400-410;
- g. Coercing or compelling Plaintiffs and putative class members to patronize Defendant's clients by requiring Delivery Drivers to purchase or rent certain tools and equipment from Defendants' clients, and coercing or compelling Plaintiffs and putative class members to patronize Contractor Management Services LLC d/b/a Openforce by requiring the Delivery Drivers to purchase payroll administration services from Contractor Management Services LLC d/b/a Openforce in violation of Labor Code §450;
- h. Failing to maintain workers' compensation insurance covering Plaintiff and putative class members, requiring Plaintiffs and putative class members to purchase workers' compensation insurance for themselves, and failing to pay compensation to Plaintiffs and putative class members injured on the job;

- i. Failing to contribute to the Unemployment Trust Fund on behalf of Plaintiffs and putative class members;
 - j. Failing to pay all wages due upon termination of employment to Plaintiffs and similarly situated putative class members no longer in Defendant's employ;
 - k. Failing to provide accurate itemized wage statements to Plaintiffs and putative class members;
 - l. Failing to keep accurate payroll records noting the actual hours worked by Plaintiffs and putative class members, in violation of Cal. Labor Code § 1174 and IWC wage order No. 9, § 7(A);
 - m. Failing to pay all wages for labor performed between the 1st and 15th days of the month between the 16th and the 26th day of the month during which the labor was performed, and failing to pay all wages for labor performed between the 16th and the last day of the month between the 1st and 10th day of the following month, as required by Cal. Labor Code § 204;
 - n. Willfully misclassifying Plaintiffs and putative class members as "independent contractors" in violation of the California Employee Misclassification Act, Cal. Labor Code § 226.8;
 - o. Failing to provide Plaintiffs and putative class members paid sick leave as required by Cal. Labor Code § 246; and
 - p. Intentionally, recklessly and/or negligently misrepresenting to Plaintiffs and putative class members the true nature of their employment status.
94. The violations of these laws serve as unlawful, unfair, and/or fraudulent predicate acts and practices for purposes of Business & Professions Code § 17200.
95. As a direct and proximate result of Defendants' unlawful, unfair, and/or fraudulent acts and practices described herein, Defendants have received and continue to hold ill-gotten gains belonging to Plaintiffs and putative class members. As a direct and proximate result of Defendants' unlawful business practices, Plaintiffs and putative class members have suffered economic injuries including, but not limited to out-of-pocket business expenses, unlawful deductions from

1 compensation, loss of minimum wage and overtime wages, compensation for missed meal periods,
2 compensation for missed rest periods, loss of unemployment insurance benefits, loss of amounts paid
3 into cash bonds and interest thereon, waiting time penalties, and attorneys' fees and costs incurred to
4 enforce their rights, including their rights under Cal. Labor Code § 2802. Defendants have profited
5 from its unlawful, unfair, and/or fraudulent acts and practices in the amount of those business
6 expenses, improper deductions from compensation, unpaid minimum wage and overtime, unpaid
7 compensation for missed meal periods and missed rest periods, unpaid unemployment insurance and
8 workers' compensation premiums, cash bond payments, and interest accrued.

9 96. Plaintiffs and putative class members are entitled to restitution pursuant to Cal.
10 Business & Professions Code §§ 17203 and 17208 for all unpaid business expenses, unlawful
11 deductions from compensation, minimum wage, overtime, meal period and rest period compensation,
12 unemployment insurance and workers' compensation premiums, cash bond payments, unpaid waiting
13 time penalties, interest since four years prior to the filing of this action, and attorney's fees and costs
14 Plaintiffs have incurred to enforce these rights, including their rights under Cal. Labor Code § 2802.

15 97. Plaintiffs and putative class members are entitled to enforce all applicable penalty
16 provisions of the California Labor Code pursuant to Business & Professions Code § 17202.

17 98. By all of the foregoing alleged conduct, Defendants have committed, and are
18 continuing to commit, ongoing unlawful, unfair and fraudulent business practices within the meaning
19 of Cal. Business & Professions Code §17200 *et seq.*

20 99. As a direct and proximate result of the unfair business practices described above,
21 Plaintiffs and putative class members have suffered significant losses and Defendants have been
22 unjustly enriched.

23 100. Pursuant to Cal. Business & Prof. Code §17203, Plaintiffs are entitled to: (a) restitution
24 of money acquired by means of its unfair business practices, in amounts not yet ascertained but to be
25 ascertained at trial; (b) injunctive relief against Defendant's continuation of its unfair and unlawful
26 business practices; and (c) a declaration that Defendant's business practices are unfair and unlawful
27 within the meaning of the statute.

28 101. Plaintiffs assumed the responsibility of enforcement of the laws and lawful claims

1 specified herein. There is a financial burden incurred in pursuing this action which is in the public
2 interest. Therefore, reasonable attorneys' fees are appropriate pursuant to Cal. Code of Civil Procedure
3 § 1021.5.

4 102. Plaintiffs request relief as described below.

5 **TENTH CAUSE OF ACTION**

6 **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT**

7 **(On Behalf of Plaintiff and the Other Aggrieved Employees Against All Defendants)**

8 103. The allegations of each of the preceding paragraphs are realleged and incorporated
9 herein by reference, and Plaintiffs allege as follows a claim of relief.

10 104. Plaintiff has complied with the procedures for bringing suit specified in California
11 Labor Code Section 2699.3. By letters dated April 28, 2020, and July 29, 2020, Plaintiffs Luis
12 Venegas and Ashley Caballero, respectively, on behalf of themselves and the other aggrieved
13 employees, gave written notice by certified mail to the LWDA and to Defendants of the specific
14 provisions of the California Labor Code alleged to have been violated, including the facts and theories
15 to support the alleged violations.

16 105. More than sixty-five (65) calendar days have passed since Plaintiffs provided the
17 LWDA with written notice. To date, Plaintiffs have not received any written notice nor been notified
18 from the LWDA that it does intend to investigate the violations of the California Labor Code alleged
19 herein.

20 106. Plaintiffs, by virtue of their employment with Defendants, and Defendants' failure to
21 provide meal and rest periods, overtime compensation, all wages for all work performed at the
22 statutory minimum agreed upon rate, all wages due at termination, accurate itemized wage statements,
23 and reimbursements for business expenses, are aggrieved employees with standing to bring an action
24 under the Private Attorney General Act ("PAGA"). Plaintiffs, as representatives of the people of the
25 State of California, will seek any and all penalties otherwise capable of being collected by the Labor
26 Commission and/or the Department of Labor Standards Enforcement (DLSE). This includes each of
27 the following, as set forth in Labor Code Section 2699.5, which provides that Section 2699.3(a) applies
28 to any alleged violation of the following provisions: Sections 201 through 203, 204, 205.5, 210, 221,

222, 223, 226, 226.7, 226.8, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1199, and 2802.

107. Plaintiffs, as personal representatives of the general public, will and do seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the statutory period, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with PAGA, with at least 75% of the penalties recovered being reimbursed to the State of California and the Labor and Workforce Development Agency (LWDA).

108. Plaintiffs request relief as described below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, as individuals and on behalf of all Delivery Drivers, prays that the Court enter judgment in their favor and against Defendants as follows:

1. For an Order requiring and certifying this action as a class action;
2. For an Order appointing Plaintiff's counsel as Class Counsel;
3. For compensatory damages in an amount to be ascertained at trial;
4. For restitution in an amount to be ascertained at trial;
5. For punitive damages in an amount to be ascertained at trial;
6. For penalties as required by the applicable Wage Order or otherwise by law;
7. For prejudgment interest at the legal rate pursuant to California Labor Code section 218.6 and other applicable sections;
8. For reasonable attorney's fees pursuant to California Labor Code § 1194;
9. For cost of suit incurred herein;
10. For disgorgement of profits garnered as a result of Defendants' unlawful failure to pay overtime premium compensation and meal and rest period compensation; and
11. For such further relief as the Court may deem appropriate.

