

Brian J. Mankin, Esq. [SBN 216228]
brian@lmlfirm.com
Peter J. Carlson, Esq. [SBN 295611]
peter@lmlfirm.com
LAUBY MANKIN LAUBY LLP
5198 Arlington Avenue, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

Attorneys for Plaintiff Juan Nieves and on behalf of the Proposed Class

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

ROBERT THREADGILL, individually, on
a representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

DECKER TRUCK LINE, INC., an Iowa
Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: CIVSDS2018856
*[Assigned to Hon. Judge David Cohn, Dept. S26,
for all purposes]*

**DECLARATION OF BRIAN MANKIN IN
SUPPORT OF PLAINTIFF'S MOTION
FOR PRELIMINARY APPROVAL**

Hearing

Date: March 27, 2023

Time: 10:00 a.m.

Dept.: S26

Complaint filed: August 6, 2020

I, Brian J. Mankin, state and declare:

1. I am an attorney licensed to practice before all of the courts of the State of California. Within our firm, I am a partner and manage the employment practice. I represent Plaintiff Robert Threadgill in this action and I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I submit this declaration in support of Plaintiff's Motion for Preliminary Approval of this Class Action Settlement. If called as a witness, I could and would competently testify thereto.

///

1 **COUNSEL'S EXPERIENCE**

2 2. I have been a member, in good standing, of the State Bar of California since 2001.
3 I am admitted to practice in the United States District Courts for the Central and Southern
4 District of California and the Ninth Circuit Court of Appeal and have tried cases in various
5 courts in California.

6 3. I have handled over 500 employee vs. employer litigation matters during my 21
7 years in practice. Over the last 15 years, my practice has almost entirely consisted of
8 representing employees, the majority of which has included class action and representative
9 action wage and hour matters. In total, I have handled over 250 class action and representative
10 action wage/hour cases, and have been appointed by the court as class counsel and have received
11 final court approval and judgment in approximately half of those actions to date, and anticipate
12 receiving final approval in many more of those in the future.

13 4. As part of these settlements and judgments, I have recovered in excess of \$250
14 million in damages for my clients and the class members (who often work as nurses, ambulance
15 drivers, technicians, warehouse workers, truck drivers, sales, professional occupations and
16 countless other trades). As of the end of 2018, my team and I held the record for the largest
17 known PAGA-only case in California's history as of that time - a \$12.5 million-dollar court
18 approved settlement, which followed extensive litigation, summary adjudication and writs to the
19 CA Supreme Court against a Fortune 50 company (*Garcia v. Macy's*, San Bernardino Superior
20 Court).

21 5. I have tried two major class and PAGA cases against Fortune 100 companies. In
22 2018, I was lead counsel in a PAGA case that my firm tried to the bench in the Orange County
23 Superior Court and received a \$425,000 judgment. In 2019, I was co-counsel in a class action
24 case against Walmart that we tried to the jury in District Court, wherein the jury awarded
25 Plaintiff over \$6 million. Both cases were appealed.

26 6. Over the last 4 to 5 years, I have been consecutively selected by my peers as a
27 "Super Lawyer" in Employment Litigation.

28 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

8. Under the terms of the Settlement Agreement, Defendant will not oppose Plaintiff Counsel's application for a reasonable award of attorney's fees not to exceed the total amount of \$233,333.33 which is 1/3 of the Gross Settlement Amount, Plaintiff Counsel's litigation expenses not to exceed \$20,000, Settlement Administrator Costs not to exceed \$5,500, PAGA Penalties of \$50,000 (of which \$37,500 or 75% will be paid to the LWDA and the remaining \$12,500 or 25% will be paid to the Aggrieved Employees on a pro rata basis), and a Service Payment to Plaintiff as the Class Representative not exceed \$10,000. After subtracting the agreed-upon deductions from the Gross Settlement Amount, it is estimated that \$381,166.67 will be available to the Class Members who do not opt-out of the settlement, as follows:

	Total Amount
<i>Gross Settlement Amount</i>	\$ 700,000.00
Attorneys' Fees (1/3)	\$ 233,333.33
Litigation Costs	\$ 20,000.00
Administrator Costs	\$ 5,500.00
PAGA Penalties	\$ 50,000.00
Class Representative's Service Award	\$ 10,000.00
<i>Net Settlement Amount</i>	\$ 381,166.67

9. Assuming 109 Class Members, the average payment to each class member will be approximately \$3,496.94 (\$381,166.67 / 109). Of course, the actual payment will be calculated on a pro-rata basis according to the number of Weeks Worked by each Class Member.

10. Each Class Member will receive the Class Notice, explaining the nature of the case, and the process for participating, objecting and opting-out, and advising of his/her estimated settlement payment and the number of Weeks he/she is credited with working during the Class and PAGA Periods (attached hereto as **Exhibit B**).

11. My office has performed considerable work and diligently investigated and prosecuted this case to a successful conclusion. Our work has resulted in the creation of a significant settlement fund for the benefit of the Class. We efficiently communicated and exchanged information informally with Defense counsel which enabled the parties to successfully settle the case at mediation. Because of the risks involved in litigating the case and the contested legal and factual issues, I believe this settlement to be fair, reasonable, and adequate.

13. On August 6, 2020, Plaintiff filed a class and representative PAGA action complaint against Defendant (the “Complaint”) in the Court alleging claims for: (1) failure to

1 pay minimum wages, (2) failure to pay for rest and recovery periods under Labor Code § 226.2,
2 (3) failure to provide rest breaks, (4) failure to provide meal periods, (5) failure to reimburse for
3 business expenses, (6) failure to timely pay final wages, (7) failure to provide accurate itemized
4 wage statements, (8) unfair and unlawful competition pursuant to Business and Professions Code
5 §§ 17200 *et seq.*, and (9)-(16) related claims under PAGA.

6 14. Defendant retained counsel and filed a Motion to Quash Service of Summons and
7 Complaint based on the theory that the Court did not have personal jurisdiction over Defendant.
8 On July 27, 2021, the Court heard arguments and denied Defendant's Motion to Quash. Then,
9 on August 6, 2021, Defendant filed a Petition for Writ of Mandate to the Court of Appeal, which
10 was summarily denied on August 16, 2021. Defendant then filed a Petition for Review with the
11 California Supreme Court on August 26, 2021, which was denied on October 20, 2021.
12 Thereafter, Defendant filed its Answer to the Complaint on or around November 1, 2021.

13 15. Plaintiff then moved forward with discovery and began a meet and confer
14 process over allegedly deficient responses, and an informal discovery conference was held on
15 April 11, 2022. However, class discovery was stayed by agreement due to Defendant's filing of
16 a Motion for Summary Judgment/Adjudication (the "MSJ") as to all of Plaintiff's individual
17 claims in the Complaint on February 14, 2022.

18 16. On June 14, 2022, after full briefing and hearing argument from counsel, the
19 Court granted summary adjudication in Defendant's favor as to Plaintiff's Third, Fourth,
20 Eleventh, and Twelfth Causes of Action (based on FMCSA preemption of meal period and rest
21 break claims), but the Court denied the MSJ in all other respects.

22 17. After the Court's ruling on Defendant's MSJ, Plaintiff and Defendant
23 (collectively, the "Parties") agreed to stay further proceedings and attend private mediation. In
24 preparation for the mediation, the Parties informally exchanged documents and information that
25 allowed both sides to calculate the potential damages and evaluate potential risk, including
26 policies and procedures pertaining to each claim alleged, and statistics relating to, *inter alia*, the
27 number of current and former Class Members/Aggrieved Employees, number of Weeks Worked
28 and pay periods, number of issued driver settlement summaries (wage statements), average

percentage of miles driven in California, and other things. Defendant also provided its written policies and practices and confirmation regarding the uniform payroll and timekeeping practices for Class Members. This information enabled both Parties to take a deep dive into the claims alleged. Additionally, during this process, Plaintiff and his counsel analyzed, researched, and investigated the potential issues, including matters related to the calculation of damages, trial, and appellate issues and risks.

18. On September 13, 2022, Plaintiff and Defendant participated in mediation before Steven Rottman, a highly regarded wage-and-hour mediator. The matter resolved pursuant to a mediator's proposal, and the Parties memorialized the terms of the settlement in a long-form Settlement Agreement. The Parties now seek the Court's preliminary approval of the Settlement.

THE SETTLEMENT IS FAIR, JUST, AND REASONABLE

19. The settlement was the product of extensive arm's length negotiations, facilitated by an experienced mediator. Though cordial and professional, the settlement negotiations were adversarial and non-collusive in nature. The settlement reached is the product of substantial effort by the parties and their counsel. Although we believed that there was a possibility of certifying the claims, we recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or on the damages awarded, and/or on an appeal that can take several more years to litigate.

20. The settlement will result in a fair payment to each class member based on the number of Weeks Worked by each Class Member. As set forth hereinabove, Plaintiff and his counsel have diligently investigated the claims and defenses on behalf of the Class Members and worked to achieve a resolution of the claims to maximize the recovery by avoiding further expenditure of attorneys' fees and costs. After evaluating the significant risks attendant with further litigation described above and weighing them against the benefits of a known compromise and settlement as set forth in the Settlement Agreement, settlement on the terms agreed to is believed to be in the best interest of Plaintiff and the Class, and is a fair and reasonable resolution of the claims alleged.

///

1 21. Plaintiff's counsel brought to bear a great deal of experience in negotiating the
2 settlement of this case. As detailed herein, Plaintiff's counsel engaged in the necessary discovery
3 and investigation, making it possible to exercise informed judgment throughout the settlement
4 process, including significant document review (e.g. documents pertaining to Defendant's
5 policies and procedures, personnel documents, among others), and conducted an extensive
6 analysis of the detailed information provided by Defendant.

7 22. Based on my experience in other cases, including wage and hour matters, I
8 believe I am qualified to evaluate the class claims and viability of defenses in this class action.
9 In this case, the recovery for each class member is reasonable, fair, and adequate, and a
10 settlement at this time is in the best interests of the class. The settlement provides each class
11 member with compensation for the alleged violations when viewed in relation to the costs and
12 risks inherent in obtaining class certification and proceeding to trial.

13 23. Plaintiff's counsel, as well as Defendant's counsel, fully endorse the terms and
14 conditions of the settlement as set forth in the abovementioned Settlement Agreement.

15 24. Of course, the settlement amount represents a compromise figure, taking into
16 account the various risks surrounding class certification and the merits of Defendant's asserted
17 defense. Nevertheless, the settlement provides for fair and adequate payments to the class
18 members, with no reversion to Defendant.

19 **PLAINTIFF'S REQUESTED ENHANCEMENT PAYMENTS**

20 25. Plaintiff seeks an enhancement payment of \$10,000, which I believe is fair and
21 warranted given the time and effort he devoted to this case, including during the Motion to
22 Quash and in opposition to Defendant's MSJ. Additionally, his efforts included providing
23 factual background for the Class and PAGA complaint; providing documents and information
24 about Defendant's compensation plan; participating in phone calls to discuss litigation and
25 settlement strategy; making himself available throughout the litigation to assist with analyzing
26 the claims and defenses; helping Class Counsel prepare for the mediation; and reviewing the
27 settlement documents. The Class Representative also assumed significant risk in bringing this
28 litigation—namely, had he lost, he could have been ordered to pay Defendant's costs.

1 **ADEQUACY OF COUNSEL AND THE PROVISIONAL REASONABLENESS OF THE**
2 **REQUESTED FEES AND COSTS**

3 26. As set forth above, I have handled over 250 class and representative actions, have
4 been appointed as class counsel and have successfully resolved over half of those class actions,
5 and many others remain pending and will successfully resolve in the future.

6 27. When this case was taken on a contingency fee basis, with my firm agreeing to
7 assume responsibility for all litigation costs, the ultimate result was far from certain. In the
8 course of this litigation, my firm paid all costs including filing fees, court costs, research fees,
9 and mediation costs. There was never a guarantee that my firm would recoup those expenditures.

10 28. It is my experience that attorney fee awards of one-third of a common fund
11 settlement is the standard in California. In this case, Plaintiff's counsel agreed to seek one-third
12 of the Settlement Amount for attorneys' fees. Defendant does not oppose this fee request. The
13 fee is further warranted because it is within the range of reasonableness typically awarded in
14 class actions. My firm's costs are reasonably capped at \$20,000 and will be based on the actual
15 amount of costs incurred at the time of final approval.

16 **SETTLEMENT ADMINISTRATOR**

17 29. The parties request that the Court appoint ILYM Group to serve as the Settlement
18 Administrator. ILYM is experienced in administering class action settlements, and has provided
19 a flat-fee proposal to administer this settlement for \$5,500.

20 **SUBMISSION TO THE LWDA**

21 30. Plaintiff has concurrently submitted the settlement to the LWDA in accordance
22 with Labor Code § 2699(1)(2). The proof of submission is attached hereto as **Exhibit D**.

23 **CONCLUSION**

24 31. For the foregoing reasons, it is respectfully requested that the Court grant
25 preliminary approval of the settlement as being fair, reasonable, and in the best interests of the
26 class, as well as preliminarily approve the requested attorneys' fees, costs, and enhancement
27 payment to the Class Representative.

28 ///

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct. Executed on November 23, 2022, at Riverside, California.

