

1 **SETTLEMENT AGREEMENT OF CLASS ACTION AND PRIVATE**
2 **ATTORNEYS GENERAL ACT CLAIMS**

3 This Settlement Agreement of Class Action and Private Attorneys General Act
4 Claims (“Settlement” or “Settlement Agreement”) is made between Raul Martinez
5 and Philippe Vieux (“Plaintiffs”), as individuals and on behalf of all other similarly
6 situated and alleged aggrieved employees, on the one hand, and Defendant Knight
7 Transportation, Inc. (“Defendant” or “Knight”) on the other hand (collectively, the
8 “Parties” and individually, a “Party”).

9 **I. DEFINITIONS**

10 A. “Class Counsel” means Jonathan Lebe, Shigufa Saleheen, and Brielle
11 Edborg of Lebe Law, APLC, 777 S. Alameda Street, Second Floor, Los Angeles,
12 California 90021.

13 B. “Class Member Payments” means the amount payable from the Class
14 Payout Fund to each Settlement Class Member, 40% of which shall be allocated to
15 penalties and other non-wage recovery and 60% of which shall be allocated to wages.
16 Class Member Payments are separate and distinct from PAGA Payments (defined
17 below) that will be paid to PAGA Aggrieved Employees.

18 C. “Class Payout Fund” means all funds remaining from the Gross
19 Settlement Amount after deducting the Court-awarded Named Plaintiffs
20 Enhancement Payments, Fees Award, Costs Award, Settlement Administration Costs,
21 and PAGA Payments.

22 D. “Costs Award” means costs of litigation approved by the Court for Class
23 Counsel’s costs incurred in investigation, litigation, and resolution of the Lawsuit,
24 and administration of the Settlement, including anticipated costs incurred through
25 Final Approval and disbursement of payments under this Settlement Agreement and
26 obtaining entry of the judgment terminating the Lawsuit.

1 E. “Court” means the United States District Court for the Central District
2 of California, located at First Street Courthouse, 350 West First Street, Los Angeles,
3 California 90012.

4 F. “Defendant’s Counsel” means Paul Cowie, John Ellis, and Luis Arias of
5 Sheppard, Mullin, Richter & Hampton LLP, Four Embarcadero Center, 17th Floor,
6 San Francisco, CA 94111.

7 G. “Effective Date” means the date by which the final judgment becomes
8 final. For purposes of this Settlement Agreement, the final judgment “becomes final”
9 only after the Court grants the motion for final approval of the settlement and upon
10 the latter of (i) the period for filing any appeal, rehearing, writ, or other appellate
11 proceeding challenging or opposing the Settlement has elapsed without any appeal,
12 writ, or other appellate proceeding having been filed; (ii) any appeal, rehearing, writ
13 or other appellate proceeding challenging or opposing the Settlement has been
14 dismissed finally and conclusively with no right to pursue further remedies or relief
15 and without impacting this Settlement; or (iii) any appeal, rehearing, writ or other
16 appellate proceeding has upheld the Court’s final order with no right to pursue further
17 remedies or relief. In this regard, it is the intention of the parties that the Settlement
18 shall not become effective, and Defendant will not be obligated to fund this
19 Settlement, until the Court’s order approving the Settlement is completely final, and
20 there is no further recourse by an appellant, objector, intervenor, or otherwise by
21 anyone who seeks to contest the Settlement.

22 H. “Fees Award” means attorneys’ fees approved by the Court for Class
23 Counsel’s fees incurred in investigation, litigation, and resolution of the Lawsuit, and
24 administration of the Settlement, including anticipated fees incurred through Final
25 Approval and disbursement of payments under this Settlement Agreement and
26 obtaining entry of the judgment terminating the Lawsuit, and which shall not exceed
27 one-third of the Gross Settlement Amount, i.e. up to \$366,666.67.

1 **I.** “Final Approval” means the Court’s order granting final approval of the
2 Settlement Agreement.

3 **J.** “Gross Settlement Amount” means a non-reversionary common fund
4 that shall have a total all-in value of \$1,100,000.00 and includes without limitation
5 any and all payments Defendant may be responsible for under the Settlement,
6 including any Fees Award and Costs Award to Class Counsel, Named Plaintiffs
7 Enhancement Payments, the Class Member Payments, the PAGA Payments (which
8 includes payments to the LWDA), Settlement Administration Costs, and all payroll
9 taxes (inclusive of employer-side payroll taxes) due and owing as a result of the
10 Settlement. The total amount that Defendant shall pay for any and all purposes under
11 this Settlement Agreement is the Gross Settlement Amount.

12 **K.** The “Lawsuit” means the action entitled *Raul Martinez and Philippe*
13 *Vieux v. Knight Transportation, Inc. Which Will Do Business in California As Arizona*
14 *Knight Transportation, Inc.*, Case No. 5:21-cv-00572-MEMF-SP, pending in the
15 United States District Court for the Central District of California, removed from the
16 Superior Court of the State of California for the County of San Bernadino on April 1,
17 2021.

18 **L.** “LWDA” means the California Labor and Workforce Development
19 Agency.

20 **M.** “Named Plaintiffs” means Raul Martinez and Philippe Vieux.

21 **N.** “Named Plaintiffs Enhancement Payments” means the amount to be paid
22 to the Named Plaintiffs for their time and effort spent pursuing the Lawsuit; for the
23 risks associated with suing Defendant; and for their agreement to enter into a general
24 release of all claims, not to exceed \$5,000.00.

25 **O.** “PAGA” means the California Private Attorneys General Act, California
26 Labor Code §§ 2699 *et seq.*

1 **P.** “PAGA Aggrieved Employees” means all current and former employee
2 over-the-road drivers of Defendant who were California residents or assigned to work
3 out of a location in California during the PAGA Period.

4 **Q.** “PAGA Aggrieved Employee List” means the list of all PAGA
5 Aggrieved Employees that Defendant will diligently and in good faith compile from
6 its records to accurately reflect employees’ names, last known mailing address,
7 telephone number, Social Security number, and pay periods worked by the PAGA
8 Aggrieved Employees during the PAGA Period.

9 **R.** “PAGA Payment” means the payment to the State of California LWDA
10 and the PAGA Aggrieved Employees in settlement of all claims for PAGA penalties
11 as defined in this Settlement Agreement.

12 **S.** “PAGA Period” means the time period beginning February 1, 2019
13 through the date of Preliminary Approval.

14 **T.** “Settlement Class” means all persons who are or have been employed by
15 Defendant as employee over-the-road drivers who were California residents or
16 assigned to work out of a location in California during the Class Period.

17 **U.** “Settlement Class Members” means individuals in the Settlement Class
18 who do not submit a timely and valid request for exclusion from the Settlement Class.

19 **V.** “Settlement Class Member List” means the list of all Settlement Class
20 Members that Defendant will diligently and in good faith compile from its records to
21 accurately reflect employees’ names, last known mailing address, telephone number,
22 Social Security number, and workweeks worked during the Class Period.

23 **W.** “Class Period” means the time period from April 6, 2016 through the
24 date of Preliminary Approval.

25 **X.** “Qualified Settlement Account” means the account established by the
26 Settlement Administrator pursuant to Internal Revenue Code section 1.468B-1.

27 **Y.** “Released Parties” means Defendant, and each of its past, present and
28 future agents, employees, servants, owners, officers, directors, partners, trustees,

1 representatives, shareholders, stockholders, attorneys, parents, subsidiaries, equity
2 sponsors, related companies/corporations and/or partnerships (defined as a
3 company/corporation and/or partnership that is, directly or indirectly, under common
4 control with Defendant or any of its parents and/or affiliates), divisions, assigns,
5 predecessors, successors, insurers, consultants, joint ventures, any actual or alleged
6 joint employers, affiliates, and alter-egos, and all of their respective past, present and
7 future employees, directors, officers, agents, owners, attorneys, insurers,
8 stockholders, fiduciaries, parents, subsidiaries, and assigns.

9 **Z.** “Settlement Administration Costs” means the costs payable from the
10 Gross Settlement Amount to the Settlement Administrator for administering this
11 Settlement, including, but not limited to, the Settlement Administrator’s
12 responsibilities outlined in this Settlement Agreement.

13 **AA.** “Settlement Administrator” means Rust Consulting, whom the Parties
14 mutually agree shall be responsible for the administration of the Settlement,
15 distribution of amounts owed under this Settlement, and matters necessarily related
16 thereto, pursuant to the terms of this Settlement Agreement.

17 **II. RECITALS**

18 **A. Background and Procedural History**

19 1. Plaintiff Raul Ramirez filed a class action on July 8, 2020, in the
20 San Bernadino Superior Court entitled Raul *Martinez v. Knight Transportation, Inc.*,
21 Case No. CIVDS2015264, alleging the following causes of action: (1) Failure to Pay
22 Minimum Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Timely Pay All
23 Earned Wages; (4) Unlawful Deduction of Wages; (5) Failure to Provide Meal
24 Periods; (6) Failure to Permit Rest Breaks; (7) Failure to Provide Accurate Itemized
25 Wage Statements; (8) Failure to Reimburse Necessary Business Expenses; (9) Failure
26 to Pay All Wages Due Upon Separation of Employment; and (10) Violation of Unfair
27 Competition Law. Defendant answered the Complaint on December 18, 2020.