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1 **DEMAND FOR JURY TRIAL**

2 Plaintiffs, as individuals and on behalf of all similarly situated individuals, demand jury
3 trial of this matter.

4
5 DATED: October 8, 2021

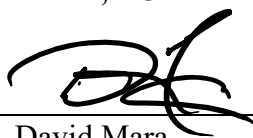
**BOYAMIAN LAW, INC.
KIZIRIAN LAW FIRM. P.C.**

6
7 By: _____

8 Armand R. Kizirian
Michael H. Boyamian

9 DATED: October 8, 2021

MARA LAW FIRM, PC

10
11 By: _____

12 David Mara
Matthew Crawford

13 Attorneys for Plaintiffs
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Exhibit 2

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN BERNARDINO

ASHLEY CABALLERO, AMERICA
CABALLERO, and LUIS VENEGAS,
individuals, on behalf of themselves, all others
similarly situated, all other aggrieved
employees, and the general public,

Plaintiffs,

v.

FIDELITONE LAST MILE, INC., a Delaware
corporation; and DOES 1 through 25, inclusive,

Defendants.

Case No. CIVSB2102002

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: **INSERT**
Time: **INSERT**
Judge: Hon. David S. Cohn
Dept.: S26

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Preliminary Approval of Class Action Settlement came before this Court,
3 the Honorable David S. Cohn presiding, on INSERT, 2022. The Court having considered the
4 papers submitted in support of the Motion, HEREBY ORDERS THE FOLLOWING:

5 1. The following Class is conditionally certified for purposes of settlement only: All
6 individuals who worked for Defendant Fidelitone Last Mile, Inc. ("Defendant") as Contract
7 Carriers, Drivers and/or Helpers in the State of California (but excluding acknowledged
8 employees of Defendant) from July 31, 2016, through November 6, 2021, and all entities owned
9 and controlled by Contract Carriers which contracted directly with Defendant to perform freight
10 delivery services from July 31, 2016, through November 6, 2021.

11 2. The Court grants preliminary approval of the Settlement and the Class based upon
12 the terms set forth in the Settlement Agreement filed herewith. Capitalized terms shall have the
13 definitions set forth in the Settlement.

14 3. The Settlement appears to be fair, adequate and reasonable to the Class. The
15 Settlement falls within the range of reasonableness and appears to be presumptively valid,
16 subject only to any objections that may be raised at the final approval hearing and final approval
17 by this Court.

18 4. Plaintiffs Ashley Caballero, America Caballero, and Luis Venegas are
19 conditionally approved as the Class Representatives for the Class.

20 5. The proposed Class Representative Enhancements of \$10,000 each payable to the
21 Plaintiffs for their services as the class representatives are conditionally approved.

22 6. David Mara and Matthew Crawford of Mara Law Firm, PC, Michael H.
23 Boyamian of Boyamian Law, Inc., and Armand R. Kizirian of Kizirian Law Firm, P.C., are
24 conditionally approved as Class Counsel for the Class.

25 7. The proposed awards of up to \$333,300 in attorneys' fees and up to \$30,000 in
26 actual costs payable to Class Counsel are conditionally approved.

27 8. A final approval hearing on the question of whether the Settlement, attorneys'
28

1 fees and costs to Class Counsel, and the Class Representative Enhancements should be finally
2 approved as fair, reasonable and adequate as to Class Members is scheduled in Department S26
3 on the date and time set forth in Paragraph 15 below.

4 9. The Court confirms Phoenix Class Action Administration Solutions (“Phoenix”)
5 as the Settlement Administrator.

6 10. The proposed payment of no more than \$15,000 in costs to Phoenix for its
7 services as the Settlement Administrator is conditionally approved.

8 11. The Court hereby preliminarily approves the allocation of \$50,000 of the Gross
9 Settlement Fund to Plaintiffs’ PAGA claims. Of this amount, 75% will be paid to the Labor and
10 Workforce Development Agency (“LWDA”) and the remaining 25% will be distributed to the
11 Class Members who worked from April 28, 2019, through November 6, 2021 (the “Aggrieved
12 Employees”). At the Final Approval Hearing, the Court will determine the sufficiency of the
13 PAGA payment. If the Court decides to award less than the amounts set forth by the Parties, then
14 excess amount will become part of the available Net Settlement Amount.

15 12. The Court approves, as to form and content, the Notices in substantially the form
16 attached as Exhibit A the Settlement. The Court approves the procedure for Class Members to
17 participate in, to opt out of, and to object to, the Settlement as set forth in the Notice of
18 Settlement.

19 13. The Court directs the mailing of the Notice by first class mail to Class Members
20 in accordance with the implementation schedule set forth in Paragraph 15 below. The Court
21 finds the dates selected for the mailing and distribution of the Notice, as set forth in the
22 Implementation Schedule, meet the requirements of due process and provide the best notice
23 practicable under the circumstances and shall constitute due and sufficient notice to all persons
24 entitled thereto.

25 14. To facilitate administration of the Settlement pending final approval, the Court
26 hereby enjoins Plaintiff and all Class Members from filing or prosecuting any claims, suits or
27 administrative proceedings (including, but not limited to, filing claims with the Division of
28

Labor Standards Enforcement of the California Department of Industrial Relations) regarding claims released by the Settlement unless and until such Class Members have filed valid Requests for Exclusion with the Settlement Administrator and the time for filing valid Requests for Exclusion with the Settlement Administrator has elapsed. This provision shall not apply to claims not alleged in the Action.

15. The Court orders the following **Implementation Schedule** for further proceedings:

a.	Deadline for Defendant to submit Class Information to Settlement Administrator:	[10 business days after Preliminary Approval Order]
b.	Deadline for Settlement Administrator to Mail the Notice to Class Members	[30 calendar days after Preliminary Approval Order]
c.	Deadline for Class Members to Postmark Requests for Exclusion Forms	[45 calendar days after mailing of Notice to Class Members]
d.	Deadline for Receipt by Court and Counsel of any Objections to the Settlement	[45 calendar days after mailing of Notice to Class Members]
e.	Deadline for Class Counsel to file Motion for Final Approval of Settlement	[16 Court days before Final Approval Hearing]
f.	Deadline for Class Counsel to file Motion for Attorneys' Fees, Costs and Class Representative Payment	[16 Court days before Final Approval Hearing]
g.	Final Approval Hearing and Final Approval	_____, 2022 _____

IT IS SO ORDERED.

Dated: _____, 2022

BY _____
Honorable David S. Cohn
San Bernardino Superior Court Judge

Exhibit 3

NOTICE OF CLASS ACTION SETTLEMENT

*A court authorized this notice. This is not a solicitation.
This is not a lawsuit against you and you are not being sued.
However, your legal rights are affected by whether you act or don't act.*

YOU MAY BE ENTITLED TO MONEY UNDER THE PROPOSED CLASS ACTION SETTLEMENT. PLEASE READ THIS NOTICE CAREFULLY; IT INFORMS YOU ABOUT YOUR LEGAL RIGHTS.

The California Superior Court, County of San Bernardino has granted preliminary approval to a proposed settlement (“Settlement”) of *Ashley Caballero, America Caballero, and Luis Venegas vs. Fidelitone Last Mile, Inc.* Because your rights may be affected by this Settlement, it is important that you read this Notice of Class Action Settlement (“Notice”) carefully.

The Court has certified the following class for settlement purposes (collectively these individuals are referred to as the “Class” or “Class Members”):

All individuals who worked for Fidelitone as Contract Carriers, Drivers and/or Helpers in the State of California (but excluding acknowledged employees of Fidelitone) from July 31, 2016, through November 6, 2021, and all entities owned and controlled by Contract Carriers which contracted directly with Fidelitone to perform freight delivery services during the from July 31, 2016, through November 6, 2021.