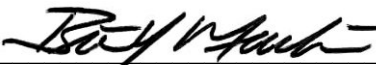
3
4 By: 
5 Brian J. Mankin, Esq.
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT “A”

Brian J. Mankin, Esq. [SBN 216228]
brian@lmlfirm.com
Peter J. Carlson, Esq. [SBN 295611]
peter@lmlfirm.com
LAUBY MANKIN LAUBY LLP
5198 Arlington Avenue, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

Attorneys for Plaintiff and all others similarly situated

LEWIS BRISBOIS BISGAARD & SMITH LLP
KATHERINE C. DEN BLEYKER, SB# 257187
E-Mail: *Katherine.DenBleyker@lewisbrisbois.com*
WILLIAM B. RICHARDS, JR., SB# 298552
E-Mail: *William.Richards@lewisbrisbois.com*
633 West 5th Street, Suite 4000
Los Angeles, California 90071
Telephone: 213.250.1800
Facsimile: 213.250.7900

Attorneys for Defendant,
DECKER TRUCK LINE, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

ROBERT THREADGILL, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

DECKER TRUCK LINE, INC., an Iowa
Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: CIVDS2018856

*[Assigned to Honorable David Cohn, Dept.
S26, for all purposes]*

**CLASS ACTION AND PAGA
SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

Complaint filed: August 6, 2020

1 This Class Action and PAGA Settlement Agreement and Release of Claims is entered
2 into by and between Plaintiff Robert Threadgill, individually and on behalf of all others similarly
3 situated, and Defendant Decker Truck Line, Inc., and is approved by their respective counsel of
4 record, subject to the terms and conditions hereof and the Court's approval.

5 **A. Definitions**

6 As used herein, for the purposes of this Settlement Agreement only, the following terms
7 shall be defined as set forth below:

8 1. "Action" or "Lawsuit" means and refers to the case entitled *Robert Threadgill v.*
9 *Decker Truck Line, Inc., et al.*, Superior Court of California, County of San Bernardino, Case
10 No. CIVDS2018856.

11 2. "Agreement" or "Settlement Agreement" shall mean this Class Action and PAGA
12 Settlement Agreement and Release of Claims.

13 3. "Aggrieved Employees" means all current and former truck drivers who resided
14 in California and who were employed by Defendant at any time during the PAGA Period.
15 Defendant represents that there are approximately 70 eligible Aggrieved Employees as of the
16 date of mediation on September 13, 2022.

17 4. "Class Counsel" refers to Brian Mankin and Peter Carlson of Lauby Mankin
18 Lauby LLP.

19 5. "Class Data" means a complete list that Defendant will diligently and in good
20 faith compile from its records and provide to the Settlement Administrator on one or more
21 spreadsheets and shall include the Settlement Class Members' full names; last known addresses;
22 last known telephone numbers (if available); Social Security Numbers; the total Weeks Worked
23 during the PAGA Period for each Aggrieved Employee; and the total Weeks Worked during the
24 Class Period for each Settlement Class Member.

25 6. "Class Period" is deemed to be any time during the period of August 6, 2016
26 through November 12, 2022.

27 7. "Class Representative" or "Plaintiff" means and refers to Robert Threadgill.

28 8. "Complaint" refers to the operative complaint in the Action, alleging Class

1 Claims and representative PAGA Claims.

2 9. “Court” (or “Judge”) means the Superior Court of California, County of San
3 Bernardino.

4 10. “Defendant” means and refers to Decker Truck Line, Inc.

5 11. “Defendant’s Counsel” or “Defense Counsel” means and refers to Lewis Brisbois
6 Bisgaard & Smith LLP.

7 12. “Effective Date” means the latest of the following dates: (i) if no Class Member
8 objects, timely and properly intervenes, or files a motion to vacate the judgment approving the
9 Settlement Agreement under California Code of Civil Procedure § 663, then the date of the
10 Notice of Entry of Order regarding Final Approval of the Settlement; (ii) if a Class Member
11 objects, timely and properly intervenes, or files a motion to vacate the judgment approving the
12 Settlement Agreement, then sixty-one (61) calendar days following the date the Court enters an
13 order granting Final Approval, assuming no appeal is filed; or (iii) if a timely appeal is filed, the
14 date of final resolution of that appeal (including any requests for rehearing and/or petitions for
15 *certiorari*), resulting in final judicial approval of the Settlement.

16 13. “Final Approval” refers to the order of the Court granting final approval of this
17 Settlement Agreement and entering a judgment approving this Agreement on substantially the
18 terms provided herein or as the same may be modified by subsequent agreement of the Parties.

19 14. “Final Settlement Class” means, collectively, all Participating Class Members
20 who have not opted out of the Settlement Class by submitting timely, valid Requests for
21 Exclusion.

22 15. “Gross Settlement Amount” shall have the meaning ascribed to it in Paragraph
23 51(a) below.

24 16. “Individual Settlement Payment(s)” shall have the meaning ascribed to it in
25 Paragraph 51(c) below.

26 17. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 51(b)
27 below.

28 18. “Notice” means the notice of class action and PAGA settlement that will be sent

1 to the Settlement Class Members and Aggrieved Employees.

2 19. “Notice Response Deadline” is thirty (30) calendar days from the date the Notice
3 is mailed to the Settlement Class Members and Aggrieved Employees.

4 20. “Objecting Settlement Class Member” means a Settlement Class Member, other
5 than Plaintiff, who submits a valid and timely objection to the terms of this Agreement with
6 respect to the Released Class Claims, pursuant to Paragraph 74(c) below.

7 21. “PAGA” means the California Private Attorneys General Act of 2004, California
8 Labor Code §§ 2698 *et seq.*

9 22. “PAGA Penalties” means the total amount of civil penalties that the Parties have
10 agreed will be paid from the Gross Settlement Amount to settle the PAGA Claims, allocated
11 75% to the California Labor and Workforce Development Agency (“LWDA”) in accordance
12 with PAGA, and 25% for the individual PAGA payments to Aggrieved Employees, as set forth
13 further below in Paragraph 51(h).

14 23. “PAGA Period” is deemed to be any time during the period of August 6, 2019,
15 through November 12, 2022.

16 24. “PAGA Released Claims” or “PAGA Claims” by the Aggrieved Employees upon
17 Final Approval of the Settlement means the PAGA claims that Plaintiff alleged against the
18 Released Parties, on behalf of the Aggrieved Employees and the State of California, based on the
19 facts stated in the Complaint and in the relevant LWDA notice letter, including all PAGA claims
20 seeking civil penalties premised upon: (a) failure to pay minimum wages, (b) failure to pay for
21 rest and recovery periods under California Labor Code § 226.2, (c) failure to reimburse business
22 expenses, (d) failure to timely pay wages each period, (e) failure to timely pay wages upon
23 separation of employment, (f) failure to provide accurate itemized wage statements, and (g) all
24 other claims for civil penalties recoverable under PAGA based on the facts or claims alleged in
25 the Complaint.

26 25. “Participating Class Member” means any and all Settlement Class Members who
27 are deemed to participate, who will receive an Individual Settlement Payment, and who do not
28 opt-out by submitting a timely, valid Request for Exclusion.

1 26. “Parties” or “Settling Parties” mean Plaintiff and Defendant, collectively.

2 27. “Preliminary Approval Date” means the date the Court preliminarily approves the
3 Settlement Agreement, and the exhibits thereto, and enters the Preliminary Approval Order.

4 28. “Preliminary Approval Order” means the judicial Order to be entered by the
5 Court, upon the application or motion of the Plaintiff, preliminarily approving this Settlement
6 and providing for the issuance of the Notice to the Settlement Class and Aggrieved Employees,
7 an opportunity for Settlement Class Members to opt-out of the Settlement, an opportunity to
8 submit timely objections to the Settlement, and setting a hearing on the fairness of the terms of
9 Settlement, including approval of attorneys’ fees and costs.

10 29. “QSF” means the Qualified Settlement Fund set up by the Settlement
11 Administrator for the benefit of the Final Settlement Class and Aggrieved Employees, and from
12 which the settlement payments shall be made, and which is intended to be a fund that qualifies
13 under Internal Revenue Code Sec. 468.

14 30. “Released Class Claims” or “Class Claims” by the Participating Class Members
15 upon Final Approval of the Settlement will include all claims stated in the Complaint and those
16 based solely upon the facts in the Complaint, including: (a) failure to pay minimum wages, (b)
17 failure to pay for rest and recovery periods under California Labor Code § 226.2, (c) failure to
18 reimburse business expenses, (d) failure to timely pay wages upon separation of employment, (e)
19 failure to provide accurate itemized wage statements, (f) unfair and unlawful competition, and
20 (g) all other claims that reasonably could have arisen out of the allegations made and based on
21 the facts alleged in the Complaint.

22 31. “Released Parties” means Defendant and their past and present officers, directors,
23 shareholders, members, partners, managers, employees, agents, principals, heirs, representatives,
24 accountants, auditors, consultants, insurers and reinsurers, and their respective parent
25 corporations, subsidiaries, divisions, affiliates, attorneys, predecessors, successors and assigns.

26 32. “Release” shall mean (1) the release and discharge of the Released Class Claims
27 by Plaintiff and all Participating Class Members, and (2) the release and discharge of the PAGA
28 Released Claims by Plaintiff, the State of California, and all of the Aggrieved Employees. The

1 *res judicata* effect of the Judgment will be the same as that of the Release of the Released Class
2 Claims and PAGA Released Claims.

3 33. “Request for Exclusion” means and refers to a valid and timely request for
4 exclusion from the Settlement of the Released Class Claims, which may be submitted by any
5 Settlement Class Member, other than Plaintiff, pursuant to Paragraph 74(a) below.

6 34. “Service Payment” or “Service Award” means, as set forth further in Paragraph
7 51(e) below, the amount approved by the Court to be paid from the Gross Settlement Amount to
8 the Class Representative, Robert Threadgill, in addition to his Individual Settlement Payment as
9 a Participating Class Member and Aggrieved Employee.

10 35. “Settlement Administrator” means and refers to ILYM Group, the third-party
11 class action settlement administrator agreed to by the Parties, that will provide the Notice to the
12 Settlement Class and Aggrieved Employees and distribute the settlement amounts as described in
13 this Agreement.

14 36. “Settlement Administration Costs” means the costs payable from the Gross
15 Settlement Amount to the Settlement Administrator for administering this Settlement, including,
16 but not limited to, printing, distributing, and tracking documents for this Settlement, tax
17 reporting, and deposit of the employee and employer share of payroll taxes, unclaimed property
18 due diligence, reporting and remittance obligations, distributing the Gross Settlement Amount,
19 and providing necessary reports and declarations, as requested by the Parties.

20 37. “Settlement Class” consists of all current and former truck drivers who resided in
21 California and who were employed by Defendant at any time during the Class Period. Defendant
22 represents that there are approximately 109 eligible Class Members as of the date of mediation
23 on September 13, 2022.

24 38. “Settlement Class Member” or “Class Member(s)” refers to individual members
25 of the Settlement Class.

26 39. “Weeks Worked” means all calendar weeks in which the Settlement Class
27 Member or Aggrieved Employee was employed by Defendant as a truck driver, based on hire
28 date, re-hire date(s) (as applicable), and separation date(s) (as applicable).

1 **B. General Terms**

2 40. Plaintiff filed a class action and representative PAGA action complaint with the
3 Court on August 6, 2020 against Defendant and Does 1 through 20, alleging class and
4 representative PAGA claims, including: (1) failure to pay minimum wages, (2) failure to pay for
5 rest and recovery periods under California Labor Code § 226.2, (3) failure to provide rest breaks,
6 (4) failure to provide meal periods, (5) failure to reimburse for business expenses, (6) failure to
7 timely pay final wages, (7) failure to provide accurate itemized wage statements, (8) unfair and
8 unlawful competition pursuant to California Business and Professions Code §§ 17200 *et seq.*,
9 and (9)-(16) related claims under PAGA. Pursuant to California Labor Code § 2699.3, subd. (a),
10 Plaintiff gave timely written notice to Defendant and the LWDA by sending his August 4, 2020
11 LWDA notice letter.

12 41. On April 12, 2021, Defendant filed a Motion to Quash Service of Summons and
13 Complaint based on the theory that the Court did not have personal jurisdiction over Defendant.
14 On July 27, 2021, the Court heard arguments and denied Defendant's Motion to Quash. Then,
15 on August 6, 2021, Defendant filed a Petition for Writ of Mandate to the Court of Appeal, which
16 was summarily denied on August 16, 2021. Defendant then filed a Petition for Review with the
17 California Supreme Court on August 26, 2021, which was denied on October 20, 2021.
18 Thereafter, Defendant filed its Answer to the Complaint on or around November 1, 2021.

19 42. Plaintiff then moved forward with discovery and began a meet and confer process
20 over allegedly deficient responses, and an informal discovery conference was held on April 11,
21 2022. However, class discovery was stayed by agreement due to Defendant's filing of a Motion
22 for Summary Judgment/Adjudication (the "MSJ") as to all of Plaintiff's individual claims in the
23 Complaint on February 14, 2022.

24 43. On June 14, 2022, after full briefing and hearing argument from counsel, the
25 Court granted summary adjudication in Defendant's favor as to Plaintiff's Third, Fourth,
26 Eleventh, and Twelfth Causes of Action (based on FMCSA preemption of meal period and rest
27 break claims), but the Court denied the MSJ in all other respects.

28 44. After the Court's ruling on Defendant's MSJ, the Parties agreed to stay further

proceedings and attend private mediation.

45. Defendant denies Plaintiff's claims and allegations and contends that the Action is not suitable for class certification or manageable as a class or representative action.

46. The Class Representative believes he can proceed with his representative and class claims, that the Action is meritorious, and that class certification is appropriate.

