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7 individually and on behalf of all others similarly
situated

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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF RIVERSIDE**

11 KENNETH KERNITZKI, individually, and on
12 behalf of all others similarly situated,

13 Plaintiff,

14 v.

15 QUALITY CAR SHIPPERS, LLC, a California
16 limited liability company; and DOES 1 through
50, inclusive,

17 Defendants.
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Case No. CVRI2100564

[Assigned to Harold W. Hopp, Department 1]

Complex Class Action

**DECLARATION OF GREG TAYLOR IN
SUPPROT OF MOTION FOR FINAL
APPROVAL OF CLASS AND PAGA
REPRESENTATIVE ACTION
SETTLEMENT**

Date: August 23, 2023

Time: 8:30 AM

Dept: 1

Reservation No.: 799134302059

Complaint filed: February 5, 2021

Trial date: None set

DECLARATION OF GREG TAYLOR

I, Greg Taylor, declare:

1. I am a member in good standing of the State Bar of California, and I am an attorney at The Kick Law Firm, APC, attorneys for Plaintiff Kenneth Kernitzki (“Plaintiff”) in this action. I make this Declaration on behalf of Plaintiff and in support of the Motion for Final Approval of Class and PAGA Representative Action Settlement. If sworn as a witness, I could competently testify to each fact set forth herein from my own personal knowledge.

2. A true and correct copy of the fully executed Class Action and PAGA Settlement Agreement (“Settlement,” “Settlement Agreement,” or “SA”) is attached as **Exhibit 1**. The proposed Notice of Class Action Settlement (“Class Notice”) is attached to the Settlement as Exhibit A. In addition, a true and correct copy of the parties’ Codicil to the Settlement Agreement, executed March 28, 2023, is attached hereto as **Exhibit 2**.

3. Paragraphs 3 through 12 of this declaration describe the work done by attorneys at The Kick Law Firm, APC leading up to the present. First, prior to the filing of the complaint, there was initial investigation of the claims alleged and conducted extensive legal research regarding Defendant’s potential liability and defenses; and communications with the class representative Kenneth Kernitzki before filing the complaint, including working with Mr. Kernitzki to gather pertinent documents and information.

4. On September 11, 2020, pursuant to Labor Code § 2699.3, Plaintiff submitted notice to the Labor and Workforce Development Agency (“LWDA”) and to Defendant, LWDA case number LWDA-CM-805937-20, of his intention to litigate various alleged Labor Code violations. Attached as **Exhibit 3** is a true and correct copy of Plaintiff’s September 11, 2020, notice to the LWDA.

5. On February 5, 2021, Plaintiff filed the initial complaint on behalf of himself and others similarly situated to recover damages and penalties for the Labor Code violations alleged against Defendant (“the Action”). The Complaint alleges the following causes of action: (1) failure to provide meal periods; (2) failure to provide rest periods; (3) failure to pay minimum wage; (4) failure to timely to pay all wages due at separation; (5) failure to provide accurate itemized wage statements; (6) failure to indemnify employees for necessary business expenses; and (7) unlawful deductions; (*See Complaint.*) Plaintiff alleged further that these violations (8) constituted unfair and unlawful business practices under the Unfair

1 Competition Law, Bus. & Prof. Code § 17200, *et seq.*, and that (9) Defendant was liable for penalties under
2 the Private Attorneys General Act (“PAGA”), Lab. Code § 2698, *et seq.*

3 6. Both before and after initiating the Action on behalf of the putative class, Plaintiff and Class
4 Counsel diligently investigated the claims alleged and conducted legal research regarding Defendant’s
5 potential liability and defenses. The parties engaged in both formal and informal discovery, and Class
6 Counsel carefully reviewed and assessed Defendant’s production of data and documents relating to
7 Plaintiff’s claims.

8 7. With respect to formal discovery, Defendant propounded and Plaintiff responded to requests
9 for admissions, special interrogatories, form interrogatories, and requests for production of documents. In
10 addition, Plaintiff obtained through informal discovery hundreds of documents, including contractor
11 agreements, trip invoices, bills of lading, settlement reports and pay statements. Defendant also produced
12 data detailing the miles driven in California for a sample of 25% of the putative class and demonstrating
13 the size of the putative Class. Class Counsel carefully considered the class claims at issue and its analysis
14 of Defendant’s driver trip data. Factual investigation also involved analysis of employment-related
15 documents provided by Plaintiff and numerous discussions between Plaintiff and Class Counsel.