The purpose of this Notice is to provide a brief description of the claims alleged in the Class Action, the key terms of the Settlement, and your rights and options with respect to the Settlement.

WHAT INFORMATION IS IN THIS NOTICE

1. Why Have I Received This Notice?.....	Page 1
2. What Is This Case About?	Page 2
3. Am I a Class Member? Am I an Aggrieved Employee?	Page 2
4. How Does This Class Action Settlement Work?.....	Page 2
5. Who Are the Attorneys Representing the Parties?	Page 3
6. What Are My Options?.....	Page 3
7. How Do I Opt Out or Exclude Myself From This Settlement?	Page 4
8. How Do I Object to the Settlement?	Page 4
9. How Does This Settlement Affect My Rights?	Page 5
10. How Much Can I Expect to Receive From This Settlement?.....	Page 5
11. How Do I Get More Information About the Case or the Settlement?	Page 7

1. Why Have I Received This Notice?

Defendant’s records indicate that you may be a Class Member. The Settlement will resolve all Class Members’ Released Class Claims, as described below, during the Claims Period.

A Preliminary Approval Hearing was held on **[INSERT]**, in the California Superior Court, County of San Bernardino. The Court conditionally certified the Classes for settlement purposes only and directed that you receive this Notice.

The Court will hold a Final Approval Hearing concerning the proposed settlement on **[DATE]**, 2022 at **[TIME a.m./p.m.]**, located at 247 W 3rd Street, San Bernardino, CA 92415. The Final Approval Hearing may be continued without further notice to the Class Members. You are advised to check the Court's website (instructions on accessing this site are provided in Section 12 of this Notice) to confirm that the date has not been changed.

2. *What Is This Case About?*

The Class Action was filed by Plaintiffs Ashley Caballero, America Caballero, and Luis Venegas. The complaint alleged causes of action on behalf of Plaintiffs and those similarly situated for (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime; (3) Failure to Reimburse Business Expenses; (4) Unlawful Deductions from Wages; (5) Failure to Provide Meal Periods; (6) Failure to Authorize and Permit Rest Periods; (7) Failure to Furnish Accurate Wage Statements; (8) Waiting Time Penalties; (9) Violation of Unfair Competition Law; and (10) Violations of the Private Attorneys General Act, Labor Code §2699, et seq. ("PAGA").

The Court has not made any determination as to whether the claims advanced by Plaintiffs have any merit. In other words, the Court has not determined whether any laws have been violated, nor has it decided in favor of Plaintiffs or Defendant; instead, both sides agreed to resolve the lawsuit with no decision or admission of who is right or wrong. By agreeing to resolve the lawsuit, all parties avoid the risks and cost of a trial. Defendant expressly denies that it did anything wrong or that it violated the law and further denies any liability whatsoever to Plaintiffs or to the Class.

3. *Am I A Class Member? Am I An Aggrieved Employee?*

You are a Class Member if you worked for Defendant in the State of California as a Contract Carrier, Driver and/or Helper (but not an acknowledged employee of Defendant) from July 31, 2016, through November 6, 2021, or were/are an entity owned and controlled by Contract Carriers which contracted directly with Defendant to perform freight delivery services during the from July 31, 2016, through November 6, 2021.

If you worked for Defendant in the State of California as a Contract Carrier, Driver and/or Helper (but not an acknowledged employee of Defendant) from April 28, 2019, through November 6, 2021, or were/are an entity owned and controlled by Contract Carriers which contracted directly with Defendant to perform freight delivery services during the from April 28, 2019, through November 6, 2021, you are also an "Aggrieved Employee" under the settlement.

4. *How Does This Class Action Settlement Work?*

In this Action, Plaintiffs sued on behalf of themselves and all other similarly situated individuals as defined in Section 3 above. Plaintiffs and these individuals comprise a "Class" and are "Class Members." The settlement of this Action resolves the Released Class Claims of all Class Members, except for those who exclude themselves from the Class by requesting to be excluded in the manner set forth below.

Plaintiffs and Class Counsel believe the Settlement is fair and reasonable. The Court must also review the terms of the Settlement and determine if it is fair and reasonable to the Class. The Court file has the Settlement

documents, which explain the Settlement in greater detail. If you would like copies of the Settlement documents, you can contact Class Counsel, whose contact information is below, and they will provide you with a copy free of charge.

5. Who Are the Attorneys Representing the Parties?

The Court has decided that David Mara and Matthew Crawford of Mara Law Firm, PC, Michael H. Boyamian of Boyamian Law, Inc., and Armand R. Kizirian of Kizirian Law Firm, P.C. are qualified as Class Counsel to represent you and all other Class Members simultaneously.

Class Counsel / Attorneys for Plaintiffs	Attorneys for Defendant
MARA LAW FIRM, PC David Mara Matthew Crawford 2650 Camino Del Rio North, Suite 205 San Diego, CA 92108 Telephone: (619) 234-2833 Facsimile: (619) 234-4048 BOYAMIAN LAW, INC. Michael H. Boyamian 550 North Brand Boulevard, Suite 1500 Glendale, California 91203 Telephone: (818) 547-5300 Facsimile: (818) 547-5678 KIZIRIAN LAW FIRM, P.C. Armand R. Kizirian 550 North Brand Boulevard, Suite 1500 Glendale, California 91203-1922 Telephone: (818) 221-2800 Facsimile: (818) 221-2900	NIXON PEABODY LLP Seth L. Neulight One Embarcadero Center, Suite 1800 San Francisco, CA 94111 Telephone: (415) 984-8200 Facsimile: (415) 984-8300

You do not need to hire your own attorney because Class Counsel is working on your behalf. But, if you want your own attorney, you may hire one at your own cost.

6. What Are My Options?

The purpose of this Notice is to inform you of the proposed Settlement and of your options. Each option has its consequences, which you should understand before making your decision. Your rights regarding each option, and the steps you must take to select each option, are summarized below and explained in more detail in this Notice.

Important Note: Defendant will not retaliate against you in any way for either participating or not participating in this Settlement.

- **DO NOTHING:** If you do nothing and the Court grants final approval of the Settlement, you will become part of this Class Action and may receive a payment from the Settlement. You will be bound to the release of the Released Class Claims and Released PAGA Claims as

defined in the Settlement Agreement and the Final Judgment. You will also give up your right to pursue the Released Class Claims and Released PAGA Claims as defined in Section No. 9 below.

- **OPT OUT:** If you do not want to participate as a Class Member, you may “opt out,” which will remove you from the Class and this Class Action. If the Court grants final approval of the Settlement, you will not receive a Settlement payment and you will not give up the right to sue Defendants and the Released Parties for the Released Class Claims. If you are an Aggrieved Employee, you will receive a portion of the PAGA Payment and be bound by the Released PAGA Claims, even if you opt-out of the settlement.
- **OBJECT:** You may file a legal objection to the proposed settlement. If you would like to object, you may not opt out of this case.

The procedures for opting out and objecting are set forth below in the sections entitled “How Do I Opt Out or Exclude Myself From This Settlement” and “How Do I Object To The Settlement?”

7. *How Do I Opt Out Or Exclude Myself From This Settlement?*

To opt-out of the Settlement, a Class Member must provide the Settlement Administrator at [address] with a Timely Written Request To Opt Out (*i.e.*, it must be postmarked no later than 45 days after the First Mailing Date or [the Response Deadline]). In order to be valid, a Timely Written Request to Opt Out must state the Class Member name, contain the last four digits of his/her social security number, be dated and signed by the Class Member and be timely received by the Settlement Administrator. All Class Members shall be bound by all of the terms of the Settlement Agreement and Judgment unless a Timely Written Request to Opt Out is received by the Settlement Administrator.

The proposed settlement includes the settlement of claims for civil penalties under the PAGA. You may not request to be excluded from the settlement of a PAGA claim. Thus, if the court approves of the settlement, even if you request exclusion from the settlement, if you worked during the PAGA Period of April 28, 2019, through November 6, 2021, you will receive a portion of the PAGA Fund and will be deemed to have released the PAGA Released Claims. A request for exclusion will preserve your right to individually pursue only the remaining class claims.