1 2. Plaintiffs Raul Martinez and Philippe Vieux subsequently filed the
2 operative First Amended Complaint (“FAC”) on January 29, 2021, adding a cause of
3 action for civil penalties under the California Private Attorneys General Act
4 (“PAGA”). Defendant answered the FAC on February 26, 2021.

5 3. On April 1, 2021, Defendant removed the action to the United
6 States District Court for the Central District of California, Case No. 5:21-cv-00572-
7 MEMF-SP.

8 4. The Parties attended mediation on December 13, 2022, with
9 mediator Mark Rudy but were unable to reach a settlement on that date. The parties
10 continued to engage in settlement discussions through Mark Rudy. On February 14,
11 2023, Mark Rudy issued a mediator’s proposal for an all-inclusive settlement in the
12 amount of \$1,100,000.00. The Parties accepted the mediator’s proposal on February
13 16, 2023.

14 5. Investigation in the Lawsuit. The Parties conducted a significant
15 investigation of the facts and law during the prosecution of the Lawsuit. Such
16 investigation has included, *inter alia*, the exchange of information and documents
17 through extensive discovery. Both Parties exchanged Initial Disclosures pursuant to
18 Federal Rule of Civil Procedure Rule 26(a). The Parties exchanged written discovery
19 requests and responses, and Defendant produced over 140,000 pages of documents to
20 Plaintiff. Counsel for the Parties investigated the applicable law as applied to the facts
21 discovered regarding Plaintiff’s alleged claims and potential defenses thereto, and the
22 damages claimed by Plaintiffs. The Named Plaintiffs allege in the Lawsuit that Defendant
23 paid its drivers solely by the mile and did not pay for pre-and post-trip inspection work duties
24 and waiting time subject to employer control, other non-driving time performing work
25 duties, and off-the-clock work, including without limitation for time recorded as
26 sleeper-berth and/or “off-duty.” Accordingly, Plaintiffs allege that Defendant failed
27 to compensate its employee drivers for minimum wages and overtime wages under
28 the California Labor Code. Named Plaintiffs also allege that Defendant failed to

1 provide meal and rest periods to drivers and to reimburse them for business expenses,
2 as well as a variety of additional allegations, including derivative claims for failure to
3 timely pay wages, failure to pay wages upon separation, and failure to provide
4 accurate itemized wage statements. For these allegedly improper actions, Named
5 Plaintiffs demand various amounts for wages, penalties, interest, attorneys' fees, and
6 restitution. Named Plaintiffs have fully investigated the factual and legal bases for
7 the causes of action asserted in the Lawsuit. As a result of their investigation, Named
8 Plaintiffs continue to believe that Defendant failed to properly compensate drivers for
9 all time worked and failed to properly provide meal and rest periods, to reimburse
10 expenses, to pay timely wages at separation, and to provide accurate itemized wage
11 statements. Defendant has denied all allegations. Defendant contends that it fully
12 and separately paid for all hours worked, including all non-driving activities, and does
13 not have to pay drivers for overtime because the California Industrial Welfare
14 Commission Wage Order governing transportation workers exempts drivers whose
15 hours of service are subject to federal regulations. Defendant further contends that it
16 provided all meal and rest periods in accordance with California law (although not
17 required to do so), and that it properly reimbursed drivers for all business expenses.
18 Defendant contends that case law supports its compensation system, and that it has a
19 good faith argument for paying the putative class via its compensation method, and
20 that the wage statements are and were accurate at all relevant times. Given the
21 disagreement between the Parties as to the viability of these claims, the Parties believe
22 the Settlement provided for herein is a fair, adequate and reasonable settlement.

23 6. Benefits of Settlement to Class Members. Named Plaintiffs
24 recognize the expense and length of continued proceedings necessary to continue the
25 litigation against Defendant through trial and through any possible appeals, including
26 the fluid changes in the regulations and law as applied to the Settlement Class and
27 facts of this of this case. Named Plaintiffs have also taken into account the uncertainty
28 and risk of the outcome of further litigation, and the difficulties and delays inherent

1 in such litigation, as described above. Named Plaintiffs are also aware of the burdens
2 of proof necessary to establish liability for the claims asserted in the Lawsuit,
3 Defendant's defenses thereto, and the difficulties in establishing damages. Named
4 Plaintiffs have also taken into account the extensive discovery undertaken, motion
5 practice including a motion to compel discovery, and settlement negotiations
6 conducted, which negotiations resulted in the material settlement terms set forth
7 herein. Based on the foregoing, Named Plaintiffs have determined that the Settlement
8 set forth in this Agreement is a fair, adequate and reasonable settlement, and is in the
9 best interests of the Settlement Class and the LWDA.

10 7. Defendant's Reasons for Settlement. Defendant has concluded
11 that any further defense of this litigation would be protracted and expensive for all
12 Parties. Defendant has devoted substantial amounts of time, energy and resources to
13 the defense of the claims asserted by Named Plaintiffs and, unless this Settlement is
14 made, will continue to do so for the foreseeable future. For these reasons, Defendant
15 has agreed to settle the matter upon the terms set forth in this Agreement, to put to
16 rest the claims as set forth in the Lawsuit.

17 8. Defendant's Denials of Wrongdoing. Defendant has denied and
18 continues to deny each of the claims and contentions alleged by Named Plaintiffs in
19 the Lawsuit. Defendant has repeatedly asserted and continues to assert defenses
20 thereto, and has expressly denied and continues to deny any wrongdoing or legal
21 liability arising out of any of the facts or conduct alleged in the Lawsuit. Neither this
22 Settlement Agreement, nor any document referred to or contemplated herein, nor any
23 action taken to carry out this Settlement Agreement, is, may be construed as, or may
24 be used as an admission, concession or indication by or against Defendant or any of
25 the Released Parties of any fault, wrongdoing or liability whatsoever.

26 9. Named Plaintiff's Claims. Named Plaintiffs claim and continue
27 to claim that the Released Claims have merit and give rise to liability on the part of
28 Defendant. Neither this Agreement nor any documents referred to herein, or any

1 action taken to carry out this Agreement is or may be construed as or may be used as
2 an admission by or against Named Plaintiffs or Class Counsel as to the merits or lack
3 thereof of the claims asserted.

4 **I.** The Parties stipulate, subject to the approval of the Court, that the
5 Lawsuit is being compromised and settled pursuant to the terms and conditions set
6 forth in this Settlement Agreement. Upon Final Approval of the Settlement by the
7 Court at or after the Final Approval hearing, the Parties shall present a Proposed Final
8 Judgment to the Court for its approval, requesting that the Court enter judgment and
9 retain jurisdiction with respect to the interpretation, implementation, and enforcement
10 of the terms of this Settlement Agreement and all orders and judgments entered in
11 connection therewith.

12 **III. SETTLEMENT TERMS**

13 **A. Conditional Certification**

14 For the purposes of this Settlement Agreement only, the Parties agree to the
15 certification of the Settlement Class pursuant to Fed. R. Civ. Proc. 23, to include all
16 members of the Settlement Class. If, for any reason, the Settlement Agreement is not
17 approved, the stipulation to certification will be void. Should the Settlement
18 Agreement not become final, for whatever reason, the fact that the Parties were
19 willing to stipulate to class certification as part of the Settlement shall have no bearing
20 on, and shall not be admissible in connection with, the issue of whether a class should
21 be certified in a non-settlement context in the Lawsuit, and shall have no bearing on,
22 and shall not be admissible in connection with, the issue of whether a class should be
23 certified in any other lawsuit.

24 **B. Funding and Allocation of Settlement**

25 1. Gross Settlement Amount. Provided the Court approves the
26 Settlement and the Effective Date occurs, Defendant will pay the Gross Settlement
27 Amount, which is the maximum monetary amount payable by Defendant and which
28 shall not exceed the all-inclusive sum of \$1,100,000.00.

1 2. Settlement Accounting. No more than fourteen (14) calendar days
2 after the Effective Date, or at a reasonable time thereafter if not reasonably
3 practicable, the Settlement Administrator will provide the Parties with an accounting
4 of all anticipated payments from the Qualified Settlement Account, including: (a)
5 Class Member Payments, (b) the PAGA Payments; (c) the Named Plaintiffs
6 Enhancement Payments; (d) the Fees Award and Costs Award to Class Counsel, and
7 (f) Settlement Administration Expenses, all as specified in this Settlement Agreement
8 and approved by the Court.

9 3. Funding the Settlement. Within thirty (30) calendar days after
10 receipt of the Settlement Accounting from the Settlement Administrator, and solely
11 for purposes of this Settlement, Defendant shall wire the Gross Settlement Amount
12 into the Qualified Settlement Account, for distribution in accordance with the terms
13 of this Settlement Agreement (the "Funding"). At no time shall Defendant have the
14 obligation to segregate the funds comprising the Gross Settlement Amount from other
15 assets and will retain exclusive authority over, and responsibility for, those funds until
16 the date those amounts are required to be funded pursuant to this Settlement
17 Agreement.