16 8. Defendant also produced records documenting its financial difficulties in recent years,
17 including income tax returns for 2019 and 2020, showing sizeable losses in these years, and Class Counsel
18 considered the impact of Defendant’s financial condition. Defendant also produced an arbitration
19 agreement and class action waiver signed by Plaintiff, which Plaintiff contends is unenforceable in this
20 field but recognizes the risk the Court could disagree.

21 9. Based on continued good faith meet and confer efforts, the parties discussed resolution
22 through arm’s-length settlement negotiations. Indeed, Settlement negotiations were conducted in good faith
23 between qualified and experienced Class Counsel at The Kick Law Firm, APC and defense counsel at
24 Larson & Gaston, LLP. At all times, negotiations were vigorous, truly arm’s-length and involved a
25 contentious—albeit collegial—debate. As a result of the parties’ substantial investigation and discovery,
26 Class Counsel was able to act intelligently and effectively in negotiating the proposed Settlement. Upon
27 reaching a settlement in principle, the parties negotiated the terms of a long form settlement agreement,
28 which the parties based on a template issued by the Complex Civil Department of the Los Angeles County

1 Superior Court with modifications similar to other recent wage and hour settlements. (Ex. 1.) The parties
2 later executed a Codicil, which amended certain terms to ensure compliance with this Court's CMO. (Ex.
3 2.)

4 10. On March 30, 2023, Plaintiff filed his Unopposed Motion for Preliminary Approval of Class
5 and PAGA Representative Action Settlement and supporting documents.

6 11. Plaintiff's unopposed motion for preliminary approval came on hearing on May 2, 2023. At
7 that time, this Court requested certain revisions to the Class Notice and Proposed Order Re Motion for
8 Preliminary Approval. Specifically, the Court requested that Plaintiff revise the final approval hearing date
9 on the Proposed Order and indicate what services the administrator will perform. The Court also requested
10 that Plaintiff revise the Class Notice to include an explanation of PAGA in laymen's terms, to clarify the
11 released parties, and to clarify that at this stage the Court has determined only that there is sufficient
12 evidence to suggest that the settlement might be fair, adequate and reasonable. Thereafter, the requested
13 changes were made to the Proposed Order and Class Notice. Plaintiff filed the revised Proposed Order on
14 May 3, 2023, along with the revised Class Notice attached as Exhibit A to the Proposed Order. On May 3,
15 2023, the Court entered the Preliminary Approval Order.

16 12. On or about June 30, 2023, after discovering that Defendant had inadvertently omitted 19
17 Class Members that from the Class List, Class Counsel conferred with the defense and secured an increase
18 in the Gross Settlement Amount ("GSA") from \$450,000.00 to \$517,050.00, to account for the addition of
19 these 19 Class Members to the Settlement Class. Thereafter, Class Counsel promptly prepared and filed a
20 Stipulation and Proposed Order, which the Court accepted and signed on July 3, 2023, and Class Counsel
21 coordinated with the defense and Simpluris to ensure the timely mailing of Class Notice to the 19 additional
22 Class Members by July 7, 2023. With the addition of 19 new Class Members, the average recovery did not
23 decrease, but rather, increased, due to the parties agreeing to increase the GSA from \$450,000 to
24 \$517,050.00. Accordingly, the parties' agreement to add 19 individuals to the Class benefited all Class
25 Members. Attached hereto as **Exhibit 4** is a true and correct copy of the parties' Joint Stipulation Regarding
26 Unopposed Motion for Final Approval of Class and PAGA Representative Action Settlement and Proposed
27 Order, accepted and signed by the Court on July 3, 2023.

1 13. In evaluating the Settlement, Class Counsel weighed the numerous risks to continuing to
2 litigate, including potentially viable defenses that Defendant asserted or could have asserted as outlined in
3 paragraphs 13 through 17 below, including the risk of non-collection due to Defendant's financial
4 condition, the risk of non-certification of Plaintiff's class claims, federal preemption of Plaintiff's claims,
5 alleged binding arbitration agreements, the disputed legality of Defendant's compensation policy,
6 increasing litigation costs, and other risks and defenses.