8. *How Do I Object To The Settlement?*

If you are a Class Member who does not opt out of the Settlement, you may object to the Settlement, personally or through an attorney, by submitting a written Objection to the Settlement Administrator at [address]. All objections to the Settlement must be submitted to the Settlement Administrator no later than 45 days after the Settlement Administrator’s First Mailing Date of the Class Notice, or [the Response Deadline]. The objection will not be valid if it objects only to the appropriateness of the action or its merits.

Class Members who timely file valid objections to the Settlement may (though are not required to) appear at the Final Approval Hearing, either in person or through the objector’s own counsel. If the Court rejects the Objection, the Class Member will receive a Settlement payment and will be bound by the terms of the Settlement.

9. *How Does This Settlement Affect My Rights? What are the Released Claims?*

If the proposed settlement is approved by the Court, a Final Judgment will be entered by the Court. All Class Members who do not opt out of the Settlement will be bound by the Court's Final Judgment and will release Defendants and the Released Parties¹ from the Released Class Claims. The Released Class Claims are:

Any and all claims for: unpaid minimum wages; unpaid overtime wages; unlawful deductions from wages; failure to reimburse work-related expenses; failure to provide meal periods or pay premium wages in lieu thereof; failure to authorize and permit rest periods or pay premium wages in lieu thereof; failure to furnish accurate itemized wage statements; failure to pay all final wages due upon termination; and unfair, unlawful or fraudulent business acts or practices; conversion; common count; fraud; breach of contract; unjust enrichment; as well as any and all remedies available at law or equity on any of the foregoing claims, including without limitation, compensatory damages, wages, penalties, liquidated damages, interest, costs, attorneys' fees, restitution, punitive damages, declaratory relief, and injunctive relief, but only to the extent that such causes of action or claims for relief were asserted or reasonably could have been asserted by Plaintiffs or Class Members in the Action and/or Related Cases based upon any of the conduct alleged therein which arose out of their work for Fidelitone in the State of California during the Claims Period.

If you are an Aggrieved Employee, you will be bound by the Final Judgment and will release the Released Parties from the Released PAGA Claims, even if you opt-out of the settlement. The Released PAGA Claims are:

Any and all claims for: unpaid minimum wages; unpaid overtime wages; unlawful deductions from wages; failure to reimburse work-related expenses; failure to provide meal periods or pay premium wages in lieu thereof; failure to authorize and permit rest periods or pay premium wages in lieu thereof; failure to furnish accurate itemized wage statements; failure to pay all final wages due upon termination; and unfair, unlawful or fraudulent business acts or practices; conversion; common count; fraud; breach of contract; and unjust enrichment, based upon any of the conduct alleged therein which arose out of their work for Fidelitone in the State of California during the PAGA Period.

10. *How Much Can I Expect to Receive From This Settlement?*

The total maximum amount that Defendant could be required to pay under this Agreement shall be up to but no more than \$1,000,000 ("Gross Settlement Fund" or "GSF").

The "Net Settlement Amount" or "NSA" means the portion of the Gross Settlement Fund, available for distribution to Class Members after the deduction of (1) the Class Representative Enhancement Payments to each named Plaintiff in an amount up to \$10,000 each, for prosecution of the Action, risks undertaken for the payment of attorneys' fees and costs, and a general release of all claims; (2) the Settlement Administration Costs to the Settlement Administrator in an amount estimated not to exceed \$20,000; (3) a payment of \$50,000 allocated to the PAGA claims; and (4) payment to Class Counsel in an amount not to exceed \$333,300 (33 1/3% of the Gross Settlement Amount) for attorneys' fees and an amount not to exceed \$30,000 for litigation costs. All of these payments are subject to court approval.

¹ "Released Parties" means Defendant Fidelitone Last Mile, Inc. and its predecessors and successors, as well as all of its current, former and future subsidiaries, affiliates, and parent companies, and each of their respective officers, directors, shareholders, members, partners, insurers, agents, administrators, executors and assigns.

The PAGA Settlement Mount means the portion of the Gross Settlement Fund which is allocated to the compromise and release of Plaintiffs' claims in the Action and Related Cases for PAGA Penalties, i.e., Fifty Thousand Dollars (\$50,000). Of this \$50,000, 75%, or \$37,500, will be paid to the Labor and Workforce Development Agency ("LWDA") (the "LWDA Payment"), and the remaining 25%, or \$12,500, will be distributed to the Aggrieved Employees (the "Aggrieved Employee Payment").

A. How Will Settlement Payments Be Calculated?

The NSA and Aggrieved Employee Payments shall be divided, for distribution to Settlement Class Members and Aggrieved Employees, into two parts as follows: (a) 55% to those Settlement Class Members and Aggrieved Employees who worked for Fidelitone during the Claims Period and/or PAGA Period as Contract Carriers; and (b) 45% to those Settlement Class Members and Aggrieved Employees who worked for Fidelitone during the Claims Period and/or PAGA Period as Drivers and/or Helpers. Each of the aforementioned portions of the Net and PAGA Settlement Amounts shall be allocated and paid to Settlement Class Members and Aggrieved Employees in accordance with formulas specified below.

Individual Settlement Shares to Class Members: After deducting the above-referenced items, the remaining Net Settlement Amount, will be proportionally distributed to the Class Members. The Settlement Administrator will calculate the amount of the Individual Settlement Share due to each Settlement Class Member based on the Workweeks of Settlement Class Member during the Claims Period, as reflected in Fidelitone's records. Specifically, each Settlement Class Member's Settlement Award will be calculated by multiplying the fraction x/y by the total of the applicable portion of Net Settlement Amount (*i.e.*, 55% for Contract Carriers or 45% for Drivers/Helpers, as applicable), where "x" equals the total number of Workweeks for each Settlement Class Member, and "y" equals the total number of Workweeks in which all Settlement Class Members worked for Fidelitone.

PAGA Settlement Shares to Aggrieved Employees: The Aggrieved Employee Payment will be proportionally distributed to the Aggrieved Employees. The Settlement Administrator will calculate the amount of the PAGA Settlement Share due to each Aggrieved Employee based on the Workweeks of Aggrieved Employee during the PAGA Period, as reflected in Fidelitone's records. Specifically, each Aggrieved Employee's Settlement Award will be calculated by multiplying the fraction x/y by the total of the applicable portion of Aggrieved Employee Payment (*i.e.*, 55% for Contract Carriers or 45% for Drivers/Helpers, as applicable), where "x" equals the total number of Workweeks for each Aggrieved Employee, and "y" equals the total number of Workweeks in which all Aggrieved Employees worked for Fidelitone.

One day worked in a given week will be credited as a week for purposes of these calculations. Therefore, the value of each Class Member's and/or Aggrieved Employee's Settlement payment ties directly to the amount of weeks that he or she worked.

B. How Will My Settlement Payment Be Taxed?

Each Settlement Class Member's Individual Settlement Share will be apportioned as follows: 40% wages, 30% interest, and 30% penalties. The amounts paid as wages shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported on IRS W-2 Forms issued by the Settlement Administrator on behalf of the qualified settlement fund. Fidelitone shall pay the employer portion of all such tax withholdings on the Individual Settlement Share amounts paid as wages separate from, and in addition to, the Gross Settlement Fund. Payments of all amounts will be made subject to backup withholding unless a duly executed W-9 form is received from the payee(s). The Individual Settlement Share amounts paid as penalties and interest shall be subject to all authorized and required withholdings other than the

tax withholdings customarily made from employees' wages and shall be reported on IRS 1099 Forms issued by the Settlement Administrator on behalf of the qualified settlement fund. Only the employee share of payroll tax withholdings shall be withheld from each Settlement Class Member's Individual Settlement Share.