18 **C. Payments from the Gross Settlement Amount.**

19 1. Named Plaintiffs Enhancement Payment. The Settlement
20 Administrator shall pay any Named Plaintiffs Enhancement Payments within twenty-
21 one (21) calendar days of the Funding either by check or wire to an account(s)
22 designated by Class Counsel. Named Plaintiffs agree to provide the Settlement
23 Administrator with an executed IRS Form W-9 within five days after the Effective
24 Date and before the Named Plaintiffs Enhancement Payments is issued. The
25 Settlement Administrator shall issue an IRS Form 1099 to Named Plaintiffs for their
26 payments. Named Plaintiffs shall be solely and legally responsible for paying any
27 and all applicable taxes on Named Plaintiffs Enhancement Payments and shall hold
28 Released Parties harmless from any claim or liability for taxes, penalties or interest

1 arising as a result of the Named Plaintiffs Enhancement Payments. The Named
2 Plaintiffs Enhancement Payments shall be in addition to any Class Member Payment
3 or PAGA Payment the Named Plaintiffs receive as Settlement Class Members and
4 PAGA Aggrieved Employees. If the Court awards Named Plaintiffs Enhancement
5 Payments less than the amount specified, the unawarded amounts shall remain in the
6 Class Payout Fund and be distributed to Settlement Class Members.

7 2. Class Counsel's Attorneys' Fees and Costs. Class Counsel may
8 request a Fees Award of one-third of the Gross Settlement Amount (i.e., \$366,666.67
9 unless the escalator is triggered) and will seek a Costs Award for reimbursement of
10 Class Counsel's out-of-pocket costs incurred pursuing the Lawsuit. Class Counsel
11 shall submit a declaration to the Court, in support of the motion for preliminary
12 approval, detailing the costs incurred and/or expected to be incurred in the Lawsuit to
13 substantiate the Costs Award. Defendant reserves the right to challenge Class
14 Counsel's requests for fees and costs if Defendant deems it appropriate after
15 reviewing Class Counsel's motion for preliminary approval.

16 a. The Settlement Administrator shall pay the Fees Award and
17 Costs Award within twenty-one (21) calendar days of the Funding either by check or
18 wire to an account designated by Class Counsel. Class Counsel agrees to provide the
19 Settlement Administrator with an executed IRS Form W-9 within five days after the
20 Effective Date and before payments for Class Counsel's Fees Award and Costs Award
21 are issued. The Settlement Administrator shall issue an IRS Form 1099 to Class
22 Counsel for the payments made pursuant to this section. Class Counsel shall be solely
23 and legally responsible for paying any and all applicable taxes on their Fees Award
24 and Costs Award and shall hold Released Parties harmless from any claim or liability
25 for taxes, penalties or interest arising as a result of any payments received by Class
26 Counsel pursuant to this Settlement. If the Court awards a Fees Award or a Costs
27 Award less than the amount requested by Class Counsel, the unawarded amounts shall
28 remain in the Class Payout Fund and be distributed to Settlement Class Members.

1 This Settlement is not contingent upon the Court awarding Class Counsel any
2 particular amount in attorneys' fees and costs; however, Class Counsel reserves the
3 right to object or challenge a decision by the court to not award requested fees or
4 costs.

5 b. Neither Class Counsel nor any other current or past counsel
6 for Named Plaintiffs shall be permitted to petition the Court for, or accept, any
7 additional payments for fees, costs, or interest, and the Fees Award and Costs Award
8 shall be for all claims for attorneys' fees and costs whenever incurred, including past,
9 present and future fees and costs incurred in connection with or arising out of the
10 Lawsuit to date and through and including the Effective Date, as well as final
11 distribution of all payments under this Settlement Agreement and through and after
12 final judgment. The payment of the Fees Award and Costs Award to Class Counsel
13 as set forth herein shall constitute full satisfaction of the obligation to pay any amounts
14 to any person, attorney or law firm for attorneys' fees, expenses or costs arising out
15 of and/or in connection with the Lawsuit incurred by any attorney on behalf of Named
16 Plaintiffs, any of the Class Settlement Members, and/or PAGA Aggrieved
17 Employees, and shall relieve Class Settlement Members, PAGA Aggrieved
18 Employees, Released Parties, the Settlement Administrator, the Qualified Settlement
19 Account, and Defendant's Counsel of any other claims or liability to any other
20 attorney or law firm for any attorneys' fees, expenses and/or costs to which any of
21 them may claim to be entitled on behalf of Named Plaintiffs, the Class Settlement
22 Members, and/or PAGA Aggrieved Employees in connection with the claims released
23 in this Settlement.

24 3. PAGA Payment. The PAGA Payment amount is \$100,000.00,
25 which the Parties have agreed is to be paid in settlement of all PAGA claims released
26 in this Settlement Agreement, which shall be allocated as follows. Within twenty-
27 one (21) calendar days of the Funding, the Settlement Administrator shall pay from
28 the Qualified Settlement Account:

1 a. \$75,000.00 to the State of California LWDA, representing
2 75% of the \$100,000.00 PAGA Payment.

3 b. the remaining 25% of the PAGA Payment (\$25,000.00)
4 shall be distributed to all PAGA Aggrieved Employees, with each receiving a pro rata
5 share based on the number of pay periods worked during the PAGA Period. To
6 establish the pay period value, the Settlement Administrator will first determine the
7 total number of pay periods worked by the PAGA Aggrieved Employees during the
8 PAGA Period. The pay period value will be equal to 25% of the PAGA Payment
9 divided by the total number of pay periods worked by PAGA Aggrieved Employees
10 during the PAGA Period. The pay periods value will be rounded to the nearest cent.
11 The amount of the PAGA Payment to be paid to each PAGA Aggrieved Employee
12 will be determined by multiplying the pay periods value by the total number of pay
13 periods each PAGA Aggrieved Employee worked during the PAGA Period. PAGA
14 Aggrieved Employees will receive their PAGA Payment even if they request
15 exclusion from the Settlement Class.

16 c. The portion of the PAGA Payment paid to the PAGA
17 Aggrieved Employees shall be treated entirely as penalties. In the event that the Court
18 awards less than the full amount requested for the PAGA Payment, the un-awarded
19 amount shall remain in the Class Payout Fund and be distributed to Settlement Class
20 Members. If for any reason additional funds are allocated to the PAGA Payment,
21 such monies shall be drawn from other amounts in this Settlement with the other
22 components of the Gross Settlement Amount being reduced proportionately,
23 including the Fees Award and the Class Payout Fund, but the Gross Settlement
24 Amount will not exceed \$1,100,000.00.

25 4. Settlement Administration Costs. The Settlement Administrator
26 shall pay from the Qualified Settlement Account the Court-approved Settlement
27 Administration Costs, within twenty-one (21) calendar days of the Funding, in an
28 amount not to exceed \$14,000.00. In the event that the Court awards less than the full

1 amount requested for Settlement Administration Costs, the unawarded amounts shall
2 remain in the Class Payout Fund and shall be distributed to Settlement Class
3 Members.

4 5. Calculation of Class Member Payments. All Settlement Class
5 Members will receive a Class Member Payment, paid from the Class Payout Fund
6 without the need to make a claim. The Parties agree that 40% of the Class Member
7 Payments shall be allocated to penalties and 60% of the Class Member Payments shall
8 be allocated to wages.

9 a. The amount of each Class Member Payment will be
10 calculated on a pro rata basis, based on the number of workweeks each Settlement
11 Class Member worked during the Class Period. To establish the workweek value, the
12 Settlement Administrator will first determine the total number of workweeks worked
13 by the Settlement Class Members during the Class Period. The workweek value will
14 be equal to the Class Payout Fund divided by the total number of workweeks worked
15 by Settlement Class Members during the Class Period. The workweek value will be
16 rounded to the nearest cent. The Class Member Payment to each Settlement Class
17 Member will be determined by multiplying the workweek value by the total number
18 of workweeks each Settlement Class Members worked during the Class Period. The
19 total of all Class Member Payments to all Settlement Class Members shall equal the
20 Class Payout Fund. Settlement Class Members do not need to submit a claim form in
21 order to be eligible for and to receive a Class Member Payment. Any partial
22 workweek will be rounded up to the nearest workweek period. Class Member
23 Payments will be reduced by any required deductions for each Settlement Class
24 Member.

25 6. Method and Timing of Payments to Settlement Class Members
26 and PAGA Aggrieved Employees.