47. The Parties have conducted a thorough investigation into the facts of the Action. This includes conducting an extensive exchange of informal discovery, including Defendant's written policies and practices and confirmation regarding the uniform payroll and timekeeping practices for Settlement Class Members. Class Counsel is both knowledgeable about and has done extensive research with respect to the applicable law and potential defenses to the claims of the Settlement Class. Class Counsel has diligently pursued an investigation of the Class Members' claims against Defendant. Based on the foregoing data and on their own independent investigation and evaluation, Class Counsel is of the opinion that the settlement with Defendant for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the Class Members in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation, various defenses asserted by Defendant, and numerous potential appellate issues.

48. On September 13, 2022, Plaintiff and Defendant participated in mediation before Steven Rottman, a highly regarded wage and hour mediator. The Action resolved at mediation pursuant to a mediator's proposal.

49. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts to be performed or judgments to be entered pursuant to the terms of the Settlement and Agreement, shall be construed as an admission by Defendant of any wrongdoing or violation of any statute or law or liability on the claims or allegations in the Action.

50. Stipulation to Class Certification and Representative Treatment. For settlement purposes only, Defendant will stipulate that the Settlement Class Members described herein who do not submit a timely Request for Exclusion from the Settlement Class may be conditionally certified as a settlement class and that the Aggrieved Employees are appropriate for

1 representative treatment for purposes of settlement. This stipulation to certification and
2 representative treatment is in no way an admission that class action certification and/or
3 representative treatment is proper and shall not be admissible in this or in any other action except
4 for the sole purpose of enforcing this Agreement. Nor should Defendant's stipulation to
5 conditional class certification and representative treatment be deemed as a waiver to any
6 additional defenses against class or representative action treatment, including but not limited to
7 Defendant's right to exclude Settlement Class Members who signed binding arbitration
8 agreements, if any, from participating in this Action. Should, for whatever reason, the Court fail
9 to issue Final Approval, the Parties' stipulation to class certification and representative treatment
10 as part of the Settlement shall become null and void *ab initio* and shall have no bearing on, and
11 shall not be admissible in connection with, the issue of whether or not certification and/or
12 representative treatment would be appropriate in a non-settlement context. Defendant expressly
13 reserves its rights and declares that it would continue to oppose class certification, representative
14 treatment, and the substantive merits of the case should the Court decline to issue Final
15 Approval. Plaintiff expressly reserves his rights and declares that he will continue to pursue
16 class certification, representative treatment, and a trial should the Court decline to issue Final
17 Approval.

18 **C. Terms of Settlement**

19 51. The financial terms of the Settlement are as follows:

20 (a) Gross Settlement Amount: The Parties agree to settle this Action for
21 Seven Hundred Thousand Dollars (\$700,000) ("the Gross Settlement Amount"). The Gross
22 Settlement Amount is the maximum amount that will be paid, and includes Individual Settlement
23 Payments, Attorneys' Fees and Costs Award, the Service Payment to the Class Representative,
24 all Settlement Administration Costs, PAGA Penalties, and interest. Defendant shall separately
25 pay the employer's share of applicable payroll tax obligations due on the wage portions of the
26 Individual Settlement Payments, which shall be reported through the Settlement Administrator.
27 (b) Net Settlement Amount: The "Net Settlement Amount" is defined as the
28 Gross Settlement Amount less the court-approved Attorneys' Fees and Costs Award, the court-

1 approved Service Payment to the Class Representative, the court-approved Settlement
2 Administration Costs, and PAGA Penalties. If the Court reduces the Attorneys' Fees and Costs
3 Award, Service Payment to the Class Representative, or Settlement Administration Costs, or
4 either increases or decreases the amount allocated to the PAGA Penalties, the Net Settlement
5 Amount shall be increased or decreased accordingly.

6 (c) Individual Settlement Payments: Individual Settlement Payments for the
7 Settlement Class will be calculated and apportioned from the Net Settlement Amount based on
8 the number of Weeks Worked by a Settlement Class Member during the Class Period. Specific
9 calculations of Individual Settlement Payments will be made as follows:

10 • Defendant will calculate the total number of Weeks Worked by
11 each Settlement Class Member during the Class Period and the aggregate total number of Weeks
12 Worked by all Settlement Class Members during the Class Period.

13 • To determine each Settlement Class Member's estimated
14 Individual Settlement Payment, the Settlement Administrator will use the following formula:
15 The Net Settlement Amount will be divided by the aggregate total number of Weeks Worked,
16 resulting in the "Workweek Value." Each Settlement Class Member's Individual Settlement
17 Payment will be calculated by multiplying his or her total number of Weeks Worked during the
18 Class Period by the Workweek Value.

19 • Individual Settlement Payments will be reduced by any required
20 deductions for each Participating Class Member as specifically set forth herein, including
21 employee-side tax withholdings and deductions.

22 • The entire Net Settlement Amount will be disbursed to all
23 Participating Class Members. If there are any valid and timely Requests for Exclusion, the
24 Settlement Administrator shall proportionally increase the Individual Settlement Payment for
25 each Participating Class Member according to the number of Weeks Worked, so that the amount
26 actually distributed to Participating Class Members equals 100% of the Net Settlement Amount.

27 (d) Allocation of Individual Settlement Payments: The Individual Settlement
28 Payments will be allocated based on the allegations in the Action as follows: One-third

(33.34%) will be allocated as wages subject to withholding of all applicable local, state and federal taxes; one-third (33.33%) will be allocated as penalties (pursuant to, *e.g.*, California Labor Code sections 203, 210, 226, etc.) from which no taxes will be withheld; and one-third (33.33%) will be allocated as interest from which no taxes will be withheld. The Settlement Administrator will issue to each Participating Class Member an Internal Revenue Service Form W-2 and comparable state forms with respect to the wage allocation and a Form 1099 with respect to the penalties and interest allocations.

(e) Service Payment to Class Representative: The amount, if any, awarded to the Class Representative as a Service Payment will be set by the Court in its discretion, not to exceed \$10,000, in exchange for the services Plaintiff performed on behalf of the Class (including taking steps to support the Settlement) and for entering into the general and expansive release discussed hereinafter. Defendant agrees not to oppose this request if Plaintiff does not request exclusion from the Settlement Class and does not take any action, directly or indirectly, to undercut this Settlement. The Service Payment to Plaintiff will be paid out of the Gross Settlement Amount. The Class Representative will be issued IRS Form 1099 in connection with this payment. Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on this payment. The Parties agree that any amount awarded as the Service Payment to Plaintiff less than the requested amount shall not be a basis for Class Counsel to void this Settlement Agreement or to appeal this aspect of the Court's ruling. Should the Court approve a lesser amount for the Service Payment, the difference shall be added to the Net Settlement Amount to be distributed to the Participating Class Members.

(f) Attorneys' Fees and Costs Award: Defendant agrees to not oppose a request by Class Counsel to the Court for an award of attorneys' fees of not more than one-third of the Gross Settlement Amount (\$233,333.33), plus reasonable litigation costs not to exceed \$20,000 ("Attorneys' Fees and Cost Award"), subject to Court approval. The Attorneys' Fees and Cost Award shall be paid from the Gross Settlement Amount, and except for this award, Defendant shall have no further obligation to pay any attorneys' fees, costs, or expenses to Class Counsel. Should the Court approve a lesser amount than what is sought by Class Counsel, the

1 difference shall be added to the Net Settlement Amount to be distributed to the Participating
2 Class Members. The Parties agree that any amount awarded as attorneys' fees and costs to Class
3 Counsel less than the requested amount shall not be a basis for Class Counsel to rescind or
4 otherwise void this Settlement Agreement. The Settlement Administrator shall issue to Class
5 Counsel an IRS Form 1099 reflecting the amount of attorneys' fees and costs awarded by the
6 Court.

7 (g) Settlement Administration Costs: The fees and other charges of the
8 Settlement Administrator will be paid from the Gross Settlement Amount, not to exceed \$5,500
9 unless approved by all Parties and the Court.

10 (h) PAGA Penalties: The Parties agree that \$50,000 is allocated to PAGA
11 Penalties and is to be paid from the Gross Settlement Amount, subject to the Court's approval.
12 Of this amount, \$37,500 (75%) shall be paid to the LWDA in satisfaction of civil penalties under
13 the Private Attorney General Act of 2004 ("PAGA") and \$12,500 (25%) will be paid to the
14 Aggrieved Employees based upon the number of Weeks Worked by each Aggrieved Employee
15 during the PAGA Period, which will be treated entirely as civil penalties and shall be reported as
16 required on an IRS Form 1099. Class Counsel shall give proper notice to the LWDA of the
17 Settlement.

18 (i) Tax Liability: Class Counsel, Defendant, and Defendant's counsel make
19 no representations as to the tax treatment or legal effect of Settlement Amounts called for
20 hereunder, and Plaintiff, Settlement Class Members, and Aggrieved Employees are not relying
21 on any statement or representation by Class Counsel, Defendant, or Defendant's counsel in this
22 regard. Plaintiff, Participating Class Members, and Aggrieved Employees understand and agree
23 that they will be solely responsible for the payment of any taxes and penalties assessed on their
24 respective Settlement Amounts described herein. The amount of federal income tax withholding
25 will be based upon a flat withholding rate for supplemental wage payments in accordance with
26 Treas. Reg. § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also
27 be made pursuant to applicable state and/or local withholding codes or regulations. Forms W-2
28 and/or Forms 1099 will be distributed at the times and in the manner required by the Internal

1 Revenue Code of 1986 (the “Code”) and consistent with this Agreement. If the Code, the
2 regulations promulgated thereunder, or other applicable tax law, are changed after the date of this
3 Agreement, the processes set forth in this Section may be modified in a manner to bring
4 Defendant into compliance with any such changes. Plaintiff, Participating Class Members, and
5 Aggrieved Employees understand and agree that they will be solely responsible for the payment
6 of any taxes and penalties assessed on their respective payments described herein and will hold
7 Defendant harmless from and against any claims resulting from treatment of such payments as
8 non-taxable damages.

9 (j) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS
10 AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY”
11 AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING
12 PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO
13 PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR
14 DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND
15 OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
16 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
17 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
18 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
19 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS
20 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
21 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
22 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY
23 OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT
24 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
25 ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY
26 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
27 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
28 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR

1 ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS
2 LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF
3 THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING
4 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

5 52. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
6 Participating Class Members under this Agreement, as well as any other payments made
7 pursuant to this Agreement, shall not be utilized to calculate any additional benefits under any
8 benefit plans to which any Participating Class Members may be eligible, including, but not
9 limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase or other types of
10 equity plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it
11 is the Parties' intention that this Settlement will not affect any rights, contributions, or amounts
12 to which any Participating Class Members may be entitled under any benefit plans. The Parties
13 agree that the amounts paid pursuant to this Settlement are not for days or hours worked, and
14 shall not be included toward any regular rate of pay calculation, or any benefit vesting or accrual
15 purpose.

16 53. "Non-Reversionary" Settlement. This is a "non-reversionary" settlement. Under
17 no circumstances will any portion of the Gross Settlement Amount revert to Defendant.
18 Participating Class Members will not have to make a claim in order to receive an Individual
19 Settlement Payment, and Aggrieved Employees will not have to make a claim in order to receive
20 their share of PAGA Penalties. Distributions, in the form of Individual Settlement Payments,
21 will be made directly to each Participating Class Member and Aggrieved Employee. The
22 Settlement Administrator shall be responsible for accurately and timely reporting and remittance
23 obligations with respect to unclaimed funds as a result of a Participating Class Member or
24 Aggrieved Employee not cashing an Individual Settlement Payment by the check cashing
25 deadline, as set forth herein.

26 54. Class Counsel and Plaintiff believe that the Settlement is fair and reasonable, and
27 adequate, and will so represent same to the Court.
28

1 **D. Release by Plaintiff and Participating Class Members**

2 55. Upon entry of the Final Approval Order and Defendant's funding of the Gross
3 Settlement Amount, and except as to such rights or claims as may be created by this Settlement
4 Agreement, the Participating Class Members will forever completely release and discharge the
5 Released Parties from the Released Class Claims for the Class Period. It is the intent of the
6 Parties that the Final Approval Order and judgment entered by the Court shall have full equitable
7 and collateral estoppel and *res judicata* effect and be final and binding upon Participating Class
8 Members regarding the Released Class Claims.

9 56. Each Participating Class Member will be deemed to have made the foregoing
10 Release as if by manually signing it.

11 57. Upon entry of the Final Approval Order and Defendant's funding of the Gross
12 Settlement Amount, Plaintiff, standing in the shoes of the Labor Commissioner/LWDA, and on
13 behalf of the State of California and all Aggrieved Employees, will forever completely release
14 and discharge the Released Parties from the PAGA Released Claims for the PAGA Period. It is
15 the intent of the Parties that the Final Approval Order and judgment entered by the Court shall
16 have full equitable and collateral estoppel and *res judicata* effect and be final and binding upon
17 Aggrieved Employees regarding the PAGA Released Claims.

18 58. Each Aggrieved Employee and the LWDA will be deemed to have made the
19 foregoing Release as if by manually signing it.

20 59. Plaintiff and Defendant intend that the Settlement described in this Agreement
21 will release and preclude any further claim, whether by lawsuit, administrative claim or action,
22 arbitration, demand, or other action of any kind, by each and all of the Participating Class
23 Members to obtain a recovery based on, arising out of, and/or related to any and all of the
24 Released Class Claims. The Class Members shall be so notified in the Notice. This paragraph
25 only applies to Participating Class Members and, thus, does not apply to any Class Member who
26 timely and validly submits a Request for Exclusion.