Each Aggrieved Employee's PAGA Settlement Share will be apportioned as follows: 100% penalties. The PAGA Settlement Share amounts shall be reported on IRS 1099 Forms issued by the Settlement Administrator on behalf of the qualified settlement fund.

C. What Is My Settlement Payment?

Although your exact share of the Net Settlement Amount as a Class Member cannot be precisely calculated until after the time during which individuals may object or seek exclusion from the Settlement concludes, based upon the calculation above, your approximate share of the Net Settlement Amount, is as follows: \$ [REDACTED], less taxes. This is based on the Class Data which shows you worked [REDACTED] workweeks during the Claims Period.

If you are also an Aggrieved Employee, you will receive a share of the Aggrieved Employee Payment. Based upon the calculation above, your approximate share of the Aggrieved Employee Payment, is as follows: \$ [REDACTED]. This is based on the PAGA Data which shows you worked [REDACTED] workweeks during the PAGA Period.

Checks issued to Settlement Class Members and Aggrieved Employees shall be valid for 120 days. If, after this 120 day period, the total amount of remaining from any uncashed checks equals or exceeds Ten Thousand Dollars (\$10,000), the Settlement Administrator shall re-distribute the residue to Settlement Class Members and Aggrieved Employees. If the total amount of the residue funds is less than Ten Thousand Dollars (\$10,000), those funds shall be distributed in accordance with Section 384 of the California Code of Civil Procedure to Legal Aid at Work, the cy pres recipient selected by the Parties, subject to Court approval.

12. *How Do I Get More Information About the Case or the Settlement?*

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact Class Counsel listed above, or the Settlement Administrator at the telephone number listed below, toll free. Please refer to the Fidelitone Class Action Settlement.

This Notice does not contain all of the terms of the proposed Settlement or all of the details of these proceedings. For more detailed information, you may refer to the underlying documents and papers on file with the Court at 247 W 3rd Street, San Bernardino, CA 92415 or at the Settlement Administrator's Website: [REDACTED]. You may also contact Class Counsel, whose contact information is above, and they will provide you with a copy of the Settlement documents or case documents free of charge. You can also visit the Court's website at <https://www.sb-court.org/divisions/civil-general-information/court-case-information-and-document-sales>. Click the "Accept" button at the bottom of the screen, then click "Click here to access the Portal (Classic)." Click the "Smart Search" button, then enter the case number CIVSB2102002.

PLEASE DO NOT TELEPHONE THE COURT OR COURT'S CLERK FOR INFORMATION ABOUT THIS SETTLEMENT.

NOTICE OF CLASS ACTION SETTLEMENT

A court authorized this notice. This is not a solicitation. This is not a lawsuit against you and you are not being sued. However, your legal rights are affected by whether you act or don't act.

YOU MAY BE ENTITLED TO MONEY UNDER THE PROPOSED CLASS ACTION SETTLEMENT. PLEASE READ THIS NOTICE CAREFULLY; IT INFORMS YOU ABOUT YOUR LEGAL RIGHTS.

IN ORDER TO RECEIVE A SETTLEMENT PAYMENT, YOU MUST SUBMIT THE ENCLOSED IRS W-9 FORM TO THE SETTLEMENT ADMINISTRATOR OR SUBMIT YOUR TAXPAYER IDENTIFICATION NUMBER ONLINE AT www.■■■■■.com.

The California Superior Court, County of San Bernardino has granted preliminary approval to a proposed settlement (“Settlement”) of *Ashley Caballero, America Caballero, and Luis Venegas vs. Fidelitone Last Mile, Inc.* Because your rights may be affected by this Settlement, it is important that you read this Notice of Class Action Settlement (“Notice”) carefully.

The Court has certified the following class for settlement purposes (collectively these individuals are referred to as the “Class” or “Class Members”):

All individuals who worked for Fidelitone as Contract Carriers, Drivers and/or Helpers in the State of California (but excluding acknowledged employees of Fidelitone) from July 31, 2016, through November 6, 2021, and all entities owned and controlled by Contract Carriers which contracted directly with Fidelitone to perform freight delivery services during the from July 31, 2016, through November 6, 2021.

The purpose of this Notice is to provide a brief description of the claims alleged in the Class Action, the key terms of the Settlement, and your rights and options with respect to the Settlement.

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1. *Why Have I Received This Notice?*

Defendant's records indicate that you may be a Class Member. The Settlement will resolve all Class Members' Released Class Claims, as described below, during the Claims Period.

A Preliminary Approval Hearing was held on [INSERT], in the California Superior Court, County of San Bernardino. The Court conditionally certified the Classes for settlement purposes only and directed that you receive this Notice.

The Court will hold a Final Approval Hearing concerning the proposed settlement on [DATE], 2022 at [TIME a.m./p.m.], located at 247 W 3rd Street, San Bernardino, CA 92415. The Final Approval Hearing may be continued without further notice to the Class Members. You are advised to check the Court's website (instructions on accessing this site are provided in Section 12 of this Notice) to confirm that the date has not been changed.

2. *What Is This Case About?*

The Class Action was filed by Plaintiffs Ashley Caballero, America Caballero, and Luis Venegas. The complaint alleged causes of action on behalf of Plaintiffs and those similarly situated for (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime; (3) Failure to Reimburse Business Expenses; (4) Unlawful Deductions from Wages; (5) Failure to Provide Meal Periods; (6) Failure to Authorize and Permit Rest Periods; (7) Failure to Furnish Accurate Wage Statements; (8) Waiting Time Penalties; (9) Violation of Unfair Competition Law; and (10) Violations of the Private Attorneys General Act, Labor Code §2699, et seq. ("PAGA").

The Court has not made any determination as to whether the claims advanced by Plaintiffs have any merit. In other words, the Court has not determined whether any laws have been violated, nor has it decided in favor of Plaintiffs or Defendant; instead, both sides agreed to resolve the lawsuit with no decision or admission of who is right or wrong. By agreeing to resolve the lawsuit, all parties avoid the risks and cost of a trial. Defendant expressly denies that it did anything wrong or that it violated the law and further denies any liability whatsoever to Plaintiffs or to the Class.

3. *Am I A Class Member? Am I An Aggrieved Employee?*

You are a Class Member if you worked for Defendant in the State of California as a Contract Carrier, Driver and/or Helper (but not an acknowledged employee of Defendant) from July 31, 2016, through November 6, 2021, or were/are an entity owned and controlled by Contract Carriers which contracted directly with Defendant to perform freight delivery services during the from July 31, 2016, through November 6, 2021.

If you worked for Defendant in the State of California as a Contract Carrier, Driver and/or Helper (but not an acknowledged employee of Defendant) from April 28, 2019, through November 6, 2021, or were/are an entity owned and controlled by Contract Carriers which contracted directly with Defendant to perform freight delivery services during the from April 28, 2019, through November 6, 2021, you are also an "Aggrieved Employee" under the settlement.

4. *How Does This Class Action Settlement Work?*

In this Action, Plaintiffs sued on behalf of themselves and all other similarly situated individuals as defined in Section 3 above. Plaintiffs and these individuals comprise a "Class" and are "Class Members." The settlement of

this Action resolves the Released Class Claims of all Class Members, except for those who exclude themselves from the Class by requesting to be excluded in the manner set forth below.

Plaintiffs and Class Counsel believe the Settlement is fair and reasonable. The Court must also review the terms of the Settlement and determine if it is fair and reasonable to the Class. The Court file has the Settlement documents, which explain the Settlement in greater detail. If you would like copies of the Settlement documents, you can contact Class Counsel, whose contact information is below, and they will provide you with a copy free of charge.

5. *Who Are the Attorneys Representing the Parties?*

The Court has decided that David Mara and Matthew Crawford of Mara Law Firm, PC, Michael H. Boyamian of Boyamian Law, Inc., and Armand R. Kizirian of Kizirian Law Firm, P.C. are qualified as Class Counsel to represent you and all other Class Members simultaneously.