7 14. Were litigation to proceed, there is a strong likelihood it would be protracted and
8 contentious, as Defendant disputes all aspects of Plaintiff's claims. Plaintiff would have to prepare and file
9 a motion for class certification, which outcome is uncertain based on Defendant's contentions, *inter alia*,
10 that Plaintiff had signed an enforceable arbitration agreement and class action waiver, that Plaintiff's claims
11 are preempted, that Defendant's compensation policy is lawful, that individual questions of fact
12 predominate, and that Plaintiff cannot show the "willfulness" requirement for Section 203 penalties. Class
13 Counsel believe it would be difficult to show that the defense is "unsupported by any evidence, [is]
14 unreasonable, or [is] presented in bad faith," as required. If the motion were granted, Defendant would
15 likely move for decertification, appeal certification, or move for Summary Judgment. Plaintiff believes he
16 would prevail on certification, but the risks to absent Class Members are significant.

17 15. Defendant has vigorously asserted multiple defenses. For instance, Defendant contends that
18 Plaintiff and many of the class members have signed enforceable arbitration agreements and class action
19 waivers. Plaintiff strongly disputes the enforceability of such arbitration agreements in this field, but
20 recognizes the risk that possibly the court might disagree with Defendant, which could preclude
21 certification or substantially reduce the potential recoverable damages. Regarding federal preemption,
22 Plaintiff acknowledges that in light of recent case law, it is very possible that the Court (or a subsequent
23 appellate court) would find Plaintiff's meal and rest break claims preempted by the FMCSA. Plaintiff also
24 recognizes Defendant could argue Plaintiff's claims for wage statement and waiting time penalties claims
25 are entirely derivative of Plaintiff's rest period and wage claims, and therefore suffered from not only the
26 same litigation risks as the rest break claims, but also additional risks unique to these claims. Defendant
27 further contended that individualized questions of fact predominate over any common issues, and these
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1 issues would pose challenges to certification. Plaintiff anticipates Defendant would have likely argued
2 again at trial, if any, that Plaintiff's claims were not appropriate for class-wide adjudication.

3 16. To succeed on the merits, Plaintiff would have to prove Defendant actually engaged in the
4 practices and policies alleged and that those practices and policies violated the law. For some claims,
5 Plaintiff would likely be unable to overcome Defendant's contentions, such as with respect to federal
6 preemption of Plaintiff's meal and rest break claims. While Class Counsel believe strong evidence exists
7 showing Defendant's liability of Plaintiff's non-preempted claims, there remains a risk that the trier of fact
8 might find otherwise. If the case were to proceed to trial, additional discovery would be needed and the
9 Parties would thus incur significant additional expenses, such as those associated with expert witnesses and
10 trial consultants, which money could go instead to fund a settlement for the benefit of the Class as a whole.
11 Moreover, discovery disputes would have certainly arisen, which would have cost the Parties additional
12 time and money. Further, regardless of which Party prevailed, appellate practice would no doubt ensue,
13 further delaying any possible recovery by Class Members. In other words, both Parties would likely incur
14 substantial attorneys' fees and costs from continued discovery, law and motion, and trial preparation, likely
15 approaching hundreds of thousands of dollars. Moreover, Plaintiff faced the risk of inability to collect due
16 to Defendant's financial condition as Defendant suffered sizeable financial losses in recent years.

17 17. Class Counsel carefully considered the viability of Plaintiff's claims. The information
18 gathered, including Plaintiff's calculations based on data and figures provided by Defendant, resulted in
19 estimates of Defendant's exposure and the potential recovery for the putative Class, if Plaintiff were to
20 prevail on all theories of liability at trial. As outlined in the preliminary approval papers, had this case gone
21 to trial and Plaintiff prevailed on all liability related to unpaid compensation, these compensatory damages
22 were estimated to total \$1,835,462.25, meaning the proposed \$517,050 equals about 28.2% of that. Further,
23 if one were also to include all possible PAGA penalties, without discretionary reduction by this Court, and
24 add them to the unpaid compensation, together these equal an estimated maximum total exposure of
25 \$6,219,455.73. However, this maximum exposure calculation fails to account for arbitration agreements
26 and other risks and defenses. As discussed below, the proposed settlement of \$517,050.00 represents
27 approximately **86.9%** of the *realistic* maximum value after accounting for real litigation risks, relative
28 strengths and weaknesses of Plaintiff's claims, and other factors.