27 a. Class Member Payments and the PAGA Aggrieved
28 Employees' portion of the PAGA Payment will be mailed by the Settlement

1 Administrator by First Class U.S. Mail within twenty-one (21) calendar days
2 following the Funding.

3 b. Checks paid to PAGA Aggrieved Employees and
4 Settlement Class Members shall remain valid and negotiable for 180 days from the
5 date of their issuance. After one-hundred eighty (180) calendar days from the date of
6 mailing, the checks shall become null and void, and any monies remaining in the
7 distribution account shall be distributed to the Controller of the State of California to
8 be held pursuant to the Unclaimed Property Law, California Civil Code §§ 1500 *et*
9 *seq.*, for the benefit of those Settlement Class Members and PAGA Aggrieved
10 Employees who did not cash their checks until such time that they claim their
11 property. The Parties agree that this disposition results in no “unpaid residue” under
12 California Civil Procedure Code § 384, as the entire Class Payout Fund will be paid
13 out to Class Members, whether or not they all cash their Class Member Payments.
14 Therefore, Defendant will not be required to pay any interest on said amount.

15 7. No Effect on Employee Benefits. The Named Plaintiffs
16 Enhancement Payments, Class Member Payments, and PAGA Payments paid to
17 Named Plaintiffs, PAGA Aggrieved Employees, and Settlement Class Members shall
18 be deemed not to be pensionable earnings and shall not have any effect on the
19 eligibility for, or calculation of, any employee benefits (e.g., vacations, holiday pay,
20 retirement plans, etc.) of the respective Named Plaintiffs, PAGA Aggrieved
21 Employees, or Settlement Class Members. The Parties agree that any Named
22 Plaintiffs Enhancement Payments, Class Member Payments, and PAGA Payments
23 paid to Named Plaintiffs, Settlement Class Members, and PAGA Aggrieved
24 Employees under the terms of this Settlement Agreement do not represent any
25 modification of Named Plaintiffs’, Settlement Class Members’, or PAGA Aggrieved
26 Employees’ previously credited hours of service or other eligibility criteria under any
27 employee pension benefit plan or employee welfare benefit plan sponsored by
28 Defendant or any of the Released Parties. Further, any Named Plaintiffs

1 Enhancement Payments, Class Member Payments, or PAGA Payments shall not be
2 considered “compensation” in any year for purposes of determining eligibility for, or
3 benefit accrual within, an employee pension benefit plan or employee welfare benefit
4 plan sponsored by Defendant or any of the Released Parties.

5 **D. Taxation**

6 1. Tax Treatment of Class Member Payments. Each Class Member
7 Payment shall be allocated between taxable and non-taxable consideration as follows:
8 60% will be allocated to alleged unpaid wages for which an IRS Form W-2 will issue,
9 and 40% will be allocated to alleged penalties, reimbursement of expenses and interest
10 for which an IRS Form 1099 will issue, if required by law. The Settlement
11 Administrator will be responsible for calculating the employer-side and employee-
12 side taxes owed on the wage portion of each Class Member Payment and deducting
13 and paying these amounts to the appropriate state and federal agencies, within the
14 timing required by applicable state and federal law. Each Settlement Class Member
15 shall be responsible for ensuring that any taxes due on his or her 1099 portion of the
16 settlement are paid.

17 2. Tax Treatment of PAGA Payments. The PAGA Payment
18 distributed to each PAGA Aggrieved Employee will be treated entirely as civil
19 penalties, and will be reported as such to each PAGA Aggrieved Employee on an IRS
20 Form 1099 misc., if required by law.

21 3. Tax Liability. The Parties make no representation as to the tax
22 treatment or legal effect of the payments called for hereunder, and the Parties,
23 Settlement Class Members, and PAGA Aggrieved Employees are not relying on any
24 statement, representation, or calculation by any of the Parties or by the Settlement
25 Administrator in this regard. Named Plaintiffs, Settlement Class Members, and
26 PAGA Aggrieved Employees understand and agree that except for the employer’s
27 portion of any payroll taxes, Named Plaintiffs, Settlement Class Members, and PAGA
28 Aggrieved Employees will be solely responsible for the payment of any taxes and

1 penalties assessed on the payments described herein. Each Party to this Settlement
2 Agreement (for purposes of this section, the “acknowledging party” and each party to
3 this agreement other than the acknowledging party, an “other party”) acknowledges
4 and agrees that (1) no provision of this Settlement Agreement, and no written
5 communication or disclosure between or among the Parties or their attorneys and
6 other advisers, is or was intended to be, nor shall any such communication or
7 disclosure constitute or be construed or be relied upon as, tax advice within the
8 meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as
9 amended); (2) the acknowledging party (a) has relied exclusively upon their own,
10 independent legal and tax counsel for advice (including tax advice) in connection with
11 this Settlement Agreement, (b) has not entered into this Settlement Agreement based
12 upon the recommendation of any other party or any attorney or advisor to any other
13 party, and (c) is not entitled to rely upon any communication or disclosure by any
14 attorney or adviser to any other party to avoid any tax penalty that may be imposed
15 on the acknowledging party; and (3) no attorney or adviser to any other Party has
16 imposed any limitation that protects the confidentiality of any such attorney’s or
17 adviser’s tax strategies (regardless of whether such limitation is legally binding) upon
18 disclosure by the acknowledging party of the tax treatment or tax structure of any
19 transaction, including any transaction contemplated by this Settlement Agreement.

20 **E. Injunctive Relief**

21 As part of this Settlement, Defendant shall not be required to enter into any
22 consent decree, nor shall Defendant be required to agree to any provision for
23 injunctive relief, or to modify or eliminate any of its personnel, compensation, or
24 payroll practices or policies, or adopt any new personnel, compensation, or payroll
25 practices or policies.

26 **F. Release of Claims**

27 1. Class Member Release. As of the Effective Date, all Settlement
28 Class Members fully and finally release the Released Parties from any and all claims

1 that arose during the Class Period based on the facts, factual predicate, theories,
2 transactions or occurrences, and primary rights alleged in the Lawsuit including
3 without limitation for unpaid wages, including, but not limited to, failure to pay
4 minimum wages, failure to pay straight time compensation, overtime compensation,
5 double-time compensation, and/or interest; off-the-clock work, including without
6 limitation for time recorded as sleeper-berth and/or “off-duty”; missed, late, short or
7 interrupted meal and/or rest periods or any allegation that meal or rest periods were
8 not provided, including any claim for any alleged failure to pay premiums for missed,
9 late, short or interrupted meal or rest periods, or to pay such premiums at the regular
10 rate of compensation; failure to timely pay all earned wages; reimbursement for
11 business expenses or any other claim that Defendant allowed or required employees
12 to bear any of the costs associated with the operation of Defendant’s business,
13 including without limitation the use of personal cell phones; inaccurate or otherwise
14 improper wage statements and/or failure to keep or maintain accurate records; failure
15 to pay all wages due upon separation of employment and within the required time;
16 unlawful deductions; any claim for unfair business practices arising out of or related
17 to any or all of the aforementioned claims; any claim for penalties arising out of or
18 related to any or all of the aforementioned claims, including, but not limited to,
19 recordkeeping penalties, wage statement penalties, minimum wage penalties,
20 liquidated damages, and waiting time penalties; and attorneys’ fees and costs. The
21 claims released by the Settlement Class Members also include any and all claims that
22 arise out of or arise in connection with the claims and facts alleged in the Lawsuit,
23 and any claims which could have been asserted in the Lawsuit arising from the alleged
24 facts, factual predicate, theories, transactions or occurrences, and/or primary rights
25 alleged to have been invaded to the fullest extent permitted by law. This release
26 includes claims alleging a violation of the Wage Orders of the California Industrial
27 Welfare Commission; California Business and Professions Code section 17200, *et*
28 *seq.*; the California Civil Code sections 3287, 3289, 3336, and 3294; California Code

1 of Civil Procedure section 1021.5; and/or alleging a violation of California Labor
2 Code §§ 200, 201, 201.3, 202, 203, 204, 210, 212, 218, 218.5, 218.6, 221222.5, 223,
3 224, 225.5, 226, 226.3, 226.7, 510, 511, 512, 558, 1174, 1174.5, 1182.12, 1194,
4 1194.2, 1197, 1197.1, 1197.2, 1198, 1199, 2698 *et seq.*, 2800, and 2802.