27 60. Plaintiff and Defendant also intend that the Settlement described in this
28 Agreement will release and preclude any further PAGA claim, whether by lawsuit,

1 administrative claim or action, arbitration, demand, or other PAGA action of any kind, by each
2 and all of the Aggrieved Employees to obtain a recovery based on, arising out of, and/or related
3 to any and all of the PAGA Released Claims. The Aggrieved Employees shall be so notified in
4 the Notice and Class Counsel shall provide appropriate notice to the LWDA of this Agreement
5 prior to the filing of the Motion for Preliminary Approval. This paragraph is not intended to
6 preclude any Aggrieved Employee other than Plaintiff from bringing any claim other than a
7 PAGA claim.

8 61. Class Representative, on behalf of himself and the Participating Class Members,
9 acknowledges and agrees that the claims, including claims for unpaid wages, unreimbursed
10 expenses, and untimely payment of wages are disputed, and that the payments set forth herein
11 constitute payment of all sums allegedly due to them. Class Representative, on behalf of himself
12 and the Participating Class Members, acknowledges and agrees that California Labor Code §§
13 206.5 and 2804 are not applicable to the Parties hereto. Section 206.5 provides in pertinent part
14 as follows:

15 An employer shall not require the execution of any release of any claim or
16 right on account of wages due, or to become due, or made as an advance on
17 wages to be earned, unless payment of those wages has been made.

18 **E. Release by Class Representative**

19 62. As a material inducement to Defendant to enter into this Settlement Agreement
20 and in consideration of the Service Award, and in addition to the Class Representative's release
21 of the Released Class Claims and PAGA Released Claims, Class Representative does hereby, for
22 himself and for his respective spouses, domestic partners, marital community, children, estates,
23 attorneys, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees,
24 conservators, guardians, personal representatives, and assigns forever and completely release and
25 discharge and covenants not to sue the Released Parties with respect to any and all claims,
26 demands, liens, agreements, contracts, covenants, actions, suits, causes of action, wages,
27 obligations, debts, liquidated damages, penalties, interest, costs, expenses, attorneys' fees,
28 damages, judgments, orders and liabilities of whatever kind or nature in law, equity or otherwise,

whether now known or unknown, suspected or unsuspected, concealed or hidden, which Plaintiff now owns or holds or has at any time heretofore owned or held as against said Released Parties, or any of them. Such released claims include specifically, but not exclusively and without limiting the generality of the foregoing, any and all claims, demands, agreements, obligations and causes of action, known or unknown, suspected or unsuspected, concealed or hidden, including but not limited to all claims arising out of, based upon, or relating to Class Representative's employment with Defendant or the remuneration for or termination of such employment, as alleged in the operative Complaint, arising out of or in any way connected with any transactions, occurrences, acts or omissions set forth, or facts alleged, in any and all charges, complaints, claims or pleadings filed by Class Representative against any Released Party prior to the date hereof with any city, county, state or federal agency, commission, office or tribunal whatsoever; or arising out of or in any way connected with any transactions, occurrences, acts or omissions occurring prior to the date hereof, including specifically without limiting the generality of the foregoing any claim under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act (29 U.S.C. Section 621 *et seq.*), the Americans with Disabilities Act, the Employee Retirement Income Security Act, the National Labor Relations Act, the Fair Labor Standards Act, the Family and Medical Leave Act, the California Constitution, the California Labor Code, the California Civil Code, the California Government Code, the California Business & Professions Code, the California Family Rights Act, the California Fair Employment and Housing Act, the California Industrial Welfare Commission Wage Orders, or any other federal, state, or local statute or regulation (collectively, the "Class Representative's Claims").

63. Class Representative agrees that there is a risk that any injury that he may have suffered by reason of the Released Parties' relationship with him might not now be known, and there is a further risk that said injuries, whether known or unknown at the date of this Settlement Agreement, might possibly become progressively worse, and that as a result thereof further damages may be sustained. Nevertheless, Class Representative agrees to forever and fully release and discharge the Released Parties, and understands that by the execution of this

1 Settlement Agreement no further claims for any such injuries that existed at the time of the
2 execution of this Settlement Agreement may ever be asserted by Class Representative with
3 respect to claims arising in the time period from the beginning of time to the execution of this
4 Settlement Agreement.

5 64. Class Representative expressly waives and relinquishes all rights and benefits
6 afforded by Section 1542 of the Civil Code of the State of California and does so understanding
7 and acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil
8 Code of the State of California states:

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

14 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
15 full and complete release and discharge of all parties, Class Representative and Class Counsel
16 expressly acknowledge that this Settlement Agreement is intended to include in its effect,
17 without limitation, all claims that Class Representative knew of, as well as all claims that he does
18 not know or suspect to exist in his favor against the Released Parties, or any of them, for the time
19 period from the beginning of time to the execution of this Settlement Agreement, and that this
20 Settlement Agreement contemplates the extinguishment of any such Class Representative's
21 claims. Notwithstanding the above, the general release by Class Representative shall not extend
22 to claims for workers' compensation benefits, claims for unemployment benefits, or other claims
23 that may not be released by law.

24 65. Class Representative represents and warrants that he has not filed and will not file
25 any other lawsuit, administrative claim or action, arbitration, demand, or other action of any kind
26 against Defendant or the Released Parties. Class Representative represents and warrants that the
27 only pending claims against Defendant or the Released Parties are included in this Action.
28

1 **F. Interim Stay of Proceedings**

2 66. Pending completion of all of the prerequisites necessary to effectuate this
3 Settlement, the Parties agree, subject to Court's approval, to a stay of all proceedings in the
4 Action except such as are necessary to effectuate the Settlement.

5 **G. Notice Process**

6 67. Appointment of Settlement Administrator. The Parties have agreed to the
7 appointment of the Settlement Administrator to perform the duties of a settlement administrator,
8 including mailing the Notice, using standard devices to obtain forwarding addresses,
9 independently reviewing and verifying documentation associated with any claims or opt-out
10 requests, resolving any disputes regarding the calculation or application of the formula for
11 determining the Individual Settlement Payments, drafting and mailing the settlement checks to
12 Participating Class Members, and Aggrieved Employees, issuing W-2 and 1099 Tax Forms,
13 performing unclaimed funds due diligence, reporting and performing remittance obligations, and
14 performing such other tasks as set forth herein or as the Parties mutually agree or that the Court
15 orders.

16 68. Disputes Regarding Settlement Administration. Any and all disputes relating to
17 administration of the Settlement by the Settlement Administrator (except for disputes regarding
18 Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction
19 over the terms and conditions of this Settlement Agreement, until Plaintiff and Defendant notify
20 the Court that all payments and obligations contemplated by this Settlement Agreement have
21 been fully carried out. Prior to presenting any issue to the Court, counsel for the Parties will
22 confer in good faith to resolve the dispute without the necessity of Court intervention. The
23 Settlement Administrator shall also be responsible for issuing to Plaintiff, Participating Class
24 Members, Aggrieved Employees, and Class Counsel any W-2, 1099, or other Tax Forms as may
25 be required by law for all amounts paid pursuant to this Agreement. The Settlement
26 Administrator shall also be responsible for setting up all necessary tax accounts and forwarding
27 all payroll taxes and penalties to the appropriate government authorities.

28 69. Class Data. Within fourteen (14) calendar days after entry of the Preliminary

1 Approval Order, Defendant shall provide the Class Data to the Settlement Administrator. The
2 Settlement Administrator will run a check of the Class Members' addresses against those on file
3 with the U.S. Postal Service's National Change of Address Database. The Class Data provided
4 to the Settlement Administrator will remain confidential, shall be used solely to administer the
5 Settlement, and it will not be used or disclosed to anyone (including Class Counsel), except as
6 required by applicable tax authorities, pursuant to Defendant's express written consent, or by
7 order of the Court. Although Class Counsel will not be provided with the list of Class Data,
8 nothing herein shall prevent Class Counsel from communicating with Class Members regarding
9 the Action and Settlement.

10 70. Notice. The Notice, as approved by the Court, shall be sent by the Settlement
11 Administrator to the Settlement Class Members, by first class mail, in English, within ten (10)
12 calendar days following the Settlement Administrator's receipt of the Class Data. The
13 Settlement Administrator shall use standard devices, including a skip trace, to obtain forwarding
14 addresses of Settlement Class Members if any envelopes are returned.

15 71. Returned Notices of Settlement. The Settlement Administrator will take steps to
16 ensure that the Notice is received by all Settlement Class Members, including utilization of the
17 National Change of Address Database maintained by the United States Postal Service to review
18 the accuracy of and, if possible, update a mailing address. Notices of Settlement will be re-
19 mailed to any Settlement Class Member for whom an updated address is located within ten (10)
20 calendar days following both the Settlement Administrator learning of the failed mailing and its
21 receipt of the updated address. The re-mailed Notice shall be identical to the original Notice,
22 except that it shall notify the Settlement Class Member that the exclusion (opt-out) request or
23 objection must be returned by the later of the Notice Response Deadline or fifteen (15) calendar
24 days after the remailing of the Notice.

25 72. Disputes Regarding Information on Notices of Settlement. Class Members are
26 deemed to participate in the Settlement, unless they timely opt-out, and Aggrieved Employees
27 may not opt-out of the PAGA Released Claims. The Notice will inform Class Members of
28 his/her estimated Individual Settlement Payment and the number of Weeks Worked during the

1 Class Period and during the PAGA Period. Class Members may dispute their Weeks Worked if
2 they feel they should be credited with more Weeks Worked than Defendant's records show by
3 timely submitting evidence to the Settlement Administrator. Defendant's records will be
4 presumed determinative absent reliable evidence to rebut Defendant's records, but the Settlement
5 Administrator will evaluate the evidence submitted by the Class Member and provide the
6 evidence submitted to Class Counsel and Defense Counsel who agree to meet and confer in good
7 faith about the evidence to determine the Class Member's actual number of Weeks Worked and
8 estimated Individual Settlement Payment. If Class Counsel and Defense Counsel are unable to
9 agree, they agree to submit the dispute to the Settlement Administrator to render a final decision.
10 Class Members will have until the Notice Response Deadline to dispute Weeks Worked, object
11 or opt-out, unless extended by the Court. In the event that the Settlement Administrator
12 increases the number of Weeks Worked for any Settlement Class Member, then the Settlement
13 Administrator will recalculate the Participating Class Members' Individual Settlement Payments;
14 accordingly, in no event will Defendant be required to increase the Gross Settlement Amount.

15 73. Declaration of Due Diligence. The Settlement Administrator shall provide
16 counsel for the Parties, at least twenty-five (25) calendar days prior to the Final Approval
17 Hearing, a declaration of due diligence and proof of mailing with regard to the mailing of the
18 Notices of Settlement.

19 74. Settlement Class Members' Rights. Each Settlement Class Member will be fully
20 advised of the Settlement, the ability to object to the provisions in the Settlement related to the
21 Released Class Claims, and the ability to opt-out or request exclusion from the Settlement with
22 respect to the Released Class Claims. The Notice will inform the Settlement Class Members of
23 the Court-established deadlines for filing objections or requesting exclusion from the Settlement
24 with respect to the Released Class Claims in accordance with the following guidelines:

25 (a) Requests for Exclusion from Participating in the Settlement Class. Any
26 Settlement Class Member, other than Plaintiff, may request to be excluded from the Settlement
27 Class by submitting a "Request for Exclusion" to the Settlement Administrator, postmarked on
28 or before the Notice Response Deadline. The Request for Exclusion should state:

1 “I WISH TO BE EXCLUDED FROM THE SETTLEMENT
2 CLASS IN THE DECKER TRUCK LINE LAWSUIT. I
3 UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM
4 THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY
5 MONEY FROM THE SETTLEMENT OF THIS LAWSUIT.”

6 To be valid, any Request for Exclusion must include the full name, address, telephone
7 number, last four digits of the social security number or date of birth, and signature of the
8 Settlement Class Member requesting exclusion. The Request for Exclusion must be returned by
9 mail to the Settlement Administrator at the specified address set forth in the Notice. Any such
10 Request must be made in accordance with the terms set forth in the Notice. A Request for
11 Exclusion will be timely only if postmarked by the Notice Response Deadline, unless the Parties
12 otherwise agree in writing. Any Settlement Class Member who timely requests exclusion in
13 compliance with these requirements: (i) will not have any rights under this Agreement with
14 respect to the Released Class Claims, including the right to object, appeal, or comment on the
15 Settlement; (ii) will not be entitled to receive any payments under this Agreement for the
16 Released Class Claims; and (iii) will not be bound by this Agreement, or the Judgment, with
17 respect to the Released Class Claims. Any Aggrieved Employee who requests timely exclusion
18 will still be subject to the PAGA Released Claims to the fullest extent permitted by law and shall
19 be sent his or her share of PAGA Penalties.

20 (b) Binding Effect on Participating Class Members. Except for those
21 Settlement Class Members who exclude themselves in compliance with the procedures set forth
22 above, all Settlement Class Members will: (i) be deemed to be Participating Class Members for
23 all purposes under this Agreement; (ii) will be bound by the terms and conditions of this
24 Agreement, the Judgment, and the releases set forth herein; and (iii) except as otherwise
25 provided herein, will be deemed to have waived all objections and oppositions to the fairness,
26 reasonableness, and adequacy of the Settlement.