Class Counsel / Attorneys for Plaintiffs	Attorneys for Defendant
MARA LAW FIRM, PC David Mara Matthew Crawford 2650 Camino Del Rio North, Suite 205 San Diego, CA 92108 Telephone: (619) 234-2833 Facsimile: (619) 234-4048 BOYAMIAN LAW, INC. Michael H. Boyamian 550 North Brand Boulevard, Suite 1500 Glendale, California 91203 Telephone: (818) 547-5300 Facsimile: (818) 547-5678 KIZIRIAN LAW FIRM, P.C. Armand R. Kizirian 550 North Brand Boulevard, Suite 1500 Glendale, California 91203-1922 Telephone: (818) 221-2800 Facsimile: (818) 221-2900	NIXON PEABODY LLP Seth L. Neulight One Embarcadero Center, Suite 1800 San Francisco, CA 94111 Telephone: (415) 984-8200 Facsimile: (415) 984-8300

You do not need to hire your own attorney because Class Counsel is working on your behalf. But, if you want your own attorney, you may hire one at your own cost.

6. *What Are My Options?*

The purpose of this Notice is to inform you of the proposed Settlement and of your options. Each option has its consequences, which you should understand before making your decision. Your rights regarding each option, and the steps you must take to select each option, are summarized below and explained in more detail in this Notice.

Important Note: Defendant will not retaliate against you in any way for either participating or not participating

in this Settlement.

- **SUBMIT W9 FORM:** The Settlement Administrator does not have your taxpayer identification number (“TIN”) and you **must** submit your TIN to receive a Settlement payment from this Settlement. Fill out the enclosed IRS W-9 Form and return it to the Settlement Administrator. Alternatively, you can go onto the settlement website (www. [redacted].com) and submit your TIN there. If you have questions about how to fill out the IRS W-9 Form or how to submit your TIN online, please call the Settlement Administrator at [redacted].
- **DO NOTHING:** If you do nothing and the Court grants final approval of the Settlement, you will become part of this Class Action and may receive a payment from the Settlement. You will be bound to the release of the Released Class Claims and Released PAGA Claims as defined in the Settlement Agreement and the Final Judgment. You will also give up your right to pursue the Released Class Claims and Released PAGA Claims as defined in Section No. 9 below. **NOTE: If you do not submit your TIN, you will not receive your Settlement Payment and will still be bound by the release of the Released Claims as defined in Section No. 10, below, and the Final Judgment**
- **OPT OUT:** If you do not want to participate as a Class Member, you may “opt out,” which will remove you from the Class and this Class Action. If the Court grants final approval of the Settlement, you will not receive a Settlement payment and you will not give up the right to sue Defendants and the Released Parties for the Released Class Claims. If you are an Aggrieved Employee, you will receive a portion of the PAGA Payment and be bound by the Released PAGA Claims, even if you opt-out of the settlement.
- **OBJECT:** You may file a legal objection to the proposed settlement. If you would like to object, you may not opt out of this case.

The procedures for submitting the IRS W-9 Form, opting out and objecting are set forth below in the sections entitled “How Do I Submit My Taxpayer Identification Number to Receive a Settlement Payment?,” “How Do I Opt Out or Exclude Myself From This Settlement?,” and “How Do I Object To The Settlement?”

7. *How Do I Submit My Taxpayer Identification Number to Receive a Settlement Payment?*

The Settlement Administrator does **not** have your Taxpayer Identification Number (“TIN”) on file. In most circumstances, this number is your Social Security Number. This information is **required** to issue you a Settlement payment, for income tax reporting purposes. You **must** submit to the Settlement Administrator the enclosed IRS W-9 Form or submit your TIN online at www. [redacted].com in order to receive your Settlement payment. If you have questions about how to fill out the IRS W-9 Form or how to submit your TIN online, please call the Settlement Administrator at [redacted].

Fill in the requested information enclosed in the IRS W-9 Form, sign and mail/fax it to the Settlement Administrator:

Fidelitone Settlement Administrator
c/o Phoenix Settlement Administrators
1411 N. Batavia Street, Suite 105

If you do **not** submit the enclosed IRS 1-9 Form or submit your TIN online and the Settlement Administrator does **not** have a TIN on file for you, the Settlement Administrator will **not** mail you a Settlement check. Your Settlement payment will become forfeit and will be deposited with the *cy pres* beneficiary, Legal Aid at Work.

8. *How Do I Opt Out Or Exclude Myself From This Settlement?*

To opt-out of the Settlement, a Class Member must provide the Settlement Administrator at [address] with a Timely Written Request To Opt Out (*i.e.*, it must be postmarked no later than 45 days after the First Mailing Date or [the Response Deadline]). In order to be valid, a Timely Written Request to Opt Out must state the Class Member name, contain the last four digits of his/her social security number, be dated and signed by the Class Member and be timely received by the Settlement Administrator. All Class Members shall be bound by all of the terms of the Settlement Agreement and Judgment unless a Timely Written Request to Opt Out is received by the Settlement Administrator.

The proposed settlement includes the settlement of claims for civil penalties under the PAGA. You may not request to be excluded from the settlement of a PAGA claim. Thus, if the court approves of the settlement, even if you request exclusion from the settlement, if you worked during the PAGA Period of April 28, 2019, through November 6, 2021, you will receive a portion of the PAGA Fund and will be deemed to have released the PAGA Released Claims. A request for exclusion will preserve your right to individually pursue only the remaining class claims.

9. *How Do I Object To The Settlement?*

If you are a Class Member who does not opt out of the Settlement, you may object to the Settlement, personally or through an attorney, by submitting a written Objection to the Settlement Administrator at [address]. All objections to the Settlement must be submitted to the Settlement Administrator no later than 45 days after the Settlement Administrator's First Mailing Date of the Class Notice, or [the Response Deadline]. The objection will not be valid if it objects only to the appropriateness of the action or its merits.

Class Members who timely file valid objections to the Settlement may (though are not required to) appear at the Final Approval Hearing, either in person or through the objector's own counsel. If the Court rejects the Objection, the Class Member will receive a Settlement payment and will be bound by the terms of the Settlement.

10. *How Does This Settlement Affect My Rights? What are the Released Claims?*

If the proposed settlement is approved by the Court, a Final Judgment will be entered by the Court. All Class Members who do not opt out of the Settlement will be bound by the Court's Final Judgment and will release Defendants and the Released Parties¹ from the Released Class Claims. The Released Class Claims are:

Any and all claims for: unpaid minimum wages; unpaid overtime wages; unlawful deductions from wages; failure to reimburse work-related expenses; failure to provide meal periods or pay premium wages in lieu

¹ "Released Parties" means Defendant Fidelitone Last Mile, Inc. and its predecessors and successors, as well as all of its current, former and future subsidiaries, affiliates, and parent companies, and each of their respective officers, directors, shareholders, members, partners, insurers, agents, administrators, executors and assigns.

thereof; failure to authorize and permit rest periods or pay premium wages in lieu thereof; failure to furnish accurate itemized wage statements; failure to pay all final wages due upon termination; and unfair, unlawful or fraudulent business acts or practices; conversion; common count; fraud; breach of contract; unjust enrichment; as well as any and all remedies available at law or equity on any of the foregoing claims, including without limitation, compensatory damages, wages, penalties, liquidated damages, interest, costs, attorneys' fees, restitution, punitive damages, declaratory relief, and injunctive relief, but only to the extent that such causes of action or claims for relief were asserted or reasonably could have been asserted by Plaintiffs or Class Members in the Action and/or Related Cases based upon any of the conduct alleged therein which arose out of their work for Fidelitone in the State of California during the Claims Period.

