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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SACRAMENTO, CENTRAL DISTRICT

11 WALTER SCOTT, an individual in his)
12 representative capacity on behalf of all)
13 Aggrieved Employees;)

14 Plaintiffs,)

15 v.)

16 HENNER TANK LINES INC., a)
17 California corporation; DOUGLAS)
18 ERWIN HENNER, an individual;)
19 DEBORAH HENNER, an individual;)
20 and DOES 1-10)

21 Defendants.)
22)
23)
24)
25)
26)
27)
28)

Case No.: 34-2020-00283120-CU-OE-GDS

Judge: Hon. Gerrit W. Wood

**JOINT STIPULATION OF PAGA
SETTLEMENT AND RELEASE**

Comp. Filed: Aug. 10, 2020

Trial Date: NA

Disc. Cutoff: NA

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9 IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff
10 Walter Scott (“Representative Plaintiff”) on behalf of himself, the “Aggrieved
11 Employees” as defined herein, and the State of California on the one hand, and
12 Defendants Henner Tank Lines Inc., Douglas Henner, and Deborah Henner, on the
13 other hand (collectively “the Defendants”), subject to Court approval pursuant to
14 California Labor Code § 2699(1)(2), that the settlement of this Action (as defined
15 herein) shall be effectuated subject to the following terms and conditions:

16 **I. SUMMARY OF SETTLEMENT TERMS.**

17 Under the terms of the Settlement, Defendant will pay the Gross Settlement
18 Amount of \$115,000 (“Gross Settlement Amount”), a non-reversionary sum, in
19 exchange for the full and final settlement and release of any and all claims, known or
20 unknown, by the Representative Plaintiff individually, and on behalf of the Aggrieved
21 Employees and the State of California that were made, or that could have been made
22 pursuant to the Private Attorney General Act, California Labor Code §§ 2698, *et seq.*
23 (“PAGA”) based on the same or similar facts alleged in the operative Complaint in
24 this action (“Action”), and subject to the terms and conditions outlined in this Joint
25 Stipulation of Settlement and Release (“Settlement Agreement”).

26 Per the PAGA and subject to Court approval, 75% of the “Net Settlement
27 Amount,” as defined herein, is payable to the Labor Workforce Development Agency
28 (“LWDA”), 25% of the Net Settlement Amount is payable to the Aggrieved

1 Employees, up to 1/3 of the Gross Settlement Amount is payable to Plaintiffs'
2 Counsel, up to \$10,015 is payable to Plaintiffs' Counsel for costs, and up to \$5,000 is
3 payable to the Settlement Administrator. There is no reversion of funds to the
4 Defendants.

5 Separate and apart from the promises and consideration set forth in this
6 Settlement Agreement, Defendants agree to pay Plaintiff Scott additional
7 consideration to resolve his individual claims against the Defendants. Subject to Court
8 approval of this Settlement Agreement and in exchange for this consideration and the
9 monies paid to him herein, Representative Plaintiff agrees to dismiss all claims
10 alleged in the operative Complaint with prejudice, as discussed below.

11 **II. DEFINITIONS.**

12 As used in this Joint Stipulation of Settlement and Release, the following terms
13 shall have the meanings specified below:

14 1. "Action" means this lawsuit and the operative Complaint in the matter
15 entitled *Scott v. Henner Tank Lines Inc.*, SDSC Case No.: 34-2020-00283120-CU-
16 OE-GDS, LWDA Case No. LWDA-CM-801751-20.

17 2. "Aggrieved Employees" means all nonexempt employees Defendants
18 employed (former and current) in the State of California during the "PAGA Period,"
19 as defined below.

20 3. "Complaint" means the operative First Amended Complaint in the
21 Action.

22 4. "Counsel for Defendants" or "Defense Counsel" means Lyle M. Chan
23 Attorney at Law, Fisher & Phillips LLP, 2050 Main Street, Suite 1000, Irvine, CA
24 92614.

25 5. "Court" means the Superior Court of California, Sacramento County in
26 which the Action is currently pending.

27 6. "Current Aggrieved Employee" means an employee who is currently
28 employed by Defendant Henner Tank Lines Inc.