27 (c) Objections to Settlement of the Released Class Claims. Any Settlement
28 Class Member, other than Plaintiff, may object to the terms of this Agreement, except as to the

1 PAGA Released Claims. To object, a Settlement Class Member shall inform the Settlement
2 Administrator, in writing, of his or her objection which must be postmarked by the Notice
3 Response Deadline at the address set forth in the Notice. Such objection shall include the
4 objecting Settlement Class Member's full name, address, telephone number, last four digits of
5 the social security number or date of birth, signature, and dates of employment with Defendant,
6 in addition to the case name and number, the basis for the objection, including any legal support
7 and each specific reason in support of the objection, as well as any documentation or evidence in
8 support thereof, and, if the Objecting Settlement Class Member is represented by counsel, the
9 name and address of his or her counsel. The Settlement Administrator shall provide objections,
10 if any, to Class Counsel and Defense Counsel within three (3) calendar days of receipt, and the
11 Settlement Administrator shall attach the same to its declaration of due diligence and file with
12 the Court prior to the Final Approval Hearing. Any Participating Class Member who files an
13 objection remains eligible to receive monetary compensation from the Settlement. Plaintiff and
14 Defendant shall not be responsible for any fees, costs, or expenses incurred by any Class
15 Member and/or his or her counsel related to any objections to the Settlement. Submitting an
16 objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is
17 preserved by becoming a party of record by timely and properly intervening or filing a motion to
18 vacate the judgment under California Code of Civil Procedure Section 663. Settlement Class
19 Members and Aggrieved Employees may not object to or opt-out of the Settlement with respect
20 to the PAGA Released Claims.

21 (d) Failure to Object. Any Settlement Class Member who desires to object to
22 the Released Class Claims in the Settlement but fails to timely submit a written objection or in
23 person objection at the Final Approval Hearing waives any right to object and will be foreclosed
24 from making any objection to this Settlement. Any Settlement Class Member who does not
25 timely and properly become a party of record by intervening or filing a motion to vacate the
26 judgment waives any and all rights to appeal from the Judgment, including all rights to any post-
27 judgment proceeding and appellate proceeding, such as a motion to vacate judgment, motion for
28 new trial, a motion under California Code of Civil Procedure Section 473, and extraordinary

1 writs.

2 (e) Responses to Objections. Counsel for the Parties may file a response to
3 any objections submitted by objecting Settlement Class Members at least five (5) court days
4 before the date of the Final Approval Hearing.

5 (f) Settlement Class Members will have until the Notice Response Deadline
6 to object or submit a Request for Exclusion to the Settlement Administrator by U.S. Mail. The
7 Settlement Administrator shall disclose jointly to Class Counsel and Defendant's counsel what
8 objections or Requests for Exclusion were timely submitted on a weekly basis, and upon the
9 request of Class Counsel or Defense Counsel.

10 (g) Defective Submissions. If a Settlement Class Member's Request for
11 Exclusion or objection is defective as to the requirements listed herein, that Settlement Class
12 Member will be given an opportunity to cure the defect(s). The Settlement Administrator will
13 mail the Settlement Class Member a cure letter within three (3) business days of receiving the
14 defective submission to advise the Settlement Class Member that his or her submission is
15 defective and that the defect must be cured to render the Request for Exclusion or objection
16 valid. The Settlement Class Member will have the later of (i) the Notice Response Deadline or
17 (ii) fifteen (15) calendar days from the date of the cure letter to postmark or fax a revised
18 Request for Exclusion or objection. If the revised Request for Exclusion or objection is not
19 postmarked or received by fax within that period, it will be deemed untimely and disregarded.

20 75. Funding of the Settlement Amount. Defendant shall make a one-time deposit into
21 the QSF of the Gross Settlement Amount within fifteen (15) calendar days after the Effective
22 Date. Defendant separately shall pay its share of employer payroll taxes as calculated and
23 directed by the Settlement Administrator. Once Defendant has complied with its obligation set
24 forth in this paragraph, it shall be deemed to have satisfied all of the terms and conditions of this
25 Agreement, shall be entitled to all the protections afforded it under the Agreement, and shall
26 have no further obligations under the Agreement, regardless of what occurs with respect to the
27 further administration of the Settlement. The Settlement Administrator (and not Defendant) shall
28 issue the applicable W-2s and IRS Form 1099 reflecting all payments to the Participating Class

Members and Aggrieved Employees.

76. Distribution of Funds. No later than ten (10) calendar days after the deposit of the Gross Settlement Amount into the QSF, the Settlement Administrator will mail the Individual Settlement Payments to the Participating Class Members, the payment to Class Counsel for the Attorneys' Fees and Costs Award, any Service Payment to the Class Representative, the payment to the LWDA for PAGA Penalties, the payments to Aggrieved Employees for PAGA Penalties, and will pay itself the Settlement Administration Costs.

77. Deadline for Cashing Settlement Checks. Participating Class Members and Aggrieved Employees shall have 180 calendar days after mailing by the Settlement Administrator to cash their settlement checks. If any Participating Class Member's or Aggrieved Employee's check is not cashed within that period, the check will be void and a stop-payment will be issued, and the Settlement Administrator shall issue the unclaimed funds to the California State Controller's Office in the name of the Class Member or Aggrieved Employee. The release will be binding upon all Participating Class Members and Aggrieved Employees who do not cash their checks within the 180-day period. In the event that any settlement check is returned to the Settlement Administrator within 180 days of mailing, the Settlement Administrator will, within five (5) business days of receipt of the returned settlement check, perform a skip trace to locate the individual, and notify Defense Counsel and Class Counsel of the results. If a new address is located by these means, the Administrator will have ten (10) business days to re-issue the check. Neither Defendant, Defense Counsel, Class Counsel, Plaintiff, nor the Settlement Administrator will have any liability for lost or stolen settlement checks, forged signatures on settlement checks, or unauthorized negotiation of settlement checks. Without limiting the foregoing, in the event a Participating Class Member or Aggrieved Employee notifies the Settlement Administrator that he or she believes that a settlement check has been lost or stolen, the Settlement Administrator shall immediately stop payment on such check. If the check in question has not been negotiated prior to the stop payment order, the Settlement Administrator will issue a replacement check.

78. No person shall have any claim against Defendant or the Released Parties,

1 Defendant's Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on
2 mailings, distributions, payments or reports made in accordance with or pursuant to this
3 Agreement. This provision does not, however, prevent a Party from seeking enforcement of this
4 Agreement.

5 79. Without prejudice to any other remedies, the Settlement Administrator shall agree
6 to be responsible for any breach of its obligations (whether committed by the Settlement
7 Administrator or its agents) and to indemnify and hold the Parties and their counsel harmless
8 from and against all liabilities, claims, causes of action, costs and expenses (including legal fees
9 and expenses) arising out of any breach committed by the Settlement Administrator or its agents.

10 **H. Duties of the Parties Prior to the Court's Approval**

11 80. Promptly after execution of this Settlement Agreement, Plaintiff will move the
12 Court for Preliminary Approval of this Settlement and entry of the Preliminary Approval Order
13 accomplishing the following:

14 (a) Scheduling the Final Approval Hearing on the issue of whether this
15 Settlement should be finally approved as fair, reasonable and adequate as to the Class Members
16 and Aggrieved Employees and a hearing on fees, costs and the Service Payment;

17 (b) Approving as to form and content of the proposed Notice;

18 (c) Directing the mailing of the Notice by first class mail to the Settlement
19 Class Members and Aggrieved Employees;

20 (d) Preliminarily approving this Settlement; and

21 (e) Preliminarily certifying the class solely for purposes of this Settlement.

22 81. Reallocation of Settlement Proceeds. In the event the Court fails, on its first
23 hearing, to approve this Agreement because the amount of the PAGA Penalties is not adequate,
24 then the Parties shall cooperate in good faith to reallocate the total settlement proceeds, within
25 this Agreement, in order to try to achieve Final Approval of the Agreement upon any subsequent
26 Court hearings.

27 **I. Duties of the Parties Following Court's Final Approval**

28 82. In connection with the Final Approval Hearing provided for in this Settlement

Agreement, Class Counsel shall submit a proposed Final Approval Order:

(a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;

(b) Approving Class Counsel's application for an award of attorneys' fees and reimbursement of litigation costs and expenses, the Service Payment to the Class Representative, and the payment to the Settlement Administrator for costs of administering the settlement; and

(c) Entering judgment approving settlement, thereby permanently barring all Participating Class Members from prosecuting any Released Class Claims against any of the Released Parties and permanently barring all Aggrieved Employees and the LWDA from prosecuting any PAGA Released Claims against any of the Released Parties.

83. Final Judgment. The Settlement Administrator shall give the Participating Class Members and Aggrieved Employees notice of the entry of Final Judgment on a postcard or letter that will be included with the Individual Settlement Payments.

J. Voiding the Agreement

84. All Parties, signatories, and their counsel shall not encourage opt-outs or objections to this Agreement. The Parties specifically agree not to solicit opt-outs, directly or indirectly, through any means.

85. If the Settlement is voided or fails for any reason, Plaintiff and Defendant will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount, or any amounts that otherwise would have been owed under this Settlement.

86. If the Settlement is voided or fails for any reason, any costs incurred by the Settlement Administrator shall be borne equally by Defendant and Plaintiff, unless otherwise specified in this Agreement.

K. Other Terms

87. Waiver. The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

88. Full and Complete Defense. This Agreement may be pleaded by any Released

1 Party as a full and complete defense to, and may be used as the basis for an injunction against,
2 any action, suit, or other proceeding that has been or may be instituted, prosecuted or attempted,
3 asserting any Released Class Claim or PAGA Released Claim.

4 89. Parties' Authority. The signatories hereto represent that they are fully authorized
5 to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions
6 hereof. The signatories hereto further represent that the Parties to this Agreement are
7 represented by competent counsel, and they have had an opportunity to consult with counsel
8 prior to authorizing its execution.

9 90. No Publicity. The Parties will not publicize the Settlement or disclose it to third
10 parties, except as required or necessary to effectuate its terms and comply with law, including the
11 payment of taxes. Specifically, Plaintiff and Plaintiff's counsel shall not publicize the settlement
12 on their websites, in advertising/marketing materials or on social media. The Parties and their
13 counsel agree that they will not issue any press releases or initiate any contact with the media
14 about the fact, amount, or terms of the settlement. If counsel for any party receives an inquiry
15 about the settlement from the media, counsel may respond only after the motion for preliminary
16 approval of the settlement has been filed and only by confirming the accurate terms of the
17 settlement. Nothing in this provision shall prevent Defendant from making any required
18 disclosure.

19 91. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
20 accomplish the terms of this Settlement Agreement, including but not limited to, execution of
21 such documents and to take such other action as may reasonably be necessary to implement the
22 terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their
23 best efforts, including all efforts contemplated by this Settlement Agreement and any other
24 efforts that may become necessary by order of the Court, or otherwise, to effectuate this
25 Settlement Agreement and the terms set forth herein. As soon as practicable after execution of
26 this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of
27 Defendant and Defendant's Counsel, take all necessary steps to secure the Court's preliminary
28 and final approval of the settlement, and the final entry of judgment. Class Counsel shall provide

1 Defendant's Counsel with copies of the Preliminary Approval Motion and Final Approval
2 Motion for review at least five (5) court days prior to the filing deadline.

3 92. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
4 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,
5 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
6 cause of action or rights released and discharged by this Settlement Agreement.

7 93. No Admission. Defendant denies any and all liability to Plaintiff, any Settlement
8 Class Member, and/or any Aggrieved Employee in this Action, as to any and all causes of action
9 that were asserted or that might have been asserted in this Action. Nonetheless, Defendant
10 wishes to settle and compromise the matters at issue in the Complaint to avoid further substantial
11 expense and the inconvenience and distraction of protracted and burdensome litigation.
12 Defendant also has taken into account the uncertainty and risks inherent in litigation, and without
13 conceding any infirmity in the defenses that they have asserted or could assert against Plaintiff,
14 has determined that it is desirable and beneficial that Plaintiff's claims be settled in the manner
15 and upon the terms and conditions set forth in this Agreement.

16 94. Inadmissibility of Agreement. Whether or not the Court issues the Final
17 Approval Order, nothing contained herein, nor the consummation of this Settlement Agreement,
18 is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on
19 the part of Defendant or any of the other Released Parties. Each of the Parties hereto has entered
20 into this Settlement Agreement with the intention of avoiding further disputes and litigation with
21 the attendant inconvenience and expenses. This Settlement Agreement is a settlement document,
22 and it, along with all related documents such as the notices, and motions for preliminary and
23 final approval, shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of
24 Evidence 408, be inadmissible in evidence in any proceeding, except an action or proceeding to
25 approve the settlement, and/or interpret or enforce this Settlement Agreement. The stipulation
26 for class certification as part of this Settlement Agreement is for settlement purposes only and if,
27 for any reason the settlement is not approved, the stipulation will have no force or effect.

28 95. Notices. Unless otherwise specifically provided herein, all notices, demands, or

1 other communications pursuant to this Agreement shall be in writing and shall be deemed to
2 have been duly given as of the third business day after mailing by United States registered or
3 certified mail, return receipt requested, addressed:

4 To the Settlement Class Members and Aggrieved Employees:

5 Brian Mankin
6 *brian@LMLfirm.com*
7 Lauby Mankin Lauby LLP
8 5198 Arlington Avenue, PMB 513
9 Riverside, CA 92504
10 Tel: (951) 320-1444 | Fax: (951) 320-1445

11 To Defendant:

12 Katherine C. Den Bleyker
13 *katherine.denbleyker@lewisbrisbois.com*
14 Lewis Brisbois Bisgaard & Smith LLP
15 633 West 5th Street, Suite 4000
16 Los Angeles, CA 90071
17 Tel: 213.250.1800 | Fax: 213.250.7900

18 96. Construction. The Parties hereto agree that the terms and conditions of this
19 Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the
20 Parties and that this Settlement Agreement shall not be construed in favor of or against any Party
21 by reason of the extent to which any Party or his or its counsel participated in the drafting of this
22 Settlement Agreement. Plaintiff and Defendant expressly waive the common-law and statutory
23 rule of construction that ambiguities should be construed against the drafter of an agreement and
24 further agree, covenant, and represent that the language in all parts of this Agreement shall be in
25 all cases construed as a whole, according to its fair meaning.