5 2. Release of PAGA Claims. As of the date of the Effective Date,
6 PAGA Aggrieved Employees and the LWDA fully and finally release the Released
7 Parties from all claims under the PAGA associated with any and all claims that arose
8 during the PAGA Period based on the facts, factual predicate, theories, transactions
9 or occurrences, and primary rights alleged in the Lawsuit including without limitation
10 for unpaid wages, including, but not limited to, failure to pay minimum wages; failure
11 to pay straight time compensation, overtime compensation, double-time
12 compensation, and/or interest; off-the-clock work, including without limitation for
13 time recorded as sleeper-berth and/or “off-duty”; missed, late, short or interrupted
14 meal and/or rest periods or any allegation that meal or rest periods were not provided,
15 including any claim for any alleged failure to pay premiums for missed, late, short or
16 interrupted meal or rest periods, or to pay such premiums at the regular rate of
17 compensation; failure to timely pay all earned wages; reimbursement for business
18 expenses or any other claim that Defendant allowed or required employees to bear
19 any of the costs associated with the operation of Defendant’s business, including
20 without limitation the use of personal cell phones; inaccurate or otherwise improper
21 wage statements and/or failure to keep or maintain accurate records; failure to pay all
22 wages due upon separation of employment and within the required time; unlawful
23 deductions; any claim for unfair business practices arising out of or related to any or
24 all of the aforementioned claims; any claim for penalties arising out of or related to
25 any or all of the aforementioned claims, including, but not limited to, recordkeeping
26 penalties, wage statement penalties, minimum wage penalties, liquidated damages,
27 and waiting time penalties; and attorneys’ fees and costs. The claims released by the
28 PAGA Aggrieved Employees also include any and all claims under the California

1 Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et seq.* that arise out
2 of or arise in connection with the claims and facts alleged in the Lawsuit, and any
3 claims which could have been asserted in the Lawsuit arising from the alleged facts,
4 factual predicate, theories, transactions or occurrences, and/or primary rights alleged
5 to have been invaded to the fullest extent permitted by law. This release includes
6 claims under the California Private Attorneys General Act of 2004 alleging a violation
7 of the Wage Orders of the California Industrial Welfare Commission; and/or alleging
8 a violation of California Labor Code §§ 200, 201, 201.3, 202, 203, 204, 210, 212, 216
9 218, 218.5, 218.6, 221, 222.5, 223, 224, 225, 225.5, 226, 226.3, 226.7, 510, 511, 512,
10 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, 1199, 2698 *et*
11 *seq.*, 2800, and 2802.

12 3. General Release By Named Plaintiffs Only. As of the date of
13 Effective Date, Named Plaintiffs fully and finally release the Released Parties from
14 any and all claims, known and unknown, under federal, state and/or local law, statute,
15 ordinance, regulation, common law, or other source of law, including but not limited
16 to claims arising from or related to Named Plaintiffs' application for, employment
17 with, and/or the termination of Named Plaintiffs' employment from Defendant
18 ("Named Plaintiffs' Released Claims"). The Named Plaintiffs' Released Claims
19 include, but are not limited to, all claims asserted in, arising in connection with, or
20 related in any way to the Lawsuit, including without limitation any and all claims that
21 could have been asserted as part of the Lawsuit based on the facts, factual predicate,
22 theories, transactions or occurrences, and primary rights invoked. Named Plaintiffs'
23 Released Claims include all claims for unpaid wages, including, but not limited to,
24 failure to pay minimum wages; failure to pay straight time compensation, overtime
25 compensation, double-time compensation, vacation or PTO, sick pay, reporting time
26 compensation, and/or interest; off-the-clock work, including without limitation for
27 time recorded as sleeper-berth and/or "off-duty"; missed, late, short or interrupted
28 meal and/or rest periods or any allegation that meal or rest periods were not provided,

1 including any claim for any alleged failure to pay premiums for missed, late, short or
2 interrupted meal or rest periods, or to pay such premiums at the regular rate of
3 compensation; reimbursement for business expenses or any other claim that
4 Defendant allowed or required employees to bear any of the costs associated with the
5 operation of Defendant's business, including without limitation the use of personal
6 cell phones; failure to timely pay all earned wages; failure to pay all wages due upon
7 separation of employment and within the required time; inaccurate or otherwise
8 improper wage statements and/or failure to keep or maintain accurate records;
9 unlawful deductions; secret underpayment of wages; unlawful payment instruments;
10 any claim for unfair business practices arising out of or related to any or all of the
11 aforementioned claims; any claim for penalties arising out of or related to any or all
12 of the aforementioned claims, including, but not limited to, recordkeeping penalties,
13 wage statement penalties, minimum-wage penalties, and waiting-time penalties; and
14 attorneys' fees and costs. Named Plaintiffs' Released Claims include all claims
15 arising under the California Labor Code (including, but not limited to, sections 200,
16 201, 201.3, 202, 203, 204, 210, 212, 216, 218.5, 218.6, 221, 222.5, 223, 224, 225,
17 225.5, 226, 226.3, 226.7, 226.8, 227.3, 245, 246, 247, 248, 249, 450, 510, 511, 512,
18 516, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, 1199,
19 2698 *et seq.*, 2800, and 2802); all claims arising under the Wage Orders of the
20 California Industrial Welfare Commission; California Business and Professions Code
21 section 17200, *et seq.*; the California Labor Code; California Government Code; the
22 California Civil Code, including but not limited to, sections 3287, 3289, 3336 and
23 3294; California Code of Civil Procedure § 1021.5; the California common law of
24 contract; and the Employee Retirement Income Security Act, 29 U.S.C. § 1001, *et*
25 *seq.* Named Plaintiffs' Released Claims include any and all claims under the Private
26 Attorneys General Act, Cal. Lab. Code § 2698 *et seq.* ("PAGA"), of any kind,
27 including but not limited to the PAGA claims asserted in the Lawsuit. Named
28 Plaintiffs' Released Claims also include all claims for lost wages and benefits,

1 emotional distress, punitive damages, and attorneys' fees and costs arising under
2 federal, state, or local laws for discrimination, harassment, retaliation, and wrongful
3 termination, such as, by way of example only, (as amended) 42 U.S.C. section 1981,
4 Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, the
5 Age Discrimination in Employment Act, and the California Fair Employment and
6 Housing Act; and the law of contract and tort. This release excludes the release of
7 claims not permitted by law. Named Plaintiffs' Released Claims include all claims,
8 whether known or unknown. Even if Named Plaintiffs discover facts in addition to
9 or different from those that Named Plaintiffs now knows or believes to be true with
10 respect to the subject matter of Named Plaintiffs' Released Claims, those claims will
11 remain released and forever barred. Thus, Named Plaintiffs expressly waive and
12 relinquishes the provisions, rights and benefits of section 1542 of the California Civil
13 Code, which reads:

14 **A GENERAL RELEASE DOES NOT EXTEND TO**
15 **CLAIMS THAT THE CREDITOR OR RELEASING**
16 **PARTY DOES NOT KNOW OR SUSPECT TO EXIST**
17 **IN HIS OR HER FAVOR AT THE TIME OF**
18 **EXECUTING THE RELEASE AND THAT, IF**
19 **KNOWN BY HIM OR HER, WOULD HAVE**
20 **MATERIALLY AFFECTED HIS OR HER**
21 **SETTLEMENT WITH THE DEBTOR OR**
22 **RELEASED PARTY.**

23 4. Notwithstanding the foregoing, Named Plaintiffs do not waive or
24 release any claim which cannot be waived or released by private agreement. Further,
25 nothing in this Agreement shall prevent Named Plaintiffs from filing a charge or
26 complaint with, or from participating in, an investigation or proceeding conducted by
27 the SEC, OSHA, EEOC, CRD, NLRB or any other federal, state or local agency
28 charged with the enforcement of any employment or other applicable laws. Named
Plaintiffs, however, understand that by signing this Settlement Agreement, Named
Plaintiffs waive the right to recover any damages or to receive other relief in any claim
or suit brought by or through the EEOC, the CRD or any other state or local deferral
agency on Named Plaintiffs' behalf to the fullest extent permitted by law, but

1 expressly excluding any monetary award or other relief available from the
2 SEC/OSHA, including an SEC/OSHA whistleblower award, or other awards or relief
3 that may not lawfully be waived.

4 **G. Settlement Administrator Responsibilities**

5 1. The Settlement Administrator shall be responsible for preparing,
6 printing and mailing to the Settlement Class and the PAGA Aggrieved Employees the
7 Notice of Proposed Settlement of Class Action attached as Exhibit 1 hereto (the “Class
8 Notice”) as directed by the Court; calculating Class Member Payments and PAGA
9 Payments; calculating and withholding all required state and federal taxes owed by
10 the Settlement Class Members, PAGA Aggrieved Employees, and Defendant as
11 described above; keeping track of opt-outs and objections; drafting and mailing
12 checks to Settlement Class Members and PAGA Aggrieved Employees; distributing
13 Named Plaintiffs Enhancement Payments, the Fees Award, the Costs Award, 75% of
14 the PAGA Payment to the LWDA, and Settlement Administration Costs; providing
15 weekly status reports to counsel for the Parties; providing a due diligence declaration
16 for submission to the Court prior to the Final Approval hearing and as otherwise
17 required by the Court; and for such other tasks as the Parties mutually agree or the
18 Court orders the Settlement Administrator to perform. The Parties each represent they
19 do not have any financial interest in the Settlement Administrator or otherwise have
20 a relationship with the Settlement Administrator that could create a conflict of interest.

21 2. The Settlement Administrator’s determination of eligibility for,
22 and the amounts of, any Class Member Payment and share of the PAGA Payment
23 shall be conclusive, final and binding on all Parties, including all Settlement Class
24 Members and PAGA Aggrieved Employees. The Settlement Administrator has no
25 power or ability to increase the amount of the Gross Settlement Amount.

26 3. To the extent any tax returns must be filed for the Gross Settlement
27 Amount pursuant to this Settlement Agreement, the Settlement Administrator shall
28 cause to be timely and properly filed all informational and other tax returns, if any,

1 necessary with respect to the Gross Settlement Amount. Such returns shall be
2 consistent with this paragraph. Any expenses and/or costs incurred in connection with
3 the operation and implementation of this paragraph (including, without limitation,
4 reasonable expenses of tax attorneys, accountants or other designees retained by the
5 Settlement Administrator as required for the preparation and filing of tax returns
6 described in this paragraph) shall be treated as, and considered to be, a cost of
7 administration of the Settlement and shall be paid from the Settlement Administration
8 Costs.