1 7. “Distributable Amount” or “Net Settlement Amount” means the amount
2 that is distributable to the Aggrieved Employees and the Labor & Workforce
3 Development Agency (“LWDA”) after the following amounts, if approved by the
4 Court, are subtracted from the Gross Settlement Amount: (a) Plaintiffs’ attorneys’
5 fees up to one third of the Gross Settlement Amount; (b) Plaintiff’s costs up to
6 \$10,015; and (c) settlement administration costs up to \$5,000.

7 8. “Effective Date” means the date of entry of Order granting approval of
8 this Settlement Agreement.

9 9. “Former Aggrieved Employee” means an employee no longer working
10 for the Defendant Henner Tank Lines Inc. but who worked for Defendant Henner
11 Tank Lines Inc. at some point during the PAGA period.

12 10. “Gross Settlement Amount” means the total amount of \$115,000
13 Defendants shall pay pursuant to the terms of this Settlement Agreement.

14 11. “Notice of Settlement” means the form to be prepared by the parties and
15 sent to the Aggrieved Employees after the Court approves the terms contained in the
16 Settlement Agreement and attached hereto as **Exhibit 1**.

17 12. “Notice Returns” means envelopes containing the Notice of Settlement
18 to Aggrieved Employees that were mailed to Aggrieved Employees but were
19 undelivered and returned by the U.S. Postal Service.

20 13. “Order” means the order entered by the Court pursuant to the terms set
21 forth in this Settlement Agreement finally and fully giving effect to the terms
22 contained in this Settlement Agreement and dismissing the Action with prejudice.

23 14. “PAGA Period” means from August 10, 2019 to the date of the approval
24 of this settlement.

25 15. “Plaintiffs’ Counsel” means Thomas D. Rutledge, Esquire, 113 West G
26 Street, Suite 231, San Diego, California 92101, Telephone No.: (619) 886-7224.

27 16. “Plaintiffs’ Counsel’s Costs” means the amount Plaintiffs’ Counsel
28 incurred in the Action on behalf of the Representative Plaintiff and Aggrieved

1 Employees including, but not limited to, future costs incurred in securing approval of
2 this Settlement Agreement.

3 17. "Plaintiffs' Counsel's Fees" means the amount payable from the Gross
4 Settlement Amount to Plaintiffs' Counsel for all past and future attorneys' fees
5 incurred by Plaintiffs' Counsel in the Action on behalf of the Representative Plaintiff
6 and the Aggrieved Employees including, but not limited to, future attorneys' fees
7 incurred in securing approval of this Settlement Agreement equal to 1/3 of the Gross
8 Settlement. Plaintiffs' Counsel may elect to have the Settlement Administrator,
9 directly or indirectly, disperse all or part of his attorneys' fees award paid to him in
10 periodic payments, through a structured settlement. Plaintiffs' Counsel will bear any
11 and all costs, fees, and expenses of administration for any periodic payments of such
12 award and shall be fully responsible for any taxes, costs, liabilities, attorneys' fees,
13 and/or penalties resulting from any issues, claims, and/or disputes arising out of,
14 related to, or incurred in connection with any such periodic payments, including
15 without limitation, any such issues, claims, and/or disputes brought by the state or
16 federal government concerning the payment of taxes thereon. Plaintiffs' Counsel shall
17 indemnify, defend, and hold Defendants harmless for any and all taxes, costs,
18 liabilities, attorneys' fees, and/or penalties resulting from any issues, claims, and/or
19 disputes arising out of, related to, or incurred in connection with any such periodic
20 payments.

21 18. "Qualifying Workweeks" means an approximation of the number of
22 weeks worked by any Aggrieved Employee during and within the PAGA Period,
23 calculated as set forth below.

24 19. "Redirected Notice" means a second Notice of Settlement to Current or
25 Former Aggrieved Employees mailed to a new or different address for an Aggrieved
26 Employee that was obtained because of a Notice Return.

27 20. "Released Claims" means any and all claims, debts, liabilities, demands,
28 obligations, guarantees, costs, expenses, attorneys' fees, damages or causes of action

1 pursuant to PAGA, which were alleged or could have been alleged, based on the facts
2 in the Complaint filed by the Representative Plaintiff, on behalf of himself and the
3 Aggrieved Employees in this Action during the PAGA Period, and shall specifically
4 include all civil penalties that are recoverable under the PAGA based on the facts
5 alleged in the operative Complaint, including any of the penalties which are or may
6 be available under the California Labor Code for failure to pay overtime wages,
7 failure to make payments within the required time, failure to provide accurate wage
8 statements, violations of California Labor Code §§ 558, 558.1, or similar statutes,
9 violations of the Industrial Welfare Commission Wage Orders, and any other claims
10 pertaining to the Aggrieved Employees which were alleged, or could have been
11 alleged based on the facts in the operative Complaint, and is inclusive of all
12 Representative Plaintiff's and the Aggrieved Employees' attorneys' fees and costs.