1 18. To accounting for the real litigation risks, strengths, and weaknesses of the case, Plaintiff
2 applied the following discounts: 35% discount for the risk of non-certification; at least 50% for the risk of
3 Defendant prevailing on liability, including as a result of the *Oman* defense and Defendant's contention
4 that any misclassification or underpayment was not intentional or willful; 5% discount for the risk that
5 arbitration agreements are found enforceable; 30% discount on penalty claims under *Maldonado*; 85%
6 discount on PAGA claims for the Court's discretion to reduce penalties and underlying risks; and a 25%
7 discount for the risk of inability to collect a judgment. Applying these discounts reduces the maximum
8 possible damages and penalties to \$595,333.09. Thus, the proposed settlement of \$517,050.00 represents
9 approximately **86.9%** of this *realistic* maximum value.

10 19. Based on their own independent investigation, discovery, and evaluation, and considering
11 Defendant's limited financial resources, Class Counsel has determined that the settlement terms and
12 conditions are in the best interests of Plaintiff and the members of the Class. The Settlement takes into
13 account the potential risks and rewards inherent in any case and, in particular, in this matter. Moreover,
14 considering all of the facts in the cases, the Settlement represents a considerable recovery for a Class of
15 126 individuals.

16 20. Accordingly, Class Counsel believes that \$517,050.00 represents a victory on multiple
17 theories and commensurate with any potential recovery at trial, had Plaintiff certified a class and then
18 prevailed, which outcome is not certain. Given the risks inherent in continuing to litigate, including: 1) the
19 possibility of an unfavorable, or less favorable, result at trial, 2) the likely possibility that post-trial motions
20 may similarly result in a less favorable result than at trial, and 3) the possibility of a less favorable result
21 on appeal, with the certainty that the appeal process would be lengthy, the Settlement is a fair, adequate,
22 and reasonable resolution for the Class as a whole.

23 21. Furthermore, Class Counsel believes that the \$30,000.00 amount allocated towards PAGA
24 penalties here is fair and reasonable given the nature of the PAGA claims, which has a limited 1-year statute
25 of limitations. Indeed, the availability of PAGA penalties here rely on contested factual issues, such as
26 whether Defendant's drivers were misclassified as independent contractors and legality of Defendant's per-
27 trip compensation structure.

1 22. As discussed in the concurrently filed Declaration of Taras Kick, Class Counsel, The Kick
2 Law Firm, APC, has significant experience in complex litigation, including wage and hour class actions,
3 and has been diligent in representing the Settlement Class.

4 23. As indicated in the declarations filed by Plaintiff and Class Counsel prior to preliminary
5 approval, neither Class Counsel nor Plaintiff has any involvement in the governance of the proposed cy
6 pres recipients: Public Citizen Foundation and St. Christopher Truckers Development and Relief Fund.
7 Likewise, Defendant and defense counsel Victor Consentino attested in their declarations in support of
8 preliminary approval that they have no financial interest or involvement in the governance or work of the
9 proposed cy pres recipients.

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11 **Case Management Order Requirements for Final Approval**

12 24. The remainder of this declaration aims to track the requirements for Motions for Final
13 Approval of Settlement set forth in Section “H” of this department’s Class Action Case Management Order
14 (“CMO”).

15 **Class Representative Service Award**

16 25. The Settlement provides a proposed service award of \$10,000 to Plaintiff, which is intended
17 to recognize the time, effort, and risk he undertook in bringing this case and helping to secure the relief
18 obtained for the members of the Class. Plaintiff should be compensated for his significant contributions
19 provided to the Class, the arguable reputational risks he undertook, his time and efforts expended on behalf
20 of the Class, Plaintiff’s entering into a broader waiver of claims outside of the scope of the Class claims
21 released by the Class in the Settlement, and the significant accomplishments of this case. Among other
22 things, Plaintiff stepped forward with willingness to serve the Class, provided essential information for the
23 prosecution of this action and in connection with settlement, gathered and provided pertinent documents,
24 took time to participate in phone calls with counsel, and reviewed the settlement documents. At no time
25 did Plaintiff ever have a guarantee of any personal benefit as a result of this case.