9 4. No person shall have any claim against Defendant, the Released
10 Parties, Defendant's Counsel, Named Plaintiffs, Class Counsel or the Settlement
11 Administrator based on distributions and payments made in accordance with this
12 Settlement Agreement.

13 **H. Notice/Approval of Settlement and Settlement Implementation.** As
14 part of this Settlement, the Parties agree to the following procedures for obtaining
15 preliminary approval of the Settlement, notifying the Settlement Class and PAGA
16 Aggrieved Employees, obtaining final Court approval of the Settlement, and
17 processing the settlement payments:

18 1. Preliminary Approval of Settlement

19 a. Named Plaintiffs shall file a motion for preliminary
20 approval of the Settlement in the Lawsuit within forty-five (45) calendar days of the
21 execution of this Settlement Agreement. Named Plaintiffs shall schedule the motion
22 for hearing on the earliest date the Court has available that complies with notice
23 requirements and after conferring with defense counsel to ensure availability. Named
24 Plaintiffs shall seek the entry of a Preliminary Approval Order for: (a) conditional
25 certification of the Settlement Class for settlement purposes only, (b) Preliminary
26 Approval of the proposed Settlement Agreement, and (c) setting a date for a Final
27 Approval hearing.
28

1 b. In conjunction with the Preliminary Approval Hearing,
2 Named Plaintiffs will submit this Settlement Agreement, which sets forth the terms
3 of this Settlement, and will include proposed forms of all notices and other documents
4 as attached hereto necessary to implement the Settlement. Simultaneous with the
5 filing of the Settlement Agreement and solely for purposes of this Settlement, Named
6 Plaintiffs will request the Court to enter the Preliminary Approval Order
7 (“Preliminary Approval Order” or “Order”), preliminarily approving the proposed
8 Settlement, and setting a hearing date to determine final approval of the Settlement.
9 The Order shall provide for notice of the Settlement and related matters to be sent to
10 Settlement Class Members as specified herein. Class Counsel will be responsible for
11 drafting all documents necessary to obtain Preliminary Approval, subject to review
12 and comment by Defendant’s counsel who shall be provided a minimum of seven (7)
13 days to review prior to filing.

14 2. LWDA Notice. Pursuant to the PAGA, concurrently with the
15 filing of the motion for Preliminary Approval, Named Plaintiffs will, pursuant to
16 California Labor Code § 2699(I), provide notice of the proposed Settlement to the
17 LWDA. The Parties intend and believe that the notice pursuant to the procedures
18 described in this section complies with the requirements of the PAGA.

19 3. CAFA Notice. Within ten (10) calendar days after Named
20 Plaintiffs move for preliminary approval of this Settlement, Defendant will mail
21 notices to the Attorney General of the United States, the Attorney General of the State
22 of California, and the Attorney General of any other state where an Employee resides
23 according to Defendant’s records, in accordance with the Class Action Fairness Act
24 of 2004.

25 4. Notice to Settlement Class.

26 a. Delivery of the Settlement Class Member and PAGA
27 Aggrieved Employee List. Within thirty (30) days of entry of the Preliminary
28 Approval Order of this Settlement, Defendant will provide the Settlement Class

1 Member List and PAGA Aggrieved Employee List (the “Employee Lists”) to the
2 Settlement Administrator, which shall be used solely for the administration of this
3 Settlement and for no other purpose, and shall not be shared with any persons or entity
4 not employed by the Settlement Administrator and working on the administration of
5 this Settlement. Because sensitive personal information is included in the Employee
6 Lists, the Settlement Administrator shall maintain the Employee Lists securely and in
7 confidence. Access to such Employee Lists shall be limited to employees of the
8 Settlement Administrator with a need to use the Employee Lists for administration of
9 the Settlement. The Employee Lists shall not be disclosed to Class Counsel, the
10 Named Plaintiffs, or any other members of the Settlement Class without the written
11 consent of Defendant. In the event that the Settlement Agreement is not finally
12 approved by the Court, or if it is in any way altered or disapproved on appeal, the
13 Settlement Administrator shall not thereafter use the Employee Lists, and shall
14 destroy any and all copies or versions of the Employee Lists (including any in
15 electronic form).

16 b. Notice By First-Class Mail. Within twenty-one (21)
17 calendar days after receipt of the Settlement Class Member List, the Settlement
18 Administrator shall mail a class notice to Settlement Class Members via first-class
19 regular U.S. mail (“Class Notice”). Settlement Class Members will have thirty (30)
20 days from the mailing of the Class Notice to opt-out or object to the Class Settlement
21 (“Objection/Exclusion Deadline Date”). Prior to mailing, the Settlement
22 Administrator will perform a search based on the National Change of Address
23 Database information to update and correct for any known or identifiable address
24 changes and, if necessary, perform reasonable skip-tracing efforts to locate
25 employees. If a new address is obtained by way of a returned Class Notice, the
26 Settlement Administrator shall promptly forward the original Class Notice to the
27 updated address via first-class regular U.S. mail indicating on the original Class
28 Notice the date of such re-mailing.

1 c. Notice Satisfies Due Process. Compliance with the notice
2 procedures specified in this Settlement Agreement shall constitute due and sufficient
3 notice to the Settlement Class of this Settlement and shall satisfy the requirements of
4 due process. Nothing else shall be required of, or done by, the Parties, Class Counsel
5 or Defendant's Counsel to provide notice of the proposed Settlement. In the event
6 that the procedures in this Settlement Agreement are followed and the intended
7 recipient of a Notice of Settlement still does not receive the Notice of Settlement, the
8 intended recipient shall be a Settlement Class Member and will be bound by all the
9 terms of the Settlement and the Final Approval entered by the Court if the Settlement
10 becomes effective.

11 5. Objections or Exclusions.

12 a. Procedure for Objecting. The Notice shall provide that
13 individuals in the Settlement Class who wish to object to the Settlement must submit
14 a written statement to the Settlement Administrator objecting to the Settlement no
15 later than the Objection/Exclusion Deadline Date. A written objection must contain
16 a statement in substance explaining that the Settlement Class individual objects to the
17 Settlement Agreement and the reasons for objecting; contain the full name, address,
18 telephone number, and last four digits of the Social Security number of the objecting
19 Settlement Class individual; be signed by the Settlement Class individual; and, be
20 postmarked on or before the Objection/Exclusion Deadline Date. No PAGA
21 Aggrieved Employee may opt out or otherwise be excluded from the PAGA Payment,
22 as no such right exists under the law. No individual in the Settlement Class shall be
23 entitled to be heard at the Final Approval hearing (whether individually or through
24 separate counsel) or to object to the Settlement, and no written objections or briefs
25 submitted by any individual in the Settlement Class shall be received or considered
26 by the Court at the Final Approval hearing, unless written notice of intention to appear
27 at the Final Approval hearing, and any written objections, have been provided to the
28 Settlement Administrator on or before the Objection/Exclusion Deadline Date. The

1 Parties will be permitted to respond in writing to such objections prior to the Final
2 Approval hearing. Any individual in the Settlement Class who fails to file and serve
3 timely written objections in the manner specified above shall remain a Settlement
4 Class Member and shall be deemed to have waived any objections and shall be
5 foreclosed from making any objection (whether by appeal or otherwise) to the
6 Settlement.

7 b. Procedure for Requesting Exclusion. The Class Notice
8 shall provide that individuals in the Settlement Class who wish to exclude themselves
9 from the Settlement Class must submit to the Settlement Administrator a personally
10 signed, written statement requesting exclusion from the Settlement Class on or before
11 the Objection/Exclusion Deadline Date. The opt-out request must state in substance,
12 words to the effect:

13 “I have read the Class Notice and I wish to opt out of the
14 Settlement Class in *Raul Martinez and Philippe Vieux v.*
15 *Knight Transportation, Inc.*, Case No. 5:21-cv-00572-
16 MEMF-SP. I understand that by requesting to be excluded
17 from the Settlement Class, I will not receive a Class
18 Member Payment. I also understand that I will still receive
a PAGA Payment for my share of the PAGA Settlement, if
I am entitled to such payment, because I cannot object or
exclude myself from the PAGA Settlement.”

19 (1) Such written request for exclusion must contain the name,
20 address, telephone number and last four digits of the Social Security number of the
21 person requesting exclusion, must be returned by mail to the Settlement Administrator
22 at the specified address, must be signed by the objecting individual in the Settlement
23 Class personally, and must be postmarked on or before the Objection/Exclusion
24 Deadline Date. The date of the postmark on the return mailing envelope shall be the
25 exclusive means used to determine whether a request for exclusion has been timely
26 submitted. If the postmark is illegible then the request for exclusion must arrive
27 within three (3) calendar days after the Objection/Exclusion Deadline Date to be
28 considered timely.