13 21. "Released Parties" include Defendants, and their past, present, and future
14 parents, affiliates, subsidiaries, successors in interest, merged parties, divisions,
15 predecessors, successors, partners, joint venturers, affiliated organizations,
16 shareholders, insurers, reinsurers and assigns, and each of their past, present and
17 future officers, directors, trustees, agents, employees, attorneys, contractors,
18 representatives, benefits plans sponsored or administered by Defendants, divisions,
19 units, and branches, and any other persons or entities acting on behalf of or in concert
20 with any of the foregoing.

21 22. "Representative Plaintiff" means Walter Scott and his representative(s),
22 heir(s), assign(s), attorney(s), and/or insurer(s).

23 23. "Settlement Administrator" means Phoenix Settlement Administration.

24 24. "Settlement Agreement" means this Joint Stipulation of Settlement and
25 Release, including any attached exhibits.

26 25. "Settlement Payment(s)" refers to the payment(s) to any Aggrieved
27 Employees Employee pursuant to the terms of this Settlement Agreement.
28

1 **III. BACKGROUND & REASONS FOR SETTLEMENT.**

2 On August 10, 2020, Plaintiffs filed a “PAGA notice” (notice alleging
3 violations of the California Labor Code subject to civil penalties) with the LWDA
4 concerning the Defendants. Likewise, on August 10, 2020, Plaintiffs via counsel filed
5 a Complaint asserting wage and hour representative PAGA and class action claims.

6 On October 16, 2020, upon the expiration of the statutory waiting period under
7 the PAGA, Plaintiffs filed a First Amended Complaint. This is the operative
8 Complaint.

9 Based on the foregoing, Plaintiffs maintain that Plaintiffs have exhausted their
10 administrative remedies with the LWDA. The LWDA has given no notice to the
11 parties of their intent to take this case over and prosecute the claims alleged herein.

12 In their pleadings, the Representative Plaintiff seeks PAGA-only civil
13 penalties, interest, costs, and attorneys’ fees based on their PAGA allegations that,
14 among other things, allege Defendants failed to pay Aggrieved Employees for all
15 overtime wages, prevailing wages, minimum wages, regular wages, meal and rest
16 break premiums, failed to provide accurate wage statements, failed to timely pay all
17 wages upon discharge, and violated the PAGA. Defendants deny each and every one
18 of Plaintiffs’ allegations asserted in the operative Complaint and assert they have no
19 liability for the claims of the Representative Plaintiff, the Aggrieved Employees, or
20 the State of California.

21 Plaintiffs’ counsel has analyzed the facts and law during the prosecution of this
22 Action. During settlement discussions and well before private mediation, Defendants
23 produced a 20% random sampling of Aggrieved Employees’ payroll records, average
24 rate of pay Aggrieved Employees earned, the title and job descriptions of Aggrieved
25 Employees, the Defendant’ wage and hour policies in effect during the PAGA period,
26 information concerning public works jobs the Defendants worked on, among other
27 things requested by Plaintiffs’ Counsel. Considering all this information, Plaintiffs’
28 counsel is able to make a determination of the potential case value and in conjunction

1 with other relevant factors, including most importantly the Defendants' vehement
2 claims they have done nothing wrong on a class action basis.

3 Representative Plaintiff and Defendants, through their counsel, engaged in
4 extensive and meaningful discussions about the factual and legal strengths and
5 weaknesses of the claims and defenses. On July 15, 2021, the parties appeared before
6 Mr. Tripper Ortman, Esquire, a private mediator during which time the parties
7 discussed the merits of Plaintiffs' claims, the evidence in support and lack of evidence
8 thereof, and following an all-day endeavor, the parties agreed to accept the mediator's
9 proposal.