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1 26. Moreover, Plaintiff Kenneth Kernitzki, the proposed Class Representative, has participated
2 actively at all stages of the litigation, and his interests are not in conflict with the absent class members, as
3 discussed in his concurrently filed declaration. In this case, Plaintiff's interests are essentially identical, if
4 not entirely identical, to the interests of all the members of the Settlement Class.

5 27. **CMO § H(2):** In compliance with this requirement, Plaintiff has filed a declaration
6 concurrently with this final approval motion, outlining his time and effort devoted to this case, the risks
7 assumed, and other relevant detail.

8 **Class Counsel's Request for Attorney's Fees and Costs**

9 28. **CMO § H(3)-(4):** In addition to this declaration detailing the work performed by attorneys
10 at the Kick Law Firm on this case, the concurrently filed Declaration of Taras Kick provides additional
11 detail regarding the total amount of time spent by counsel, the reasonableness of the fees charged, and a
12 detailed description of costs actually incurred in this litigation.

13 29. **CMO § H(11):** This item in the CMO regarding fee splitting is not applicable as the Class
14 Counsel in this matter is limited to attorneys of The Kick Law Firm.

15 **Declaration from Settlement Administrator**

16 30. **CMO § H(5):** In compliance with this requirement, Plaintiff has filed a declaration from
17 Stephen Gomez of the Court-appointed Settlement Administrator, Simpluris, Inc., concurrently with this
18 final approval motion, describing in detail the work performed by Simpluris since preliminary approval,
19 including the successful distribution of the Class Notice, along with the objection and exclusion forms, to
20 the Class Members as well as the other items listed in CMO § H(5)(a)-(d).

21 **Employer-Side Taxes**

22 31. **CMO § H(6):** This item in the CMO is not applicable, as the Settlement provides that
23 Defendants will separately pay the employer's payroll tax obligations on the wage portion of Individual
24 Settlement Payments in addition to the Gross Settlement Amount. (SA, ¶ 4.3.)

25 **Order and Judgment**

26 32. Plaintiff has concurrently filed a Proposed Order Granting Final Approval of Class and
27 PAGA Action Settlement and Judgment Thereon, which includes the requirements of CMO § H(8)(a)-(d),
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§ H(9), and § H(15), and does not include items prohibited in § H(13)-(14). To date, there are no opt outs from the Settlement. Accordingly, there are no excluded individuals to list by name.

33. The concurrently filed Proposed Order and Judgment includes a date for the Final Report (Nonappearance) Hearing and a deadline for the filing of a report concerning the amount of money distributed, as required by CMO § H(17) and § I.

Cy Pres Recipients

34. **CMO § H(12)**: Per the terms of the Settlement and Codicil, unclaimed funds will be distributed to the proposed cy pres recipients only under the following circumstances, pursuant to paragraph 5 of the Codicil to the Settlement:

The Parties agree that the value of any uncashed or undeliverable Individual Class Payment checks or Individual PAGA Payment checks will first be redistributed back to those Class Members who have cashed their checks. If, after this second distribution, any Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall then transmit the funds represented by such checks to the Parties' proposed cy pres recipients, subject to Court approval, without further amendment to the Settlement, consistent with Code of Civil Procedure Section 384, subd. (b) ("Cy Pres Recipients"). The Parties propose that funds represented by any such uncashed or undeliverable checks shall be distributed to two section 501(c)(3) non-profit organizations as follows: 50% to Defendants' nominee St. Christopher Truckers Development & Relief Fund Inc. and 50% to Plaintiff's nominee Public Citizen Foundation. The Parties, Class Counsel and Defense Counsel represent that they have no financial interest in the proposed Cy Pres Recipients and do not have members on the Board of Directors of the organizations, or hold any other governing type relationship with the organizations. Participating Class Members who do not cash their Individual Class Payment and Individual PAGA Payment checks remain bound to the terms of this Agreement. (Codicil, ¶ 5.)

As required by CMO § H(12), the name and address of each proposed recipient are listed below:

<u>Plaintiff's proposed cy pres recipient:</u> Public Citizen Foundation (Main Office) 1600 20th St NW Washington, D.C. 20009	<u>Defendant's proposed cy pres recipient:</u> St. Christopher Truckers Development and Relief Fund 9217 Park West Blvd, Suite A-2, Knoxville, TN 37923
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I declare under penalty of perjury that the foregoing is true and correct to the best of my belief and knowledge.