1 (2) Any individual in the Settlement Class who opts out of the
2 Settlement Class will not be entitled to any recovery under the Class Settlement
3 (which refers to claims encompassed by the Class Payout Fund and excludes the
4 PAGA claims) and will not be bound by the Settlement as it relates to the Class
5 Settlement or have any right to object, appeal or comment in court on the Class
6 Settlement. Any and all individuals in the Settlement Class who fail to submit a valid
7 and timely request for exclusion on or before the Objection/Exclusion Deadline Date
8 shall be Settlement Class Members and shall be bound by all terms of the Settlement
9 and any final judgment entered in the Lawsuit if the Settlement is approved by the
10 Court.

11 c. PAGA Aggrieved Employees will not have the opportunity
12 to opt out of, or object to, the PAGA Payment and release of the PAGA claims set
13 forth in this Settlement Agreement.

14 d. No Solicitation of Settlement Objections or Exclusions.
15 The Parties agree to use their best efforts to carry out the terms of this Settlement. At
16 no time shall any of the Parties, or their counsel, seek to directly or indirectly solicit
17 or otherwise encourage the Settlement Class to submit written objections to the
18 Settlement or requests for exclusion from the Class Settlement, or appeal from the
19 Court's final judgment.

20 6. Certification Reports by the Settlement Administrator.

21 a. The Settlement Administrator will, on a weekly basis
22 during and for a reasonable period following distribution of the Class Notice, provide
23 updates to Class Counsel and Defendant's Counsel as to the number of individuals in
24 the Settlement Class who submitted (i) valid opt-out requests for exclusion; and (ii)
25 objections. All written objections shall be provided to the Parties' counsel within five
26 (5) calendar days of receipt by the Settlement Administrator. The Settlement
27 Administrator shall also provide the names of any opt-outs to Defendant's counsel
28 within five (5) calendar days of receipt. To the extent practicable, the weekly updates

1 shall also provide updated data on the number of Class Notices that are returned
2 undeliverable and any re-mailing efforts.

3 b. Within ten (10) calendar days after the Objection/Exclusion
4 Deadline Date, the Settlement Administrator will prepare a declaration to be provided
5 to Class Counsel and Defendant's Counsel for filing in support of Named Plaintiffs'
6 motion for final approval attesting to the following: (i) its mailing efforts regarding
7 the Class Notice; (ii) its receipt of any valid and timely requests for exclusion, and its
8 inability to deliver the Class Notice to the Settlement Class, if any; (iii) the number
9 of Settlement Class Members; (iv) the highest estimated Class Member Payment,
10 along with the estimated average Class Member Payment. The Settlement
11 Administrator will also prepare and submit to Class Counsel and Defendant's Counsel
12 for filing in support of the motion any supplemental declaration as may be needed.

13 7. Right of Defendant to Reject Settlement.

14 a. Option to Void Settlement. If, after the
15 Objection/Exclusion Deadline Date, the number of employees in the Settlement Class
16 who have timely submitted requests for exclusion total in number more than two (2)
17 percent of the Settlement Class, Defendant shall have, in its sole discretion, the option
18 to void this Settlement. In order to exercise this option, Defendant must notify Class
19 Counsel in writing within fifteen (15) calendar days after the later of the
20 Objection/Exclusion Deadline Date, or of learning in writing from the Settlement
21 Administrator that the number of individuals in the Settlement Class who have timely
22 submitted requests for exclusion total in number more than two (2) percent of the
23 Settlement Class.

24 b. Escalator Clause. Defendant estimates that there are
25 approximately 63,000 workweeks worked by the Settlement Class from April 6, 2016,
26 through February 16, 2023, excluding workweeks covered by individual settlement
27 agreements (the "Estimated Workweeks"). Within fifteen (15) calendar days of
28 receipt of the Employee Lists, the Settlement Administrator shall confirm to all Parties

1 the number of actual workweeks worked by the Settlement Class from April 6, 2016
2 through February 16, 2023, excluding workweeks covered by individual settlement
3 agreements (the “Actual Workweeks”). If the number of Actual Workweeks from
4 April 6, 2016, through February 16, 2023 exceed ten (10) percent above the Estimated
5 Workweeks, the Gross Settlement Amount shall be increased by one (1) percent for
6 every one percent increase in workweeks over the ten (10) percent threshold. There
7 shall be no increase in the Gross Settlement Amount if the total number of Actual
8 Workweeks is 69,300, or less.

9 c. Nullification of Settlement Agreement. In the event: (i) the
10 Court does not enter the Order specified herein; (ii) the Court does not finally approve
11 the Settlement as provided herein; (iii) the Court does not enter a final judgment as
12 provided herein which becomes final as a result of the occurrence of the Effective
13 Date; or (iv) the Settlement does not become final for any other reason, this Settlement
14 Agreement shall be null and void and any order or judgment entered by the Court in
15 furtherance of this Settlement shall be treated as void ab initio. In such a case, the
16 Parties and any funds to be awarded under this Settlement shall be returned to their
17 respective statuses as of the date and time immediately prior to the execution of this
18 Agreement, and the Parties shall proceed in all respects as if this Settlement
19 Agreement had not been executed, except that any fees already incurred by the
20 Settlement Administrator shall be borne equally by the Parties. In the event an appeal
21 is filed from the Court’s final judgment, or any other appellate review is sought prior
22 to the Effective Date, administration of the Settlement shall be stayed pending final
23 resolution of the appeal or other appellate review, pending the Effective Date.

24 8. Final Approval Hearing and Entry of Final Judgment.

25 a. Upon expiration of the Objection/Exclusion Deadline Date,
26 with the Court’s permission, a Final Approval hearing shall be conducted to determine
27 final approval of the Settlement along with the amount properly payable for (i) the
28 Fees Award and Costs Award, (ii) Named Plaintiffs Enhancement Payments, (iii)

1 Settlement Administrator's Expenses, (iv) Class Member Payments; and (v) the
2 PAGA Payments. Upon final approval of the Settlement by the Court at or after the
3 Final Approval hearing, the Parties shall present a Proposed Final Judgment to the
4 Court for its approval. Class Counsel will be responsible for drafting all documents
5 necessary to obtain Final Approval, including a proposed order and judgment, which
6 shall be provided to Defendant's counsel seven days prior to filing for review.

7 b. The Settlement Administrator shall keep counsel for the
8 Parties apprised of all distributions from the Qualified Settlement Account and upon
9 completion of administration of all distributions related to the Settlement, the
10 Settlement Administrator shall provide written certification, under penalty of perjury,
11 of such completion to the Court and counsel for all Parties.

12 c. Upon completion of administration of the Settlement,
13 Named Plaintiffs and Class Counsel shall provide written certification, under penalty
14 of perjury, of such completion to the Court and Defendant's Counsel.

15 9. Administration Costs. All of Defendant's own legal fees, costs
16 and expenses incurred in the Lawsuit shall be borne by Defendant. As set forth above,
17 claims administration expenses will be paid from the Gross Settlement Amount. The
18 Parties agree to cooperate in the Settlement administration process and to make all
19 reasonable efforts to control and minimize the costs and expenses incurred in
20 administration of the Settlement.

21 **IV. Other Provisions**

22 A. **Publicity**. The Parties agree that neither Named Plaintiffs nor Class
23 Counsel shall issue any press release or announcement of any kind related in any way
24 to the Settlement. Named Plaintiffs and Class Counsel agree that, prior to preliminary
25 approval of the Settlement, they will keep the terms of the Settlement confidential
26 except for purposes of communicating with Named Plaintiffs only. Named Plaintiffs
27 shall be informed that the Settlement is confidential and shall be advised to keep the
28 Settlement confidential. After preliminary approval of the Settlement, Named

1 Plaintiffs and Class Counsel may comment regarding the specific terms of the
2 Settlement (1) as required by law; (2) as required under the terms of the Settlement;
3 or (3) as required under counsel's duties and responsibilities as Class Counsel. In all
4 other cases, Named Plaintiffs and Class Counsel agree to limit their statements
5 regarding the terms of the Settlement, whether oral, written or electronic (including
6 the world wide web), to say the Lawsuit has been resolved and that Named Plaintiffs
7 and Class Counsel are satisfied with the terms of the Settlement. Class Counsel shall
8 not, at any time, advertise or mention the terms of the Settlement on personal or firm
9 website(s); shall not discuss the terms of the Settlement with media, general public,
10 or issue press releases; and shall limit any statements regarding the terms of the
11 Settlement to that information that is publicly available. Nothing in this Paragraph is
12 intended to interfere with Class Counsel's duties and obligations to faithfully
13 discharge their duties as Class Counsel.

14 **B. Privacy of Documents and Information.** Named Plaintiffs and Class
15 Counsel agree that none of the documents and information provided to them by
16 Defendant or as part of this Settlement shall be used for any purpose other than
17 settlement of the Lawsuit.