10 Plaintiffs' Counsel's review of the random sampling Defendants provided
11 demonstrate there are a large number of obstacles to obtaining favorable adjudication
12 on many of Plaintiffs' claims. The prevailing wage/overtime claims, for example,
13 lacked evidence because Defendants are in the transportation business, not
14 construction. Plaintiffs' meal and rest break claims were hotly contested with
15 Defendants arguing too many individual inquiries would surface making trial
16 unmanageable and that regardless Defendants maintain all Aggrieved Employees
17 received compliant meal and rest breaks. There was virtually no evidence
18 demonstrating that Defendants failed to maintain records or failed to reimburse
19 expenses inasmuch as there was ample evidence showing Defendants kept careful
20 records of Aggrieved Employees' working hours and that Defendants maintained a
21 written reimbursement policy allowing employees to obtain expense reimbursements.
22 Plaintiffs did not learn these facts until they received records and data pursuant to the
23 mediation privilege.

24 Representative Plaintiff and Plaintiffs' Counsel, however, maintain their Labor
25 Code §§ 226, PAGA, and some of their underpayment of overtime claims are viable.
26 This is because Plaintiff alleges that during a very short period (about six weeks)
27 during COVID-19 Defendants issued Aggrieved Employees COVID-19 bonus
28 payments with which Plaintiffs maintain Defendants bungled these payments by not

1 reporting them properly on Aggrieved Employees' paystubs or adding this pay to
2 their regular rate of pay for overtime purposes. Defendants assert that these payments
3 were not bonus payments, but were funds were obtained by way of the government's
4 COVID-19 Paycheck Protection Program and were paid to its employees when the
5 employees were unable to work due to COVID-19 shutdowns. Notwithstanding, the
6 Representative Plaintiff and Plaintiffs' Counsel concluded, after taking into account
7 the disputed factual and legal issues involved in the Action, the risks and substantial
8 expenses involved in the further prosecution of this case, reasonably sufficient
9 benefits to be received pursuant to the compromise and settlement of the Action, as
10 set forth in this Settlement Agreement, that settlement on the terms set forth herein is
11 in the best interest of Representative Plaintiff and the Aggrieved Employees is fair
12 and reasonable.

13 Similarly, Defendants concluded there are benefits associated with settling the
14 Action. After taking into account the disputed factual and legal issues involved in the
15 Action, the expense and burden of protracted litigation, and their desire to put the
16 controversy to rest, Defendants believe this settlement is in Defendants' best interests
17 and is fair and reasonable. In particular, Defendants are concerned the future costs
18 and expenses involved in continuing the Action are substantial and Defendants
19 choose to eliminate any further expenses, attorneys' fees, and risks via the Settlement
20 Agreement.

21 By signing below, Defendants warrant and represent that Defendants provided
22 Plaintiffs a true and correct random sampling of 20% of Aggrieved Employees'
23 payroll records before private mediation. Defendants also warrant and represent that
24 at the time of mediation, Defendants employed about 99 Aggrieved Employees who
25 worked approximately 3066 pay periods at \$35.51/pay period during The PAGA
26 Period. By this Agreement and based on Defendants' representations, the parties
27 estimate the gross payout before expenses is about \$19 per workweek
28 (\$115,000/6059). The parties also estimate that the approximate payout to the State of

1 California via the LWDA shall be \$46,239 and the Aggrieved Employees shall
2 receive payment from a total of approximately \$15,413 based on the number of pay
3 periods worked during the PAGA Period. Defendants further warrant and represent
4 that, with the assistance of counsel, they have conducted a review of their wage and
5 hour policies and practices to address the issues raised in this lawsuit to ensure they
6 are in full compliance with all wage and hour laws currently.

7 **IV. PAGA SETTLEMENT APPROVAL & IMPLEMENTATION**
8 **PROCEDURE.**

9 This Settlement Agreement contemplates (1) entry of an Order granting
10 approval of the Settlement and dismissing the Action with Prejudice (“Order”); (2)
11 the mailing of a Notice of Settlement and Settlement Payments to all Aggrieved
12 Employees; (3) providing Settlement Payments to all Aggrieved Employees; and (4)
13 the mailing of a Notice of Settlement and Settlement Payments to the California
14 LWDA. Proceeds from any uncashed checks after the expiration of 180 days shall be
15 sent to the LWDA.