26 97. Captions and Interpretations. Paragraph titles or captions contained herein are
27 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or
28 describe the scope of this Settlement Agreement or any provision hereof. Each term of this
Settlement Agreement is contractual and not merely a recital.

98. Modification. This Settlement Agreement may not be changed, altered, or
modified, except in writing and signed by the Parties hereto, and approved by the Court. This

1 Settlement Agreement may not be discharged except by performance in accordance with its
2 terms or by a writing signed by all of the Parties hereto.

3 99. Dispute Resolution. Prior to instituting legal action to enforce the provisions of
4 this Agreement or to declare rights and/or obligations under this Agreement, a Party shall
5 provide written notice to the other Party and allow an opportunity to cure the alleged
6 deficiencies, and Plaintiff and Defendant agree to seek the help of the mediator identified in this
7 Agreement to resolve any dispute they are unable to resolve informally. During this period, the
8 Parties shall bear their own attorneys' fees and costs. This provision shall not apply to any legal
9 action or other proceeding instituted by any person or entity other than Plaintiff or Defendant.

10 100. Court Retains Jurisdiction. The Parties agree that upon the entry of judgment of
11 dismissal pursuant to the terms of this Agreement, that, pursuant to California Code of Civil
12 Procedure Section 664.6, the Court shall retain exclusive and continuing equity jurisdiction of
13 this Action over all Parties to interpret, enforce, and effectuate the terms, conditions, intents, and
14 obligations of this Agreement.

15 101. Enforceability. Pursuant to California Evidence Code Section 1123(a) and (b),
16 this Agreement is intended by the Parties to be, and shall be, enforceable, binding, and
17 admissible in a court of law.

18 102. Choice of Law. This Settlement Agreement shall be governed by and construed,
19 enforced and administered in accordance with the laws of the State of California.

20 103. Integration Clause. This Settlement Agreement contains the entire agreement
21 between the Parties relating to the settlement and transaction contemplated hereby, and all prior
22 or contemporaneous agreements, understandings, representations, and statements, whether oral
23 or written and whether by a Party or such Party's legal counsel, are merged herein. No rights
24 hereunder may be waived except in writing.

25 104. Binding On Assigns. This Settlement Agreement shall be binding upon and inure
26 to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
27 successors, and assigns.

28 105. Signatures of All Class Members and Aggrieved Employees Unnecessary to be

1 Binding. It is agreed that, because the members of the Settlement Class and Aggrieved
2 Employees are numerous, it is impossible or impractical to have each Class Member and
3 Aggrieved Employee execute this Settlement Agreement. The Notice will advise all Settlement
4 Class Members and Aggrieved Employees of the binding nature of the releases provided herein
5 and such shall have the same force and effect as if this Settlement Agreement were executed by
6 each Settlement Class Member and Aggrieved Employee.

7 106. Invalidity of Any Provision. Before declaring any provision of this Settlement
8 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest
9 extent possible consistent with applicable precedents so as to define all provisions of this
10 Settlement Agreement valid and enforceable.

11 107. Counterparts. This Settlement Agreement may be executed in counterparts, and
12 when each Party has signed and delivered at least one such counterpart, each counterpart shall be
13 deemed an original, and, when taken together with other signed counterparts, shall constitute one
14 fully signed Settlement Agreement, which shall be binding upon and effective as to all Parties.
15 Electronic signatures shall have the same force and effect as an original.

16
17 Dated: October 25, 2022

PLAINTIFF AND CLASS REPRESENTATIVE:

18 
19 Robert Dee Threadgill (Oct 25, 2022 15:28 PDT)
20 Robert Threadgill

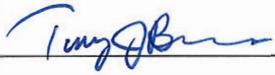
21
22 Dated: October 25, 2022

CLASS COUNSEL:
LAUBY MANKIN LAUBY LLP

23 
24 Brian J. Mankin
25 Peter J. Carlson
26 Attorneys for Plaintiff
27
28

1 Dated: ^{November 1}~~October~~ __, 2022

DEFENDANT:
DECKER TRUCK LINE, INC.

3 
4 _____

5 By: Timothy J. Burns

6 Title: Sec/ Treas

8 Dated: November 1, 2022

DEFENDANT'S COUNSEL:
LEWIS BRISBOIS BISGAARD & SMITH LLP

10 
11 _____

12 Katherine C. Den Bleyker
13 William B. Richards, Jr.
14 Attorneys for Defendant

15
16
17
18
19
20
21
22
23
24
25
26
27
28
END OF DOCUMENT

EXHIBIT “B”

NOTICE OF SETTLEMENT OF CLASS AND REPRESENTATIVE ACTION

Robert Threadgill v. Decker Truck Line, Inc.
Superior Court of the State of California, County of San Bernardino
Case No. CIVSD2018865

To: All current and former truck drivers who resided in California and were employed by Decker Truck Line, Inc. (“Decker”) at any time between August 6, 2016 and November 12, 2022 (the “Class”):

THIS NOTICE is of a proposed settlement of the above-referenced class action and representative action lawsuit (the “Lawsuit”), and an announcement of a court hearing that you may choose to attend. Your rights may be affected by the legal proceedings in this Lawsuit. The Court will conduct a hearing on [REDACTED], 2023, to address whether the proposed Settlement should be approved (the “Final Approval Hearing”). You may be entitled to receive a payment under the terms of this class and representative action settlement contained in the Settlement Agreement.

As described in further detail below, the proposed Settlement has two main components: (1) a settlement of Class Claims requiring Decker to pay Individual Settlement Payments to Participating Class Members; and (2) a settlement of PAGA Claims requiring Decker to pay PAGA Penalties to Aggrieved Employees and the California Labor and Workforce Development Agency.

[IDENTIFYING INFORMATION]

You have been identified as a Class Member and/or Aggrieved Employee in the above Lawsuit. Under the terms of the proposed settlement, you are estimated to receive approximately \$[INSERT AMOUNT] as your share of the Settlement should the Court grant the settlement in full. Please note that this is only an estimate. Your actual share may be more or less than this estimate. Your estimate is based on the number of eligible weeks during which you drove a truck for Decker while residing in California between August 6, 2016, and November 12, 2022 (the “Class Period”). Your options and eligibility requirements for receiving payments are described below.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	If you want to receive your full settlement payment, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator if the Settlement receives Final Approval by the Court. You will be bound by the terms of the Settlement Agreement and will give up your right to sue on the released class and PAGA claims described in Section IV under the provisions titled “Release of Class Claims” and “Release of PAGA Claims.”
EXCLUDE YOURSELF	If you do not wish to participate in the settlement of the Class Claims, you may “opt-out” of the settlement of the Class Claims. If you choose to opt-out, you must submit a Request for Exclusion by [REDACTED], 2023 (see Section V(B) for more details on how to opt-out). If you opt-out of the settlement of the Class Claims, you will no longer be a Class Member, and you will (1) neither receive any settlement payment for the Class Claims nor release any Class Claims as set forth in Section IV, and (2) be barred from filing an objection to the settlement. If eligible, you still will receive a payment as part of the civil penalties paid pursuant to the California Private Attorneys General Act of 2004 (“PAGA”) and will release your claims for such civil penalties. You cannot opt-out of the settlement of the PAGA Claims.
OBJECT	If you decide to object to the settlement with respect to the Class Claims because you find it unfair or unreasonable, you must submit an objection by [REDACTED], 2023 (see Section V(C) for more details on how to object).
DISPUTE YOUR NUMBER OF WORKWEEKS CREDITED	If you believe that the number of weeks that you are credited with working during the Class Period and/or PAGA Period is incorrect, you may submit a written dispute to the Settlement Administrator (see Section IV for more details on how to dispute your credited Weeks Worked). Weeks Worked are based on your hire dates and, where applicable, re-hire date(s) and separation date(s). Defendant’s records will be presumed correct, but you may provide evidence to the Settlement Administrator showing that your Workweek calculation is inaccurate.

I. Why should I read this Notice?

The Court has granted preliminary approval of a proposed settlement (the “Settlement”) in *Threadgill v. Decker Truck Line, Inc.*, Superior Court of California, County of San Bernardino, Case No. CIVSD2018856 (the “Lawsuit”). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

Decker’s records show that you were employed as a truck driver while residing in California at some point between August 6, 2016, and November 12, 2022 (the “Class Period”). The Court ordered this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE SETTLEMENT: If you were employed by Decker as a truck driver and resided in California at any time during the Class Period, you are automatically included in the Settlement and do not need to take any further action to receive a payment.

The purpose of this Notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the proposed Settlement, and to discuss your rights and options in connection with the Lawsuit and the Settlement.

II. What is this lawsuit about?

On August 6, 2020, Plaintiff and Class Representative Robert Threadgill (“Plaintiff” or “Class Representative”), through his attorneys (“Class Counsel”), filed a class action and representative action complaint against Decker for alleged wage and hour violations on behalf of all current and former truck drivers who were employed by Decker and resided in California at any time since August 6, 2016. The Lawsuit alleges that Decker violated various California Labor Code sections by failing to pay all required minimum wages, failing to pay for rest and recovery periods and all nonproductive time under California Labor Code § 226.2, failing to reimburse for business expenses, failing to timely pay final wages, and failing to provide accurate and complete wage statements during the Class Period. The Lawsuit also seeks equitable relief under California’s Unfair Competition Law, California Business and Professions Code §§ 17200 *et seq.* All of these claims are called the “Class Claims.” The Lawsuit also seeks, on behalf of the California Labor and Workforce Development Agency (“LWDA”) and other Aggrieved Employees, civil penalties pursuant to PAGA as a representative action. The civil penalty claims are called “PAGA Claims” and the relevant period for PAGA Claims is August 6, 2019, through November 12, 2022 (the “PAGA Period”).

Decker has denied, and continues to deny, the factual and legal allegations in the Lawsuit and believes that it has valid defenses to Plaintiff’s claims. By agreeing to settle, Decker is not admitting liability on any of the factual allegations or claims in the case or that the case can or should proceed as a class action and/or a representative action. Decker has agreed to settle the case as part of a compromise with Plaintiff, Participating Class Members, and Aggrieved Employees.

The Court has not ruled on the merits of Plaintiff’s claims. And, by approving the Settlement and issuing this Notice, the Court is not suggesting which side would win or lose this case if it went to trial. However, to avoid additional expense, inconvenience, and risks of continued litigation, Decker and Plaintiff (collectively, the “Parties”) have concluded that it is in their respective best interests, and the interests of the Settlement Class and Aggrieved Employees, to settle the Lawsuit on the terms summarized in this Notice. After providing extensive information to Class Counsel, the Settlement was reached following an arm’s length mediation with a respected and experienced mediator. In these negotiations, both sides recognized the substantial risk of the Court deciding against them at trial and determined that the proposed Settlement was a good option to resolve the disputed claims.

The Class Representative and Class Counsel support this Settlement. Among the reasons for their support are the defenses to liability potentially available to Decker, the risk of denial of class certification or representative status, the inherent risk of trial on the merits, and the delays and uncertainties associated with litigation.

If you are still employed by Decker, this proposed Settlement will not affect your employment. California law strictly prohibits unlawful retaliation. Further, Decker will not take any adverse action against or otherwise target, retaliate, or discriminate against any Class Member because of the Class Member’s participation or decision not to participate in this Settlement. If a Class Member does not participate as to the Class Claims, his/her share of the settlement of the Class Claims will be paid to those who do participate.

III. Who are the attorneys representing the Parties?

Attorneys for Plaintiff and Class Members:	Attorneys for Defendant:
Brian Mankin <i>brian@LMLfirm.com</i> Peter Carlson <i>peter@LMLfirm.com</i> Lauby Mankin Lauby LLP 4590 Allstate Drive Riverside, CA 92501 Tel: (951) 320-1444	Katherine C. Den Bleyker <i>Katherine.DenBleyker@lewisbrisbois.com</i> William B. Richards, Jr. <i>William.Richards@lewisbrisbois.com</i> Lewis Brisbois Bisgaard & Smith LLP 633 West 5th Street, Suite 4000 Los Angeles, CA 90071 Tel: (213) 250-1800

IV. What are the terms of the Settlement?

On [PA DATE], the Court certified a class, for settlement purposes only, of all current and former truck drivers who resided in California and who were employed by Decker at any time from August 6, 2016 through November 12, 2022 (the “Settlement Class” or “Class Members”), and approved a representative PAGA group comprised of all current and former truck drivers who resided in California and who were employed by Decker at any time from August 6, 2019 through November 12, 2022 (“Aggrieved Employees”). Individuals who do not opt-out of the Settlement with respect to the Class Claims, pursuant to the procedures set forth in this Notice, will become “Participating Class Members” and will be mailed Individual Settlement Payment checks, and in exchange will be bound by the Settlement and release of the Class Claims against the Released Parties. Individuals may not opt-out of the Settlement with respect to the PAGA Claims. Aggrieved Employees who opt-out of the Settlement with respect to the Class Claims will still be mailed their PAGA Penalty payment checks, and in exchange will be bound by the Settlement and release of the PAGA Claims against the Released Parties.