/s/ Greg Taylor
Greg Taylor

EXHIBIT 1

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiff Kenneth Kernitzki (“Plaintiff”), individually and on behalf of all others similarly situated and Defendant Quality Car Shippers, LLC, a California Limited Liability Company (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1 “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Defendant captioned *Kernitzki v. Quality Car Shippers, LLC*, initiated on February 5, 2021, and pending in Superior Court of the State of California, County of Riverside, Case No. CVRI2100564.
- 1.2 “Administrator” means Simpluris, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3 “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4 “Aggrieved Employee” means all Class Members who worked for Defendant during the PAGA Period.
- 1.5 “Class” means all current and former drivers, classified by Defendant as independent contractors, who hauled for Defendant at any time during the Class Period.
- 1.6 “Class Counsel” means The Kick Law Firm, APC.
- 1.7 “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8 “Class Data” means Class Member identifying information in Defendant’s possession including the Class Member’s name, employee identification number, last-known mailing address, telephone numbers, email addresses, Social Security number, inclusive dates of active employment during the Class Period, and number of Class Period Workweeks and/or Class Pay Periods and PAGA Pay Periods.
- 1.9 “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non- Participating Class Member who qualifies as an Aggrieved Employee).
- 1.10 “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

- 1.11 “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English, with Spanish translation, in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.12 “Class Pay Period” means any semi-monthly pay period during which a Class Member worked for Defendant for at least one day in California, during the Class Period.
- 1.13 “Class Period” means the period from February 5, 2017, through the date Plaintiff files a motion for preliminary approval of this Settlement.
- 1.14 “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.15 “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.16 “Court” means the Superior Court of California, County of Riverside.
- 1.17 “Defendant” means named Defendant Quality Car Shippers, LLC, a California Limited Liability Company.
- 1.18 “Defense Counsel” means Larson & Gaston, LLP.
- 1.19 “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.
- 1.20 “Final Approval” means the Court’s order granting final approval of the Settlement.
- 1.21 “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.22 “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.
- 1.23 “Gross Settlement Amount” means \$450,000.00 which is the total amount Defendant agrees to pay under the Settlement. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator’s Expenses.

- 1.24 “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks and/or Class Pay Periods worked during the Class Period.
- 1.25 “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the PAGA Period.
- 1.26 “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.27 “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.28 “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.29 “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.30 “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.31 “PAGA Pay Period” means any -semi-monthly pay period during which an Aggrieved Employee worked for Defendant for at least one day in California during the PAGA Period.
- 1.32 “PAGA Period” means the period from September 11, 2019 through the date Plaintiff files a motion for preliminary approval of this Settlement.
- 1.33 “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.34 “PAGA Notice” means Plaintiff’s September 11, 2020 letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.35 “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount (\$30,000), allocated 25% to the Aggrieved Employees (\$7,500) and the 75% to LWDA (\$22,500) in settlement of PAGA claims.
- 1.36 “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.37 “Plaintiff” means Kenneth Kernitzki, the named plaintiff in the Action.
- 1.38 “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.

- 1.39 "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.40 "Released Class Claims" means the claims being released as described in Paragraph 5.4 below.
- 1.41 "Released PAGA Claims" means the claims being released as described in Paragraph 5.5 below.
- 1.42 "Released Parties" means Defendant and all of its former or present parents, subsidiaries, successors, predecessors, affiliates, assigns, joint employers, officers, directors, employees, insurers, directors, executors, attorneys, shareholders, related corporations, profit sharing, savings, health, and other employee benefit plans of any nature, the successors of such plans, and those plans' respective current or former trustees and administrators, agents, employees, fiduciaries, and the predecessors and successors, assigns, and legal representatives of all such entities and individuals.
- 1.43 "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.44 "Response Deadline" means 45 days after the Administrator mails Notice to Class Members and Aggrieved Employees and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.
- 1.45 "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.
- 1.46 "Workweek" means any week during which a Class Member worked for Defendant for at least one day, during the Class Period.