16 **A. Approval of the PAGA Settlement.**

17 As soon as practicable, Plaintiffs’ Counsel will submit this Settlement
18 Agreement to the Court for its approval. Such submission will include such motions,
19 pleadings, and evidence that may be required for the Court to determine if this
20 Settlement Agreement is fair, adequate, and reasonable as required by California
21 Labor Code § 2699(1)(2). Such submission will also include a Notice of Settlement
22 for the Court’s approval, a copy of which is attached hereto as **Exhibit 1**.

23 If the Settlement Agreement fails to be approved or otherwise fails to be
24 consummated for any reason whatsoever, the parties shall retain all rights previously
25 available to them, and any provisional approval of the Settlement Agreement, or the
26 adoption of any procedure herein, shall be undone and the parties shall be restored to
27 their pre-settlement status as if no settlement had been reached and no decisions were
28 made pursuant to it, except as otherwise expressly provided herein. In that event,

1 nothing in this Settlement Agreement or other papers or proceedings related to the
2 Settlement Agreement shall be used as evidence or argument by any party or
3 Aggrieved Employee.

4 **B. Cooperation.**

5 The Parties agree to cooperate fully with each other to accomplish the terms
6 and requirements of this Settlement Agreement, including but not limited to, the
7 execution of such documents and taking such other action as may reasonably be
8 necessary to implement the terms of this stipulated Settlement Agreement.

9 **C. Approval of Stipulation.**

10 By submitting this Settlement Agreement, the Representative Plaintiff, via
11 Plaintiffs' Counsel, respectfully requests the Court to approve this Settlement
12 Agreement. Upon granting approval of the settlement contained herein, the Court
13 shall also enter an Order dismissing with prejudice all claims and implementing the
14 Releases contained herein as to Representative Plaintiff and all Aggrieved Employees
15 and the State of California. The Releases contained herein shall become effective
16 concurrently with the issuance of the Court's Order granting approval subject to
17 Defendants' compliance with making all payments required by this Agreement.

18 **D. Notice of Settlement by Mail.**

19 The Defendants shall, by and through the Settlement Administrator, within
20 sixty (60) days from the Effective Date, mail the Notice of Settlement and Settlement
21 Payments via First-Class mail using the U.S. Postal Service to the most recent address
22 known for each Current and Former Aggrieved Employee. If any Notices of
23 Settlement are returned with a forwarding address, Defendants will re-mail the Notice
24 of Settlement and/or Settlement Payment to the Aggrieved Employee whose notice
25 was returned.

26 If any Notice of Settlement mailed to Aggrieved Employees is returned as
27 having been undelivered by the U.S. Postal Service, the Defendants shall use
28 reasonable efforts to locate an address correction from such Aggrieved Employee(s),

1 and send a Redirected Notice to the new or different address within seven days. The
2 Defendants shall, via Defense Counsel, provide Plaintiffs' Counsel monthly updates
3 as to the status of mailing until the completion of all mailing.

4 **E. Declaration of Compliance.**

5 As soon as practicable, the Defendants shall, via Defense Counsel, provide
6 Plaintiffs' Counsel a declaration attesting to completion of the notice and payment
7 process set forth above, including an explanation of efforts to resend Notice Returns,
8 a summary of claims paid, and checks cashed and uncashed. Counsel shall keep this
9 declaration for their records in the event of an audit from the LWDA for no more than
10 five years.

11 **F. Sufficient Notice.**

12 Compliance with the procedures described in this Section shall constitute due
13 and sufficient notice to Aggrieved Employees of this Settlement Agreement, shall
14 satisfy the requirements of due process, and nothing further shall be required of the
15 Representative Plaintiff, Plaintiffs' Counsel or his assigns, Defendants, or Counsel for
16 Defendants to provide additional notice of the Settlement Agreement, unless
17 expressly ordered by the Court.

18 **G. Formulas to Determine Payment, Distribution of Funds & Payment**
19 **of Funds.**

20 **1. General Terms of Settlement.**

21 On the Effective Date, Defendants shall tender payments directly to the
22 Aggrieved Employees and Plaintiffs' Counsel in the amounts determined pursuant to
23 this Settlement Agreement. From the Gross Settlement Amount, Defendants via
24 counsel shall pay Plaintiffs' Counsel or his assigns \$48,348 as Plaintiffs' Counsel
25 Fees and Costs, and \$49,989 to the LWDA. All payments shall be deemed penalties
26 and, thus no employer's taxes are due and payable from the Gross Settlement
27 Amount. Defendants shall issue Aggrieved Employees 1099's for their amount
28 received for the applicable tax year.