Without admitting any wrongdoing, Decker has agreed to pay \$700,000 (the “Gross Settlement Amount”) to fully resolve all claims in the Lawsuit. The Parties agreed to the following payments from the Gross Settlement Amount:

Settlement Administration Costs. The Court has approved XX to act as the “Settlement Administrator,” who is sending this Notice to you and will perform many other duties relating to the Settlement. Under the Settlement, a maximum of \$XX will be paid from the Gross Settlement Amount to pay the Settlement Administration Costs.

<u>Settlement Administrator</u>
Name Address Telephone

PAGA Penalties to Aggrieved Employees and the California Labor Workforce and Development Agency. The California Private Attorneys General Act (“PAGA”) authorizes employees to file lawsuits to attempt to recover civil penalties on behalf of other Aggrieved Employees and the State of California for alleged violations of the California Labor Code and California Industrial Welfare Commission Wage Orders. Under the Settlement, \$50,000 of the Gross Settlement Amount will be allocated to Plaintiff’s PAGA Claims. Of this amount, \$37,500 (75%) will be paid to the California Labor and Workforce Development Agency (“LWDA”) in satisfaction of the claims for civil penalties under PAGA, and the remaining \$12,500 (25%) will be divided between all Aggrieved Employees based on the number of Weeks Worked during the PAGA Period. Aggrieved Employees includes “all current and former truck drivers who resided in California and who were employed by Decker at any time during the PAGA Period.” You do not have the right to opt-out or exclude yourself from receiving the civil penalties paid to pursuant to PAGA. Review the information below to determine if you are an Aggrieved Employee and eligible to receive a share of the \$12,500 allocation:

Do you Qualify as an Aggrieved Employee?	Weeks Worked as an Aggrieved Employee	Your Share of PAGA Penalties
YES/NO	INSERT	\$INSERT

Service Payment to Class Representative. Class Counsel will ask the Court to award the Class Representative a Service Payment in the amount of \$10,000 to compensate him for service and extra work provided on behalf of the Class Members and in exchange for a general release of claims. The Class Representative also will receive his individual share of the Settlement as a Class Member and Aggrieved Employee.

Attorneys' Fees and Costs. Class Counsel have been prosecuting the Lawsuit on behalf of the Class Members and Aggrieved Employees on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys' fees, which will be paid from the Gross Settlement Amount. Class Members and Aggrieved Employees are not personally responsible for any of Class Counsel's attorneys' fees or costs. Class Counsel will ask for fees of one-third (\$233,333.33) of the common fund Gross Settlement Amount as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through finalization of the Settlement. Class Counsel also will ask for reimbursement of up to \$20,000 for the costs Class Counsel incurred in connection with the Lawsuit.

Calculation of Individual Settlement Payments to Class Members. After deducting the amounts above from the Gross Settlement Amount, the balance will form the Net Settlement Amount for distribution to Participating Class Members (who are Class Members who do not opt-out). The Net Settlement Amount will total approximately \$ [REDACTED]. Individual Settlement Payments to Class Members will be calculated and apportioned from the Net Settlement Amount based on the number of calendar weeks during which a Settlement Class Member was employed by Decker as a truck driver (the "Weeks Worked" or "Workweeks"). Weeks Worked are based on the Settlement Class Member's hire date and, where applicable, re-hire date(s) and separation date(s). Specific calculations of Individual Settlement Payments will be made as follows: the Settlement Administrator will divide the total Weeks Worked by all Settlement Class Members into the Net Settlement Amount to determine a per "Workweek Value." The Workweek Value will be multiplied by the number Weeks Worked by each Settlement Class Member during the Class Period to determine the "Individual Settlement Payment," prior to legal deductions/withholdings, for each Settlement Class Member. If any Settlement Class Member opts-out of the Settlement, his/her Individual Settlement Payment will be distributed to all Participating Class Members (i.e., those who do not opt-out). Review the information below to determine your share as a Class Member:

Workweeks Worked as a Class Member During the Class Period	Your Estimated Share of the Net Settlement Amount
INSERT	INSERT

Disputes to Workweeks Credited. For each Settlement Class Member, the Weeks Worked at Decker during the Class Period will be calculated from Decker's records. If you disagree with the numbers reported above, you may submit evidence to the Settlement Administrator on or before [REDACTED], 2023, with documentation to establish the number of Weeks Worked you claim to have actually worked for Decker as a truck driver between August 6, 2016 and November 12, 2022. **DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED; DO NOT SEND ORIGINALS.** The Parties and Settlement Administrator will evaluate the evidence submitted by the Settlement Class Member and discuss in good faith how many Weeks Worked should be credited to each Settlement Class Member.

Payments to Participating Class Members. After the Court grants Final Approval of the Settlement and after Judgment is entered, settlement checks will be mailed to all Participating Class Members who did not timely request to be excluded. For those Aggrieved Employees who requested to be excluded from the settlement of the Class Claims, their settlement checks will be for their share of PAGA Penalties only for release of the PAGA Claims, and they will not include any payment for settlement of the Class Claims. Participating Class Members and Aggrieved Employees will have 180 days from the issuance of the last check to cash all of the checks. In the event that any Participating Class Member or Aggrieved Employee fails to timely cash a settlement check, a stop payment will be placed on the check and the funds will be paid to the California State Controller's Office in the name of the Participating Class Member or Aggrieved Employee, so that the Participating Class Member or Aggrieved Employee can attempt to collect the funds at a later date.

Allocation and Taxes. One-third (33.34%) of the Individual Settlement Payment distributed to each Participating Class Member will be considered and reported as wages (Form W-2 reporting), one-third (33.33%) will be considered and reported as penalties (Form 1099 reporting), and one-third (33.33%) will be considered and reported as interest (Form 1099 reporting). The Settlement Administrator shall take all usual and customary deductions from the Individual Settlement Payments that are distributed as wages, including, but not limited to, state and federal tax withholding, disability premiums, and unemployment insurance premiums. There will be no deduction taken from the interest and penalty distribution; however, the payments will be reported on IRS Form 1099 as income. Payments for PAGA Claims shall be paid one

hundred percent (100%) as civil penalties for which no taxes shall be withheld and for which payment will be reported on IRS Form 1099. Participating Class Members and Aggrieved Employees are responsible for the proper income tax treatment of the Individual Settlement Payments and their PAGA Penalty payments for PAGA Claims. The Settlement Administrator, Decker and its counsel, and Class Counsel cannot provide tax advice and make no representations as to the tax treatment or legal effect of the Individual Settlement Payments or PAGA Penalty payments for PAGA Claims. Participating Class Members and Aggrieved Employees will be solely responsible for the payment of any taxes and penalties assessed on their Individual Settlement Payments and PAGA Penalty payments for PAGA Claims. Accordingly, Participating Class Members and Aggrieved Employees should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release of Class Claims. Upon the final approval of the Settlement by the Court and Decker's funding of the Gross Settlement Amount, Plaintiff and all Class Members who do not submit a valid opt-out/request for exclusion will fully release and discharge Decker and their past and present officers, directors, shareholders, members, partners, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and their respective parent corporations, subsidiaries, divisions, affiliates, attorneys, predecessors, successors and assigns (the "Released Parties") from all claims stated in the operative complaint and those based solely upon the facts in the complaint, including: (a) failure to pay minimum wages, (b) failure to pay for rest and recovery periods under California Labor Code § 226.2, (c) failure to reimburse business expenses, (d) failure to timely pay wages upon separation of employment, (e) failure to provide accurate itemized wage statements, (f) unfair and unlawful competition, and (g) all other claims that reasonably could have arisen out of the allegations made and based on the facts alleged in the operative complaint. These released claims and damages are hereinafter referred to as the "Released Class Claims." The time period governing these Released Class Claims shall be at any time from August 6, 2016 through November 12, 2022 (the "Class Period").

Release of PAGA Claims. Also upon the Court's final approval of the Settlement and Decker's funding of the Gross Settlement Amount, Plaintiff—in his individual capacity and on behalf of the State of California and the LWDA—and all Aggrieved Employees shall completely release and discharge the Released Parties of all PAGA claims that Plaintiff alleged against the Released Parties, on behalf of the Aggrieved Employees and the State of California, based on the facts stated in the operative complaint and in the relevant LWDA notice letter, including all PAGA claims seeking civil penalties premised upon: (a) failure to pay minimum wages, (b) failure to pay for rest and recovery periods under California Labor Code § 226.2, (c) failure to reimburse business expenses, (d) failure to timely pay wages each period, (e) failure to timely pay wages upon separation of employment, (f) failure to provide accurate itemized wage statements, and (g) all other claims for civil penalties recoverable under the PAGA, California Labor Code §§ 2698 *et seq.* based on the facts or claims alleged in the operative complaint. These released claims and penalties are hereinafter referred to as the "PAGA Released Claims." The time period governing the PAGA Released Claims shall be any time from August 6, 2019 to November 12, 2022 (the "PAGA Period").

Waiver of Labor Code Section 206.5(e). Participating Class Members will be deemed to have acknowledged and agreed that their claims for wages and/or penalties in the Lawsuit are disputed, and that the Individual Settlement Payments constitute payment of all sums allegedly due to them. Participating Class Members will be deemed to have acknowledged and agreed that California Labor Code Section 206.5 is not applicable to the Individual Settlement Payments. That section 206.5 of the Labor Code provides in pertinent part as follows:

"No employer shall require the execution of any release of any claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of such wages has been made."

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class, and the entry of Judgment.

V. What options do I have?

- A. Do Nothing and Participate in the Settlement.** Under the Settlement, you will automatically receive a Settlement Payment unless you exclude yourself from the settlement of the Class Claims by following the exclusion procedure set forth below. If you disagree with the number of Work Weeks credited, as described in this Notice, you may dispute the allocation of the Settlement without excluding yourself or objecting, as described below.
- B. Exclude Yourself from the Class Claims in the Settlement.** If you do not wish to take part in the release of the Class Claims in the Settlement, you may exclude yourself by sending to the Settlement Administrator a

“Request for Exclusion from the Class Claims in the Class Action Settlement” letter/card postmarked no later than [REDACTED], 2023 with your full name, address, telephone number, last four digits of your social security number or your date of birth, and signature. The Request for Exclusion should state:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE DECKER TRUCK LINE LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT.”

Send the Request for Exclusion directly to the Settlement Administrator, [ADDRESS], postmarked no later than [REDACTED], 2023. Any person who files a timely Request for Exclusion from the Class Action Settlement, upon receipt: (1) will not have any rights under this Settlement with respect to the Class Claims, including the right to object, appeal or comment on the Settlement; (2) will not be entitled to receive any money for the Class Claims under this Settlement; and (3) will not be bound by this Settlement, or the Judgment, with respect to the Class Claims. You still will be bound by this Settlement with respect to the release of the PAGA Claims.

- C. **Object to Class Settlement.** You also have the right to object to the terms of the Settlement with respect to the Class Claims if you believe they are unfair or unreasonable. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Class Claims portion of the Settlement, you must submit a written objection stating your full name, your address, your telephone number, the last four digits of your social security number or your date of birth, your dates of employment at Decker, the case name and number, the name and address of your attorney(s) if you are represented, your signature, and each specific reason in support of your objection. You must also include any documentation or evidence in support of the objection, if any. Objections must be in writing and mailed to the Settlement Administrator, [ADDRESS], by no later than [REDACTED], 2023. Objections that do not include all required information, or that are not submitted timely, may not be considered by the Court. You need not object to the Settlement if you only dispute the number of Weeks Worked. To dispute the number of Weeks Worked, please refer to the directions provided under the provision entitled “Calculation of Individual Settlement Payments to Class Members” in Section IV of this Notice.

If you choose to object to the Class Claims portion of the Settlement, you may also appear at the Final Approval Hearing scheduled for [REDACTED], 2023, at 10:00 a.m. in Department S26 of the Superior Court of California, County of San Bernardino, located at 247 West Third Street, San Bernardino, CA 92415. You have the right to appear either in person or through your own attorney at this hearing. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before [REDACTED], 2023. All objections or other correspondence must state the name and number of the case. If you wish to appear at the Final Approval hearing, please contact Class Counsel or the Settlement Administrator in advance of the scheduled hearing to ensure that the hearing has not been continued by the Court.

If you object to the Class Settlement, you will remain a Class Member, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Participating Class Members who do not object. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment before entry of judgment.

- D. **Dispute Work Weeks Credited.** As discussed in Section IV, you may dispute the number of Weeks Worked if you believe the number credited is inaccurate.

VI. What is the effect of the Settlement?

Released Rights and Claims. The Settlement is intended to settle all claims against the Released Parties that were asserted or could have been asserted in the Lawsuit regarding the alleged violations of wage and hour laws. If you were employed by Decker in California at any time during the Class Period and do not elect to exclude yourself from the Settlement Class, you will be deemed to have entered into this Release and to have released the class claims in this Lawsuit, described above in Section IV under the provision titled “Release of Class Claims.” All Aggrieved Employees will be deemed to have entered into a release of the PAGA Claims, described above in Section IV under the provision titled “Release of PAGA Claims.” If the Settlement is not approved by the Court or does not become final for some other reason, the Lawsuit may continue and the releases will not take effect.

VII. What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement, the Class Counsel's request for attorneys' fees and reimbursement of documented litigation costs, and the Service Payment to the Class Representative on [REDACTED], 2023 at **10:00 a.m. in Department** S26 of the Superior Court of California, County of San Bernardino, located at 247 West Third Street, San Bernardino, CA 92415.