If you are an Aggrieved Employee, you will be bound by the Final Judgment and will release the Released Parties from the Released PAGA Claims, even if you opt-out of the settlement. The Released PAGA Claims are:

Any and all claims for: unpaid minimum wages; unpaid overtime wages; unlawful deductions from wages; failure to reimburse work-related expenses; failure to provide meal periods or pay premium wages in lieu thereof; failure to authorize and permit rest periods or pay premium wages in lieu thereof; failure to furnish accurate itemized wage statements; failure to pay all final wages due upon termination; and unfair, unlawful or fraudulent business acts or practices; conversion; common count; fraud; breach of contract; and unjust enrichment, based upon any of the conduct alleged therein which arose out of their work for Fidelitone in the State of California during the PAGA Period.

11. *How Much Can I Expect to Receive From This Settlement?*

The total maximum amount that Defendant could be required to pay under this Agreement shall be up to but no more than \$1,000,000 ("Gross Settlement Fund" or "GSF").

The "Net Settlement Amount" or "NSA" means the portion of the Gross Settlement Fund, available for distribution to Class Members after the deduction of (1) the Class Representative Enhancement Payments to each named Plaintiff in an amount up to \$10,000 each, for prosecution of the Action, risks undertaken for the payment of attorneys' fees and costs, and a general release of all claims; (2) the Settlement Administration Costs to the Settlement Administrator in an amount estimated not to exceed \$20,000; (3) a payment of \$50,000 allocated to the PAGA claims; and (4) payment to Class Counsel in an amount not to exceed \$333,300 (33 1/3% of the Gross Settlement Amount) for attorneys' fees and an amount not to exceed \$30,000 for litigation costs. All of these payments are subject to court approval.

The PAGA Settlement Mount means the portion of the Gross Settlement Fund which is allocated to the compromise and release of Plaintiffs' claims in the Action and Related Cases for PAGA Penalties, i.e., Fifty Thousand Dollars (\$50,000). Of this \$50,000, 75%, or \$37,500, will be paid to the Labor and Workforce Development Agency ("LWDA") (the "LWDA Payment"), and the remaining 25%, or \$12,500, will be distributed to the Aggrieved Employees (the "Aggrieved Employee Payment").

A. How Will Settlement Payments Be Calculated?

The NSA and Aggrieved Employee Payment shall be divided, for distribution to Settlement Class Members and Aggrieved Employees, into two parts as follows: (a) 55% to those Settlement Class Members and Aggrieved Employees who worked for Fidelitone during the Claims Period and/or PAGA Period as Contract Carriers; and (b) 45% to those Settlement Class Members and Aggrieved Employees who worked for Fidelitone during the Claims Period and/or PAGA Period as Drivers and/or Helpers. Each of the aforementioned portions of the Net

and PAGA Settlement Amounts shall be allocated and paid to Settlement Class Members and Aggrieved Employees in accordance with formulas specified below.

Individual Settlement Shares to Class Members: After deducting the above-referenced items, the remaining Net Settlement Amount, will be proportionally distributed to the Class Members. The Settlement Administrator will calculate the amount of the Individual Settlement Share due to each Settlement Class Member based on the Workweeks of Settlement Class Member during the Claims Period, as reflected in Fidelitone's records. Specifically, each Settlement Class Member's Settlement Award will be calculated by multiplying the fraction x/y by the total of the applicable portion of Net Settlement Amount (*i.e.*, 55% for Contract Carriers or 45% for Drivers/Helpers, as applicable), where "x" equals the total number of Workweeks for each Settlement Class Member, and "y" equals the total number of Workweeks in which all Settlement Class Members worked for Fidelitone.

PAGA Settlement Shares to Aggrieved Employees: The Aggrieved Employee Payment will be proportionally distributed to the Aggrieved Employees. The Settlement Administrator will calculate the amount of the PAGA Settlement Share due to each Aggrieved Employee based on the Workweeks of Aggrieved Employee during the PAGA Period, as reflected in Fidelitone's records. Specifically, each Aggrieved Employee's Settlement Award will be calculated by multiplying the fraction x/y by the total of the applicable portion of Aggrieved Employee Payment (*i.e.*, 55% for Contract Carriers or 45% for Drivers/Helpers, as applicable), where "x" equals the total number of Workweeks for each Aggrieved Employee, and "y" equals the total number of Workweeks in which all Aggrieved Employees worked for Fidelitone.

One day worked in a given week will be credited as a week for purposes of these calculations. Therefore, the value of each Class Member's and/or Aggrieved Employee's Settlement payment ties directly to the amount of weeks that he or she worked.

B. How Will My Settlement Payment Be Taxed?

Each Settlement Class Member's Individual Settlement Share will be apportioned as follows: 40% wages, 30% interest, and 30% penalties. The amounts paid as wages shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported on IRS W-2 Forms issued by the Settlement Administrator on behalf of the qualified settlement fund. Fidelitone shall pay the employer portion of all such tax withholdings on the Individual Settlement Share amounts paid as wages separate from, and in addition to, the Gross Settlement Fund. Payments of all amounts will be made subject to backup withholding unless a duly executed W-9 form is received from the payee(s). The Individual Settlement Share amounts paid as penalties and interest shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported on IRS 1099 Forms issued by the Settlement Administrator on behalf of the qualified settlement fund. Only the employee share of payroll tax withholdings shall be withheld from each Settlement Class Member's Individual Settlement Share.

Each Aggrieved Employee's PAGA Settlement Share will be apportioned as follows: 100% penalties. The PAGA Settlement Share amounts shall be reported on IRS 1099 Forms issued by the Settlement Administrator on behalf of the qualified settlement fund.

C. What Is My Settlement Payment?

Although your exact share of the Net Settlement Amount as a Class Member cannot be precisely calculated until after the time during which individuals may object or seek exclusion from the Settlement concludes, based upon the calculation above, your approximate share of the Net Settlement Amount, is as follows: \$.

less taxes. This is based on the Class Data which shows you worked [REDACTED] workweeks during the Claims Period.

If you are also an Aggrieved Employee, you will receive a share of the Aggrieved Employee Payment. Based upon the calculation above, your approximate share of the Aggrieved Employee Payment, is as follows: \$ [REDACTED]. This is based on the PAGA Data which shows you worked [REDACTED] workweeks during the PAGA Period.

D. What Happens If I Don't Submit the Enclosed IRS W-9 Form?

It is strongly encouraged that you submit the enclosed IRS W-9 Form. If you do not submit this form within 120 calendar days after the settlement checks are mailed to Participating Class Members, your settlement check will be deposited with Legal Aid at Work. If you have any questions about this, please contact the Settlement Administrator.

13. *How Do I Get More Information About the Case or the Settlement?*

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact Class Counsel listed above, or the Settlement Administrator at the telephone number listed below, toll free. Please refer to the Fidelitone Class Action Settlement.

This Notice does not contain all of the terms of the proposed Settlement or all of the details of these proceedings. For more detailed information, you may refer to the underlying documents and papers on file with the Court at 247 W 3rd Street, San Bernardino, CA 92415 or at the Settlement Administrator's Website: [REDACTED]. You may also contact Class Counsel, whose contact information is above, and they will provide you with a copy of the Settlement documents or case documents free of charge. You can also visit the Court's website at <https://www.sb-court.org/divisions/civil-general-information/court-case-information-and-document-sales>. Click the "Accept" button at the bottom of the screen, then click "Click here to access the Portal (Classic)." Click the "Smart Search" button, then enter the case number CIVSB2102002.

PLEASE DO NOT TELEPHONE THE COURT OR COURT'S CLERK FOR INFORMATION ABOUT THIS SETTLEMENT.