1 In summary, the amount from which the Aggrieved Employees may be paid,
2 also called the “Distributable Amount,” is:

3	Gross Settlement Amount:	\$115,000
4	Plaintiffs’ Counsel Fees (minus):	(\$38,333)
5	Plaintiffs’ Counsel Costs (minus):	(\$10,015)
6	Payment to Settlement Administrator (minus):	(\$5,000)
7	Payment to the LWDA (minus):	(\$46,239)
8	Estimated Distributable Amount to Aggrieved	
9	Employees:	\$15,413

10 No funds will revert to Defendants from the Gross Settlement Amount.
11 Defendants shall pay any remaining proceeds from uncashed checks after the
12 expiration of 180 days to the LWDA.

13 **2. Formula for Determining the Value of the Claims for the**
14 **Aggrieved Employees.**

15 To fairly distribute the Settlement Payments to Aggrieved Employees,
16 Plaintiffs’ Counsel and Defense Counsel arrived at a formula designed to fairly
17 determine each Aggrieved Employee’s *pro rata* payment from the Distributable
18 Amount, as allowed by PAGA, based on their length of service. The Distributable
19 Amount will be divided amongst Aggrieved Employees pro-rata based on the number
20 of a particular Aggrieved Employee’s Qualifying Workweeks worked as compared to
21 the total Qualifying Workweeks worked by the Aggrieved Employees as a whole.
22 Each Aggrieved Employee’s pro-rata Settlement Payment is calculated by dividing
23 the Distributable Amount by the total number of Qualifying Workweeks of the
24 Aggrieved Employees as a whole, to determine the monetary value of each
25 Qualifying Workweek. To determine each Aggrieved Employee’s Settlement
26 Payment, the Defendants will then multiply the number of each Aggrieved
27 Employee’s Qualifying Workweeks, as calculated above, times the value of each
28 Qualifying Workweek, as calculated above.

Mathematically, each Aggrieved Employee's payment is calculated as follows:
Aggrieved Employee's Settlement Payment = (Distributable Amount) ÷ (total
Qualifying Workweeks of all Aggrieved Employees as a whole) x (individual
Aggrieved Employees Employee's Qualifying Workweeks). Payments from the
Distributable Amount shall be made only to Aggrieved Employees, pursuant to the
manner provided in this Agreement and this section.

H. Administration of Settlement

**1. Settlement Administrator. The Parties agree to engage Phoenix
Settlement Administration as the Settlement Administrator to handle the
administration of this Settlement.**

2. Distribution of Settlement Payments.

The Settlement Administrator will be responsible for distributing the Notice of
Settlement and Settlement Payments. The Settlement Administrator shall prepare, file,
and send IRS Forms 1099s for Settlement Payments made to Aggrieved Employees
and for all other payments issued out of the Net Settlement Amount. The Defendants
and/or Settlement Administrator shall not disburse the settlement funds except as
provided herein, as ordered by the Court, or as agreed upon, in writing, by Counsel
for Defendants and Plaintiffs' Counsel.

3. Time for Disbursement.

Within twenty-one (21) days of the later of: (a) the Settlement being fully
funded; and (b) the Court enters an order granting approval of the Settlement (the
Effective Date), the Settlement Administrator shall issue payments to (1) the
Aggrieved Employees; (2) the LWDA; (3) Plaintiffs' Counsel for Plaintiffs'
Counsel's Court-approved attorneys' fees and costs, and (4) the Settlement
Administrator for its Court-approved settlement administration costs incurred in
connection with the Settlement. The Settlement Administrator shall issue Payment to
Aggrieved Employees in the form of a check issued for an amount calculated using
the formulas contained in this Settlement Agreement. Funds from any settlement

1 checks remaining un-cashed after one hundred eighty (180) calendar days after being
2 issued to Aggrieved Employees shall be distributed to the LWDA by the Settlement
3 Administrator.

4 Aggrieved Employees will be bound by all the terms of this Settlement
5 Agreement, regardless of whether that Aggrieved Employee receives and cashes his
6 or her check for Settlement Payment.