You are not required to attend the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

VIII. How can I get additional information?

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court's files and the Class Action and PAGA Settlement Agreement at the Office of the Clerk, Superior Court of California, County of San Bernardino, located at 247 West Third Street, San Bernardino, CA 92415, during regular court hours. You may also contact the Settlement Administrator using the contact information listed above under Section IV for more information.

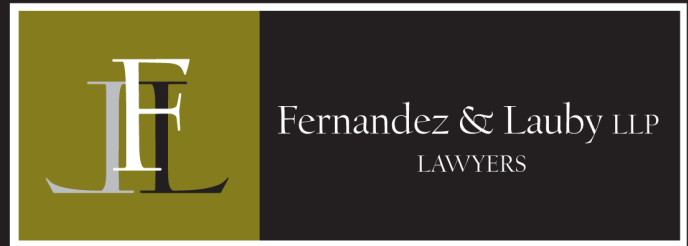
IX. Reminder as to time limits

Class Members do not have to take any further action to participate in the Settlement. The deadline for submitting a Request for Exclusion from the Class Claims is [REDACTED], 2023. The deadline for mailing an objection to the Settlement Administrator is [REDACTED], 2023.

These deadlines will be strictly enforced. To be considered timely, any Requests for Exclusion and objections to the Settlement must be postmarked by the above-stated deadlines. Any Requests for Exclusion and objections to the Settlement that are not postmarked on or before these deadlines will be deemed untimely and disregarded.

**PLEASE DO NOT CALL OR WRITE THE COURT
FOR INFORMATION ABOUT THIS SETTLEMENT**

EXHIBIT “C”



August 4, 2020

Sent Via Online Filing to the LWDA

California LWDA
Attn: PAGA Administrator
455 Golden Gate Ave., 9th Fl.
San Francisco, CA 94102

Sent Via U.S. Mail and Certified Mail

Decker Truck Line, Inc.
4000 5th Avenue South
Fort Dodge, IA 50501

Re: PAGA Civil Penalty Claim
Robert Threadgill v. Decker Truck Line, Inc., et al.

To the Labor and Workforce Development Agency, Decker Truck Line, Inc., and all affiliated entities:

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, this letter shall serve as notification of the PAGA civil penalty claim of aggrieved employee Robert Threadgill (“Claimant”), on behalf of the State of California and all Aggrieved Employees, against his former employer(s), Decker Truck Line, Inc. and/or any affiliated entities (the “Company”), for violations of Labor Code §§ 201, 202, 203, 204, 208, 210, 218.6, 226, 226.2, 226.3, 226.7, 256, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, among other sections inadvertently omitted, and/or sections of the applicable Industrial Welfare Commission Wage Order(s).

FACTUAL BACKGROUND

Claimant was employed by the Company from approximately September 2019 through June 2020 as a truck driver. Claimant alleges that he and all other truck drivers who resided in California and that were employed by the Company (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and corresponding wage and hour violations to Claimant was subjected during his employment.

Notably, at all relevant times, Claimant and the Aggrieved Employees were only paid on a piece-rate (per-mile) basis but did not receive separate hourly compensation at no less than the minimum wage for unpaid, on-duty, time including tasks such as pre-trip and post-trip inspections, detention time, loading and unloading time, completing paperwork, refueling or repair, and downtime between runs. Also, the piece-rate compensation paid to Claimant and the Aggrieved Employees often resulted in a payment of wages at less than the required California minimum wages for all hours worked.

Claimant was also not provided 30-minute off-duty meal periods, as mandated by California law, during employment with the Company. As a result of the Company’s policies and practices,

Claimant was subjected to meal period violations when Claimant was: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal period while under the control of the Company, (3) forced to take a meal period after the 5th hour of work, and (4) not provided a mandated second meal period on occasions for shifts in excess of 10 hours.

The Company also failed to provide Claimant with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. The Company did not schedule Claimant's rest breaks, Claimant was unable to leave the premises for breaks, and Claimant was often not authorized and/or permitted to take mandated rest breaks due to being overwhelmed by the hectic workload. Furthermore, on occasions when Claimant worked in excess of 10 hours in a shift, the Company failed to authorize and/or permit a third mandated rest break.

Furthermore, at all relevant times, Claimant and the Aggrieved Employees were denied paid rest breaks by virtue of the Company's policy that only paid its truck drivers for miles driven. As Claimant and the Aggrieved Employees could not accrue miles during a rest break, Claimant and the Aggrieved Employees were illegally denied paid rest breaks. Claimant and the Aggrieved Employees were also not provided mandated 30-minute off-duty meal periods. Claimant and the Aggrieved Employees were not paid the mandatory one-hour wage premium for each such meal period or rest break denied. Also, the Company failed to pay Claimant and the Aggrieved Employees for rest and recovery periods and other nonproductive time as required by Labor Code § 226.2.

Also, the Company required Claimant and the Aggrieved Employees to incur necessary business-related expenses and costs without reimbursement, including, but not limited to, acquiring and maintaining a smart phone and related monthly data plan to communicate with the Company via phone and text message.

The Company also failed to comply with the mandates of Labor Code § 204 regarding the timing of the payment of wages to its employees each period, including meal and rest period premiums. Additionally, the Company failed to pay Claimant and the Aggrieved Employees their final wages within the timeframe required by Labor Code §§ 201 – 203. Finally, during employment with the Company, Claimant and the Aggrieved Employees received inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a).

Also, in a separate, but not necessarily mutually exclusive, alternative theory of liability, Claimant alleges that the owners of the Company are liable for PAGA civil penalties under Labor Code § 558 as "other person(s)" who caused the violations regarding minimum wage among other claims. *See Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820 ("if there is evidence and a finding that a party other than the employer 'violates, or causes to be violated' the overtime laws (§ 558(a)) or 'pays or causes to be paid to any employee' less than minimum wage (§ 1197.1(a)), then that party is liable for certain civil penalties regardless of the identity or business structure of the employer"); *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S.Dist.LEXIS 40851 (holding the same)

As a result of these violations, and others described below, Claimant alleges that he and other Aggrieved Employees were denied specific rights to which they are/were entitled under California law and the rules promulgated by the IWC Wage Orders, including the following:

///

///

PAGA ASSESSMENT FOR FAILURE TO PAY WAGES

(Labor Code §§ 204, 221-223, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198; IWC Wage Order §§ 3, 4(B))

During their employment, Claimant and the Aggrieved Employees were paid on a piece-rate but did not receive separate hourly compensation at no less than the minimum wage for unpaid, on-duty, time including tasks such as mandatory paid rest breaks, pre-trip and post-trip inspections, detention time, loading and unloading time, completing paperwork, refueling or repair, and downtime between runs. Additionally, the piece-rate compensation paid to Claimant and the Aggrieved Employees often resulted in a payment of wages at less than the required California minimum wages for all hours worked. Therefore, this resulted in earned, but unpaid, minimum and regular wages due and owing to Claimant and the Aggrieved Employees. Accordingly, Labor Code §§ 210, 558, 1194.2, 1197.1, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay all wages.

PAGA ASSESSMENT FOR FAILURE TO PROVIDE SEPARATE PAYMENT FOR REST AND RECOVERY PERIODS AND OTHER NONPRODUCTIVE TIME

(Labor Code § 226.2)

Labor Code § 226.2 requires employers that pay their employees on a piece-rate basis to provide separate payment for rest and recovery periods and other nonproductive time. Claimant and the Aggrieved Employees are and/or were employees of the Company who were paid on a piece-rate/flat-rate basis, yet the Company did not comply with the requirements of Labor Code § 226.2 for its piece-rate employees. As a result of these violations, penalties may be assessed pursuant to Labor Code § 2699, among possibly other sections.

PAGA ASSESSMENT FOR DENIAL OF MEAL PERIODS, REST BREAKS, AND WAGE PREMIUMS

(Labor Code §§ 226.7(b) & (c), 512, 558; Cal. Admin. Code, Title 8, § 11090)

Labor Code § 226.7(b) states that “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ...” Labor Code § 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than 5 hours per day without providing the employee with an uninterrupted meal period of not less than 30 minutes [...] [a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.” Section 12 of applicable IWC Wage Order states in pertinent part: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

Here, Claimant and other Aggrieved Employees were regularly not provided compliant mandatory meal periods and paid rest breaks due to the Company’s policies described above. Although the Company was required to pay Claimant and all Aggrieved Employees premium wages equal to an additional hour of pay at the employee’s regular rate of pay for each violation under Labor Code § 226.7(c), the Company did not pay the mandatory one-hour wage premiums. Labor Code § 558 imposes a penalty for each violation. Additionally, the civil assessment set forth in Labor Code § 2699 applies to these violations.

PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES

(Labor Code § 2802; IWC Wage Order § 9(b))

Labor Code § 2802(a) states “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.” IWC Wage Order § 9(b) states “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer.”

Here, the Company required Claimant and the Aggrieved Employees to incur expenses in direct consequence of the discharge of their duties. For example, the Company required Claimant and the Aggrieved Employees to acquire and maintain a smart phone and related monthly data plan to communicate with the Company via phone and text message. Accordingly, Labor Code § 2699 imposes a penalty upon the Company for each such violation of Labor Code § 2802.

**PAGA ASSESSMENT FOR FAILURE TO PAY ALL WAGES DUE AND OWING
EACH PAYROLL PERIOD WITHIN THE TIME REQUIRED BY LAW**

(Labor Code §§ 204, 204.1, 208, 256 and 2699)

Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month. Labor Code § 204(d) states “[t]he requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

As a result of the Company’s failure to pay Claimant and the Aggrieved Employees all compensation to which they were entitled, the Company had a pattern and practice of failing to pay all wages due and owing to Claimant and the Aggrieved Employees within the time mandated by Labor Code § 204. As a result of these violations, penalties may be assessed pursuant to Labor Code §§ 203, 210, 256, and/or 2699.

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201, 202, 203, 256 and 2699)

Labor Code § 201(a) provides in pertinent part: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202(a) states in pertinent part “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours’ previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Labor Code § 203(a) states “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

The Company did not pay the Aggrieved Employees all wages that were due and owing within the required time following the end of their employment in accordance with Labor Code §§ 201-202. As a result, all such Aggrieved Employees are entitled to 30 days of wages as a “waiting time penalty.” (Labor Code §§ 203, 256.) Labor Code § 2699 also imposes a penalty.

**PAGA ASSESSMENT FOR FAILURE TO PROVIDE ACCURATE,
ITEMIZED WAGE STATEMENTS**
(Labor Code §§ 226, 226.3, and 1174)

Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the pay period, the employee’s name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Furthermore, Labor Code § 226.2(a) states “[f]or employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period: [...] (2) the itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items specified in that subdivision, separately state the following, to which the provisions of Section 226 shall also be applicable: (A) the total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period [and] (B) [...] the total hours of other nonproductive time, [...] the rate of compensation, and the gross wages paid for that time during the pay period.”

Here, the Company violates Labor Code § 226(a) every pay period with respect to Claimant and the Aggrieved Employees because the wage statements failed to provide any information regarding hours worked, and therefore the wage statements did not state “total hours worked by the employee” in direct violation of Labor Code § 226(a)(2). Additionally, the Company failed to provide accurate itemized wage statements due to violations including: failure to accurately state the number of piece-rate units earned by the Aggrieved Employees and any applicable piece-rate; failure to accurately state gross wages earned; failure to accurately state all deductions; failure to accurately state net wages earned; failure to state all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee; failure to state the total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period; and failure to state the total hours of other nonproductive time, [...] the rate of compensation, and the gross wages paid for that time during the pay period. Accordingly, Labor Code §§ 226.3 and 2699 impose a civil penalty and/or assessment for these violations.

PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199
(Labor Code § 1199)

An employer violates Labor Code § 1199 if said employer: (a) requires or causes an employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission; (b) pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission; or, (c) violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission. Labor Code § 2699.5

specifically enumerates Labor Code § 1199 as a section to which the civil penalties under the PAGA apply. Therefore, as a result of the Company's violations described herein, the Company is subject to the civil penalties in accordance with Labor Code § 2699.

ATTORNEYS' FEES, INTEREST, AND PENALTIES

(Labor Code §§ 2699(f)(2), 2699(g)(1), 2699.5)

Labor Code § 2699(g)(1), give employees the right to recover in a civil action the unpaid balance of the full amount of wages, including interest thereon, penalties and other damages, as applicable, reasonable attorneys' fees, and costs of suit. Additionally, Claimants seek the assessment of penalties, including civil penalties, under Labor Code §§ 203, 210, 225.5, 226.3, 1174.5, 1197.1, 2699, and/or § 20 of the IWC Wage Orders, among possibly other provisions inadvertently omitted herein. Furthermore, Claimants is entitled to bring a wage/hour claim on behalf of all current and former similarly situated employees of the Company. Thus, the Company is exposed to these same penalties for violations involving all Aggrieved Employees.

Additionally, Claimant seeks attorney's fees pursuant to C.C.P. § 1021.5. Please construe this correspondence as Claimants' notification of alleged wrongdoing and attempted resolution in accordance with C.C.P. § 1021.5 and *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553.

CONCLUSION

Based on the foregoing, the Company may be liable for penalties related to the foregoing claims and remedies. If Claimant becomes aware of any additional claims for Labor Code violations related to his employment and/or other employees of the Company, he reserves the right to add new claims by amending this claim letter.

Should you have any questions, please feel free to give me a call. In the meantime, I look forward to your response.

Very Truly Yours,



By: Peter J. Carlson, Esq.

E-mail: PJC@fernandezlauby.com

www.California-EmploymentLawyers.com

EXHIBIT “D”