18 **C. No Admission By the Released Parties.**

19 1. The Released Parties, including Defendant, deny any and all
20 claims alleged in the Lawsuit and deny any and all wrongdoing whatsoever. This
21 Settlement Agreement is not a concession or admission, and shall not be used against
22 Defendant or any of the Released Parties as an admission or indication with respect
23 to any claim of any fault, concession or omission by Defendant or any of the Released
24 Parties. Whether or not the Settlement is finally approved, neither the Settlement, nor
25 any document, statement, proceeding or conduct related to this Settlement
26 Agreement, nor any reports or accounts thereof, shall in any event be: (1) construed
27 as, offered or admitted in evidence as, received as, or deemed to be evidence for any
28 purpose adverse to the Released Parties, including, but not limited to, evidence of a

1 presumption, concession, indication or admission by any of the Released Parties of
2 any liability, fault, wrongdoing, omission, concession or damage; or (2) disclosed,
3 referred to or offered or received in evidence against any of the Released Parties, in
4 any further proceeding in the Lawsuit, or any other civil, criminal or administrative
5 action or proceeding, except for purposes of settling the Lawsuit pursuant to this
6 Settlement Agreement.

7 2. The Released Parties, including Defendant, shall have the right to
8 use this Settlement, including the Releases set forth above, to defend against any
9 claims asserted by or on behalf of Settlement Class Members, PAGA Aggrieved
10 Employees, or the LWDA, that are encompassed within the Releases, whether such
11 claims are asserted in the Lawsuit or any other lawsuit.

12 **D. Exhibits and Headings.** The terms of this Settlement Agreement
13 include the terms set forth in any attached Exhibit, which is incorporated by this
14 reference as though fully set forth herein. The Exhibit to this Settlement Agreement
15 is an integral part of the Settlement. The descriptive headings of any paragraphs or
16 sections of this Settlement Agreement are inserted for convenience of reference only
17 and do not constitute a part of this Settlement Agreement.

18 **E. Interim Stay of Proceedings.** The Parties agree to hold all proceedings
19 in the Lawsuit, except such proceedings necessary to implement and complete the
20 Settlement, in abeyance pending the Final Approval hearing to be conducted by the
21 Court.

22 **F. Amendment or Modification.** This Settlement Agreement may be
23 amended or modified only by a written instrument signed by all Parties or their
24 successors-in-interest.

25 **G. Entire Agreement.** This Settlement Agreement and any attached
26 Exhibits constitute the entire agreement among these Parties with respect to resolution
27 of the Lawsuit. To the extent there are any other oral or written agreements relating
28 to the subject matter of this Settlement Agreement, this Settlement Agreement

1 controls and supersedes all such agreements. No oral or written representations,
2 warranties or inducements have been made to any Party concerning this Settlement
3 Agreement or its Exhibit other than the representations, warranties and covenants
4 contained and memorialized in this Settlement Agreement and attached Exhibit.

5 **H. Authorization to Enter Into Settlement Agreement.** Counsel for all
6 Parties warrant and represent they are expressly authorized by the Parties whom they
7 represent and who are signing this Settlement Agreement, to negotiate this Settlement
8 Agreement and to take all appropriate action required or permitted to be taken by such
9 Parties pursuant to this Settlement Agreement to effectuate its terms, and to execute
10 any other documents required to effectuate the terms of this Settlement Agreement.
11 The Parties and their counsel will cooperate with each other and use their best efforts
12 to effect the implementation of the Settlement.

13 **I. Binding on Successors and Assigns.** This Settlement Agreement shall
14 be binding upon, and inure to the benefit of, the successors or assigns of the Parties
15 hereto, as previously defined.

16 **J. California Law Governs.** All terms of this Settlement Agreement and
17 the Exhibits hereto shall be governed by and interpreted according to the laws of the
18 State of California.

19 **K. Counterparts.** This Settlement Agreement may be executed in one or
20 more counterparts. All executed counterparts and each of them shall be deemed to be
21 one and the same instrument provided that counsel for the Parties to this Settlement
22 Agreement shall exchange among themselves original signed counterparts.

23 **L. This Settlement is Fair, Adequate and Reasonable.** The Parties
24 believe this Settlement is a fair, adequate and reasonable settlement of the Lawsuit
25 and have arrived at this Settlement in arms-length negotiations, taking into account
26 all relevant factors, present and potential. This Settlement was reached after extensive
27 negotiations.

1 **M. Jurisdiction.** The Court shall retain jurisdiction with respect to the
2 interpretation, implementation and enforcement of the terms of this Settlement
3 Agreement and all orders and judgments entered in connection therewith, and the
4 parties and their counsel hereto submit to the jurisdiction of the Court for purposes of
5 interpreting, implementing and enforcing the settlement embodied in this Settlement
6 Agreement and all orders and judgments entered in connection therewith.

7 **N. Cooperation and Drafting.** Each of the parties has cooperated in the
8 drafting and preparation of this Settlement Agreement. Hence, in any construction
9 made to this Settlement Agreement, the same shall not be construed against any of
10 the Parties.

11 **O. Invalidity of Any Provision.** Before declaring any provision of this
12 Settlement Agreement invalid, the Court shall first attempt to construe the provisions
13 valid to the fullest extent possible consistent with applicable precedents so as to define
14 all provisions of this Settlement Agreement valid and enforceable.

15 **P. Severability.** Should any clause or provision of this Settlement
16 Agreement be declared illegal or unenforceable, it shall be modified or reformed as
17 minimally necessary to be enforceable. If the provision cannot be modified or
18 reformed to be enforceable, such provision shall be severed and deemed null and void,
19 leaving the remainder of this Settlement Agreement in full force and effect.

20 **Q. Named Plaintiffs General Release Remains Effective.** Named
21 Plaintiffs agree to sign this Settlement Agreement, and by signing this Settlement
22 Agreement they are bound by the terms herein stated upon final approval, including
23 without limitation the general release set forth above. Named Plaintiffs shall each
24 retain their right to participate as a Settlement Class Member under this Settlement
25 Agreement, and agree that they may not opt out of the Settlement Class.

26 **R. No Liens or Encumbrances**

27 Named Plaintiffs and Class Counsel represent and warrant that there are no
28 liens or encumbrances on any amounts payable under this Settlement Agreement,

1 including on the Gross Settlement Amount and any of its components, including the
2 amounts allocated for Fees Award and Costs Award to Class Counsel, Named
3 Plaintiffs Enhancement Payments, the Class Member Payments, the PAGA Payments
4 (which includes payments to the LWDA), and Settlement Administration Costs.
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PLAINTIFF

Date: May 26, 2023 
[raul.martinez \(May 26, 2023 11:49 PDT\)](#)
RAUL MARTINEZ

PLAINTIFF

Date: _____
PHILIPPE VIEUX
**DEFENDANT KNIGHT
TRANSPORTATION, INC.**

Date: _____
By: Todd Carlson
Its: General Counsel

APPROVED AS TO FORM BY:

LEBE LAW, APLC

Date: _____
Jonathan M. Lebe
Attorney for Plaintiffs Raul Martinez and
Philippe Vieux

**SHEPPARD, MULLIN, RICHTER &
HAMPTON LLP**

Date: _____
Paul S. Cowie
Attorney for Defendant Knight Transportation,
Inc.

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PLAINTIFF

Date: _____
RAUL MARTINEZ

PLAINTIFF

Date: Jun 3, 2023

[Philippe Vieux \(Jun 3, 2023 10:22 PDT\)](#)
PHILIPPE VIEUX

**DEFENDANT KNIGHT
TRANSPORTATION, INC.**

Date: _____
By: Todd Carlson
Its: General Counsel

APPROVED AS TO FORM BY:

LEBE LAW, APLC

Date: _____
Jonathan M. Lebe
Attorney for Plaintiffs Raul Martinez and
Philippe Vieux

**SHEPPARD, MULLIN, RICHTER &
HAMPTON LLP**

Date: _____
Paul S. Cowie
Attorney for Defendant Knight Transportation,
Inc.

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PLAINTIFF

Date: _____
RAUL MARTINEZ

PLAINTIFF

Date: _____
PHILIPPE VIEUX

**DEFENDANT KNIGHT
TRANSPORTATION, INC.**

Date: _____
By: Todd Carlson
Its: General Counsel

APPROVED AS TO FORM BY:

LEBE LAW, APLC

Date: June 5, 2023

Jonathan M. Lebe
Attorney for Plaintiffs Raul Martinez and
Philippe Vieux

**SHEPPARD, MULLIN, RICHTER &
HAMPTON LLP**

Date: _____
Paul S. Cowie
Attorney for Defendant Knight Transportation,
Inc.

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PLAINTIFF

Date: _____
RAUL MARTINEZ

PLAINTIFF

Date: _____
PHILIPPE VIEUX

**DEFENDANT KNIGHT
TRANSPORTATION, INC.**

Date: 5-25-23 _____
By: Todd Carlson
Its: General Counsel

APPROVED AS TO FORM BY:

LEBE LAW, APLC

Date: _____
Jonathan M. Lebe
Attorney for Plaintiffs Raul Martinez and
Philippe Vieux

**SHEPPARD, MULLIN, RICHTER &
HAMPTON LLP**

Date: May 30, 2023 _____
Paul S. Cowie
Attorney for Defendant Knight Transportation,
Inc.