7 **I. Circular 230 Disclaimer.**

8 Each party to this Settlement Agreement acknowledges and agrees that (1) no
9 provision of this Agreement, and no written communication or disclosure between or
10 among the parties or their attorneys and other advisers, is or was intended to be, nor
11 shall any such communication or disclosure constitute or be construed or be relied
12 upon as, tax advice within the meaning of United States Treasury Department
13 Circular 230 (31 CFR Part 10, as amended); (2) the Acknowledging Party (a) has
14 relied exclusively upon his, her or its own, independent legal and tax advisers for
15 advice (including tax advice) in connection with this Agreement, (b) has not entered
16 into this Agreement based upon the recommendation of any other party or any
17 attorney or advisor to any other party, and (c) is not entitled to rely upon any
18 communication or disclosure by any attorney or adviser to any other party to avoid
19 any tax penalty that may be imposed on the Acknowledging Party; and (3) no attorney
20 or adviser to any other party has imposed any limitation that protects the
21 confidentiality of any such attorney's or adviser's tax strategies (regardless of
22 whether such limitation is legally binding) upon disclosure by the Acknowledging
23 Party of the tax treatment or tax structure of any transaction, including any transaction
24 contemplated by this Agreement.

25 **V. LIMITATIONS ON USE OF THIS SETTLEMENT.**

26 **A. No Admission.**

27 Neither the acceptance nor the performance by Defendants of the terms
28 contained in this Settlement Agreement or any of the related negotiations or

1 proceedings is or shall be claimed to be, construed as, or deemed a precedent or an
2 admission by Defendants of the truth of any allegations in the Complaint or any
3 amended complaint, which are explicitly denied.

4 **B. Non-Evidentiary Use.**

5 Neither this Settlement Agreement, its terms, nor any statements or conduct in
6 the negotiation or drafting of it, shall be offered or used as evidence by the
7 Representative Plaintiff, any Aggrieved Employees, Defendants, or its or their
8 respective counsel, in the Action, except as is reasonably necessary to effectuate its
9 purpose and terms, including enforcement of the Settlement Agreement in the event
10 of breach by any party as provided herein. This Settlement Agreement may be used
11 by Defendants and/or the Released Persons to prove or defend against any claim
12 released herein by any Aggrieved Employee in any judicial, quasi-judicial,
13 administrative or governmental proceeding.

14 **C. Nullification.**

15 If the Court for any reason does not approve this Settlement Agreement, this
16 Settlement Agreement shall be considered null and void and all parties to this
17 Settlement Agreement shall stand in the same position, without prejudice, as if the
18 Settlement Agreement had been neither entered into nor filed with the Court.

19 **VI. RELEASE**

20 **A. Aggrieved Employees.**

21 Upon the approval by the Court of this Settlement Agreement and by operation
22 of the Settlement Agreement's terms, and except as to such rights or claims as may be
23 created by this Settlement Agreement, all Aggrieved Employees, fully release and
24 discharge the Released Persons from all Released Claims, whether known or
25 unknown during the PAGA Period.

26 **VII. MISCELLANEOUS PROVISIONS.**

27 **A. Amendments.**

28 Material terms and provisions of this Settlement Agreement may be amended

1 only by a written agreement, which is both (1) signed by the Representative Plaintiff,
2 Plaintiffs' Counsel, Defendants, and Counsel for Defendants and (2) approved by the
3 Court. Nonmaterial amendments or modifications to this Agreement, however, may
4 be made in writing between Plaintiffs' Counsel and Defendants' Counsel without the
5 need to obtain signatures from the represented parties.

6 **B. Jurisdiction of the Court to Enforce Terms of Agreement.**

7 The Parties stipulate and agree that the Court will retain jurisdiction to enforce
8 the terms of this Settlement Agreement following approval of the Settlement
9 Agreement pursuant to California Code of Civil Procedure § 664.6. The Parties agree
10 to the exclusive jurisdiction of the Court to enforce the terms and conditions
11 contained herein.

12 **C. No Inducements.**

13 Representative Plaintiff and Defendants acknowledges they are entering this
14 Settlement Agreement voluntarily act without duress or undue pressure or influence
15 of any kind or nature whatsoever and that neither the Representative Plaintiff nor
16 Defendants have relied on any promises, representations or warranties regarding the
17 subject matter hereof other than as set forth in this Settlement Agreement.