2. RECITALS.

- 2.1 On February 5, 2021, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for (1) failure to provide meal periods; (2) failure to provide rest periods; (3) failure to pay minimum wage; (4) failure to timely pay all wages at separation; (5) failure to provide accurate itemized wage statements; (6) failure to indemnify for necessary business expenses; (7) unlawful deductions; (8) unlawful and unfair business practices; and (9) penalties under the Labor Code Private Attorneys General Act ("PAGA"). The Complaint is the operative complaint in the Action (the "Operative Complaint"). Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint and denies any and all liability for the causes of action alleged.
- 2.2 Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice.

- 2.3 Prior to the Parties reaching a resolution of this matter, the Parties engaged in formal discovery and extensive good faith meet and confer efforts. Along with informal settlement negotiations, the Parties have exchanged informal discovery, including some of Defendant's financial documents that it offered to support its claim of financial difficulties. Moreover, Defendant has agreed to provide confirmatory discovery, including of its financial condition, and to cooperate with appropriate *Kullar* evidence. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").
- 2.4 The Court has not granted class certification, as no motion for certification has been filed to date. The Parties agree to certification of this matter as a class action pursuant to California Code of Civil Procedure § 382 for the purposes of this Agreement and the settlement of this Action only.
- 2.5 The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

- 3.1 Gross Settlement Amount. Defendant promises to pay \$450,000 and no more as the Gross Settlement Amount and to separately pay any and all employer-side payroll taxes owed on the Wage Portions of the Individual Class Payments. The Settlement Administrator shall provide the calculations for employer-side payroll taxes. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.
- 3.2 Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:
- 3.2.1 To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$10,000 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Defendant will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The

Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

- 3.2.2 To Class Counsel: A Class Counsel Fees Payment of not more than one-third (33 $\frac{1}{3}$ %), which is currently estimated to be \$150,000 and a Class Counsel Litigation Expenses Payment of not more than \$15,000. Defendant will not oppose requests for these payments provided that do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Final Approval and for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms.
- 3.2.3 To the Administrator: An Administrator Expenses Payment not to exceed \$7,000.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less, or the Court approves payment less than \$7,000.00, the Administrator will retain the remainder in the Net Settlement Amount.
- 3.2.4 To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.
- 3.2.4.1 Tax Allocation of Individual Class Payments. 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The remaining 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.
- 3.2.4.2 Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net

Settlement Amount for distribution to Participating Class Members on a pro rata basis.

3.2.5 To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$30,000 to be paid from the Gross Settlement Amount, with 75% (\$22,500) allocated to the LWDA PAGA Payment and 25% (\$7,500) allocated to the Individual PAGA Payments.

3.2.5.1 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$7,500) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.2 If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1 Class Pay Periods and Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendant estimates that, as of the date of this Settlement Agreement, there are 106 Class Members who collectively worked a total of 4,086 Class Pay Periods, and 74 Aggrieved Employees who worked a total of 2,233 PAGA Pay Periods.

4.2 Class Data. Not later than 15 days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. Defendant will supplement the Class Data upon receipt of changes to class member information. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if they discover that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.3 Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator within 20 days

following final approval of the settlement by the Superior Court or June 14, 2023, whichever is later.

- 4.4 Payments from the Gross Settlement Amount. Within 7 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.

4.4.1 The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. For any checks not cashed within 90 days of the Administrator sending them, the Administrator will do another skip-trace address update and send those Class Members an additional postcard reminder about their checks not yet being cashed. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2 The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within 14 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

4.4.3 For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the proposed cy pres recipients, subject to Court approval, without further amendment to this Agreement, consistent with Code of Civil Procedure

Section 384, subd. (b) (“Cy Pres Recipients”). The Parties propose that funds represented by any uncashed or undeliverable checks shall be distributed to two section 501(c)(3) non-profit organizations as follows: 50% to Defendants’ nominee St. Christopher Truckers Development & Relief Fund Inc. and 50% to Plaintiff’s nominee Public Citizen Foundation. The Parties, Class Counsel and Defense Counsel represent that they have no financial interest in the proposed Cy Pres Recipients and do not have members on the Board of Directors of the organizations, or hold any other governing type relationship with the organizations. Participating Class Members who do not cash their Individual Class Payment and Individual PAGA Payment checks remain bound to the terms of this Agreement.