IRS W-9 FORM

To timely receive payment, please complete the substitute IRS Form W-9 form below.
Sign and mail or fax this form to:

Fideltione Settlement Administrator
c/o Phoenix Settlement Administrators
1411 N. Batavia Street, Suite 105
Orange, CA 92867
Fax: **INSERT**

Taxpayer Identification Number Certification - Substitute IRS Form W-9

Enter your Social Security Number (SSN) or Employer Identification Number (EIN):
SSN: _ _ _ -- _ _ -- _ _ _ _ OR EIN: _ _ -- _ _ _ _ _ _ _ _

Check Appropriate box: ☐ Individual/Sole Prop. ☐ Other

Print name as shown on your income tax return if different from
Payee: _____

Under penalties of perjury, I certify that:

1. The taxpayer identification number shown on this form is my correct taxpayer identification number,
and
2. I am a U.S. person (including a U.S. resident alien). Please Check one: ☐ Yes ☐ No

Signature: _____

Exhibit 4

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1 **ORDER**

2 This matter came on for hearing on INSERT, 2022, at INSERT, in Department S26 of the
3 above-captioned Court on Plaintiffs' Motion for Final Approval of Class Action Settlement,
4 Attorneys' Fees, Costs, Class Representative Enhancements, and Entering of Judgment pursuant
5 to: (1) California Rule of Court 3.769(g); (2) the Order Granting Plaintiffs' Motion for
6 Preliminary Approval of Class Action Settlement, Conditional Certification, Approval of Class
7 Notice, Setting of Final Approval Hearing Date (hereinafter referred to as the "Preliminary
8 Approval Order"); and (3) the Settlement Agreement.

9 Having received and considered the Settlement Agreement, the supporting papers filed by
10 the Parties, and the evidence and argument received by the Court in conjunction with the Motion
11 for Preliminary Approval of Class Action Settlement; and Plaintiffs' Motion for Final Approval,
12 Attorneys' Fees, Costs, Class Representative Enhancements, and Entering of Judgment, the
13 Court grants final approval of the Settlement and HEREBY ORDERS AND MAKES THE
14 FOLLOWING DETERMINATIONS:

15 1. Pursuant to the Preliminary Approval Order, the Notice of Class Action
16 Settlement (hereinafter referred to as the "Notice") was mailed to all members of the Class by
17 first-class U.S. mail. The Notice informed the Class of the terms of the Settlement, of their right
18 to receive their proportional Settlement Payment, of their right to request exclusion from the
19 Class and the Settlement, of their right to comment upon or object to the Settlement and to
20 appear in person or by counsel at the final approval hearing and of the date set for the Final
21 Approval hearing. Adequate periods of time were provided by each of these procedures.

22 2. In response to the Notice, no members of the Class filed a written objection to the
23 Settlement, no class members stated an intention to appear at the final approval hearing, and only
24 INSERT member(s) of the Class requested to be excluded from the Settlement.

25 3. The Court finds and determines that this notice procedure afforded adequate
26 protections to Class Members and provides the basis for the Court to make an informed decision
27 regarding approval of the Settlement based on the Class Members' response. The Court finds and
28

1 determines that the Notice provided in conjunction with preliminary approval was the best notice
2 practicable, which satisfied the requirements of law and due process.

3 4. The Court further finds and determines that the terms of the Settlement
4 Agreement are fair, reasonable and adequate to the Class and to each Class Member and that the
5 settlement is ordered finally approved, and that all terms and provisions of the Settlement
6 Agreement should be and hereby are ordered to be consummated.

7 5. The Court has certified a Class, as that term is defined in and by the terms of the
8 Settlement Agreement, and the Court deems this definition sufficient for purposes of California
9 Rule of Court 3.765(a).

10 6. The Court hereby approves the terms set forth in the Settlement Agreement and
11 finds that the Settlement is, in all respects, fair, adequate, and reasonable, and directs the Parties
12 to effectuate the settlement according to its terms. The Court finds that the settlement was
13 reached as a result of informed and non-collusive arm's-length negotiations facilitated by a
14 neutral mediator. The Court further finds that the Parties conducted extensive investigation,
15 research, and discovery and that their attorneys were able to reasonably evaluate their respective
16 positions. The Court also finds that settlement will enable the Parties to avoid additional and
17 potentially substantial litigation costs, as well as delay and risks if the Parties were to continue to
18 litigate the case. The Court has reviewed the monetary recovery provided as part of the
19 settlement and recognizes the significant value accorded to the Class.

20 7. The Court hereby confirms David Mara and Matthew Crawford of Mara Law
21 Firm, PC, Michael H. Boyamian of Boyamian Law, Inc., and Armand R. Kizirian of Kizirian
22 Law Firm, P.C. as Class Counsel in this action.

23 8. The Court hereby confirms Plaintiffs Ashley Caballero, America Caballero, and
24 Luis Venegas as the Class Representatives in this action.

25 9. The Court finds and determines that the individual Settlement Payments provided
26 for by the terms of the Settlement Agreement to be paid to Participating Class Members are fair
27 and reasonable. The Court hereby gives final approval to and orders the payment of those
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1 amounts be made to the Participating Class Members in accordance with the terms of the
2 Settlement.

3 10. The Court finds and determines that payment to the California Labor and
4 Workforce Development Agency of \$INSERT as its share of the settlement of civil penalties in
5 this case is fair, reasonable, and appropriate. The Court hereby gives final approval to and orders
6 that the payment of that amount be paid in accordance with the Settlement.

7 11. The Court finds and determines the Class Representative Enhancements in the
8 sum of \$INSERT each to Plaintiffs Ashley Caballero, America Caballero, and Luis Venegas are
9 fair and reasonable. The Court hereby orders the Administrator to make these payments to the
10 Plaintiffs/Class Representatives in accordance with the terms of the Settlement Agreement.

11 12. The Court finds and determines that the payment to be paid to the Settlement
12 Administrator, Phoenix Class Action Administration Solutions, in the sum of \$INSERT for its
13 fee and expenses incurred is fair and reasonable. The Court hereby orders the Administrator to
14 make this payment to itself in accordance with the terms of the Settlement Agreement.

15 13. Pursuant to the terms of the Settlement, and the authorities, evidence and
16 argument submitted by Class Counsel, the Court hereby awards Class Counsel attorneys' fees in
17 the sum of \$INSERT and litigation costs of \$INSERT. The Court finds such amounts to be fair
18 and reasonable. The Court hereby orders the Settlement Administrator to make these payments in
19 accordance with the terms of the Settlement Agreement.

20 14. Neither Defendant nor any related persons or entities shall have any further
21 liability for costs, expenses, interest, attorneys' fees, or for any other charge, expense, or
22 liability, except as provided for by the Settlement Agreement.

23 15. Nothing in this Order shall preclude any action to enforce the Parties' obligations
24 pursuant to the Settlement Agreement or pursuant to this Order, including the requirement that
25 Defendant make payments to Participating Class Members in accordance with the Settlement
26 Agreement.

27 16. The Court hereby enters final judgment in this case in accordance with the terms
28 of the Settlement Agreement, Preliminary Approval Order and this Order.

17. The Parties shall bear their own costs and attorneys' fees except as otherwise provided for by the Settlement Agreement and this Court's Order Granting Final Approval.

18. Without affecting the finality of this Order in any way, the Court retains jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation and enforcement of this order and the Settlement.

JUDGMENT

19. This document shall constitute a judgment for purposes of California Rules of Court, Rule 3.769(h). In accordance with, and for the reasons stated in this Order, judgment shall be entered within the meaning and for purposes of Code of Civil Procedure sections 577, 904.1(a), and Rules 3.769, and 8.104 of the California Rules of Court whereby named Plaintiff/Class Representative and all Class Members shall take nothing from Defendant except as expressly set forth in the Settlement Agreement filed on February 23, 2021, in conjunction with Plaintiff's Motion for Preliminary Approval of the Class Action Settlement. The Court pursuant to California Rule of Court 3.769(h) shall retain jurisdiction over the parties to enforce the terms of the judgment.

Dated: _____

BY ORDER OF THE COURT
HON. DAVID S. COHN
SUPERIOR COURT OF CALIFORNIA