18 **D. No Prior Assignment.**

19 The parties hereto represent, covenant, and warrant they have not, directly or
20 indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or
21 encumber to any person or entity any portion of any liability, claim, demand, action,
22 cause of action or rights herein released and discharged except as set forth herein.
23 Any Released Claims made by any Aggrieved Employees during the PAGA period
24 are deemed covered and released by the individual Aggrieved Employee(s) making
25 the claim under the terms set forth herein. Any Aggrieved Employees covered by this
26 Settlement Agreement will be barred from proceeding with any such claim.

1 **E. No Impact on Benefit Plans.**

2 Neither the Settlement Agreement nor any amounts paid to Plaintiff or any
3 Aggrieved Employee under the settlement will modify any previously credited hours
4 or service under any employee benefit plan sponsored by Defendant Henner Tank
5 Lines, Inc. Such amounts will not form the basis for additional contributions to,
6 benefits under, or any other monetary entitlement under, Henner Tank Lines, Inc.'s
7 sponsored benefit plans. The payments made under the terms of this Settlement
8 Agreement shall not be applied retroactively, currently or on a going-forward basis, as
9 salary, earnings, wages, or any other form of compensation for the purposes of any
10 Henner Tank Lines, Inc. benefit plan, unless required by such plan.

11 **F. Costs and Fees.**

12 The Parties shall each bear their own costs, attorneys' fees, mediator fees and
13 other fees incurred in connection with this Settlement Agreement, the Action and
14 Plaintiff's claims, except as otherwise set forth specifically herein.

15 **G. Governing Law.**

16 This Settlement Agreement shall be construed under and governed by the laws
17 of the State of California. This Settlement Agreement shall be deemed to have been
18 entered into in California, and all questions of validity, interpretation, or performance
19 of any of its terms or of any rights or obligations of the Parties to this Settlement
20 Agreement shall be governed by California law. If any legal or equitable action or
21 arbitration is necessary to enforce the terms of this Settlement Agreement, it shall be
22 brought in the State of California, County of Sacramento.

23 **H. Severability.**

24 If any term or provision of this Settlement Agreement is held to be invalid or
25 unenforceable, the remaining portions of this Settlement Agreement will continue to
26 be valid and will be performed, construed and enforced to the fullest extent permitted
27 by law, and the invalid or unenforceable term will be deemed amended and limited in
28 accordance with the intent of the Parties, as determined from the face of the

1 Agreement, to the extent necessary to permit the maximum enforceability or
2 validation of the term or provision.

3 **I. Waiver.**

4 No waiver of any condition or covenant contained in this Settlement
5 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be
6 considered to imply or constitute a further waiver by such Party of the same or any
7 other condition, covenant, right or remedy.

8 **J. Binding Agreement.**

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

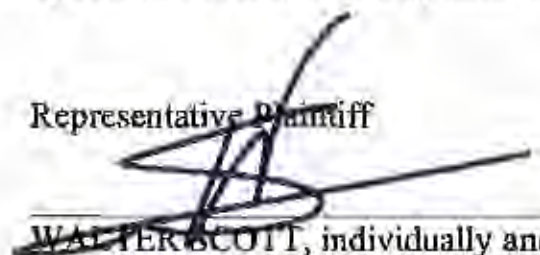
14 **K. Counterparts.**

15 This Settlement Agreement, and any amendments hereto, may be executed in
16 any number of counterparts, each of which when executed and delivered shall be
17 deemed to be an original and all of which taken together shall constitute one and the
18 same instrument. Signatures obtained via facsimile, or copies of signatures, shall be
19 deemed valid as if they were inked originals. This Settlement Agreement will become
20 effective on the date when the last person signs and dates it.

21 **IN WITNESS WHEREOF**, the parties hereto execute this Settlement
22 Agreement and have caused this Settlement Agreement to be executed by their duly
23 authorized representatives.

24
25 Dated: 9/21/2021

Representative Plaintiff

26
27 
WALTER SCOTT, individually and
for Aggrieved Employees

28 Defendant Henner Tank Lines Inc.

1 Dated: 9/22/2021



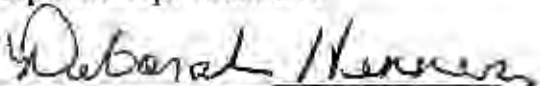
CEO
For Defendant Henner Tank Lines Inc.

2
3
4 Dated: 9/22/2021



Douglas Henner, individually and as a
corporate representative

5
6 Dated: 9/22/2021



Deborah Henner, individually and as a
corporate representative