- 4.4.4 The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. RELEASES OF CLAIMS. Effective on the date when Defendant fully funds the entire Gross Settlement Amount and fund all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Defendant will release claims against all Released Parties as follows:

- 5.1 Mutual Release. With the exception of any of their respective rights and obligations created pursuant to this Agreement, each party to this Agreement mutually releases and discharges the other, its predecessors, successors and assigns and their respective officers, directors, employees, other representatives and shareholders, from any and all known claims, demands, causes of action, obligations, and liabilities of every kind and nature whatsoever which each had, or claims to have had, or now has, against the other, which relate to or arises out of any agreements, transactions, events or circumstances which are the subject of the Action.
- 5.2 Plaintiff’s Release. Without limiting the generality of the foregoing, Plaintiff and his or her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiff’s PAGA Notice, or ascertained during the Action and released below, pursuant to Civ. Code § 1542. (“Plaintiff’s Release.”) Plaintiff’s Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers’ compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff’s Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff’s discovery of them.

- 5.3 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of Section 1542 of the California Civil Code, which reads:

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

- 5.4 Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint, Plaintiff's PAGA Notice, or otherwise ascertained in the course of the Action. Except as set forth in Section 5.4 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.
- 5.5 Release by Aggrieved Employees: All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint, the PAGA Notice, and ascertained in the course of the Action.

6. MOTION FOR PRELIMINARY APPROVAL. The Parties agree to jointly prepare and file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with the Court's current checklist for Preliminary Approvals.

- 6.1 Defendant's Declaration in Support of Preliminary Approval. Within 7 days of the full execution of this Agreement, Defendant will prepare and deliver to Class Counsel a signed Declaration from Defendant and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator and Cy Pres Recipient. In their Declarations, Defense Counsel and Defendant shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.
- 6.2 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; and (iii) a draft proposed Class Notice.
- 6.3 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly

responsible for making best efforts to expeditiously finalize and file the Motion for Preliminary Approval no later than 30 days after the full execution of this Agreement; obtain a prompt hearing date for the Motion for Preliminary Approval; and appear in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

- 6.4 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

- 7.1 Selection of Administrator. The Parties have jointly selected Simpluris, Inc. to serve as the Administrator and verified that, as a condition of appointment, Simpluris, Inc. agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements. Out of two highly regarded settlement administrators with substantial class action administration experience, the lower bid was provided by Simpluris, Inc., with a "not to exceed" cap of \$7,000. Class Counsel deems the bid to be reasonable considering the Class size, amount of mailing, and services provided, including skip tracing, re-mailing, calculating payroll tax, and other duties.
- 7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.
- 7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.
- 7.4 Notice to Class Members.
- 7.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.
- 7.4.2 Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class

Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice with Spanish translation substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

- 7.4.3 Not later than 3 business days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.
- 7.4.4 The deadlines for Class Members’ written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 45 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.
- 7.4.5 If the Administrator, Defendant, or Class Counsel are contacted by or otherwise discover any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights and subject to the same releases as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

7.5 Requests for Exclusion (Opt-Outs).

- 7.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member’s election to be excluded from the Settlement and includes the Class Member’s name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked

by the Response Deadline.

- 7.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.
- 7.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 5.4 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.
- 7.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment nor have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 5.5 of this Agreement and are eligible for an Individual PAGA Payment.

7.6 Challenges to Calculation of Workweeks. Each Class Member shall have 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

7.7 Objections to Settlement.

- 7.7.1 Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of

the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

7.7.2 Participating Class Members may send written objections to the Administrator by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 45 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

7.7.3 Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

7.8 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

7.8.1 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

7.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion ("Exclusion List"); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).

7.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and

Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

7.8.4 Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.

7.8.5 Administrator’s Declaration. Not later than 14 days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.

7.8.6 Final Report by Settlement Administrator. Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

8. **CLASS SIZE ESTIMATES.** Based on its records, Defendant estimates that, as of the date of this Settlement Agreement, (1) there are 106 Class Members and 4,086 Class Pay Periods during the Class Period and (2) there were 74 Aggrieved Employees who worked 2,233 Pay Periods during the PAGA Period.

9. **DEFENDANT’S RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 10% of the total of all Class Members, Defendant may elect, but are not obligated, to withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendant will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendant must notify Class Counsel and the Court of their election to withdraw not later than seven days after the Administrator sends the final Exclusion List to

Defense Counsel; late elections will have no effect.

10. **MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively “Motion for Final Approval”). Plaintiff shall provide drafts of these documents to Defense Counsel not later than three days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

10.1 **Response to Objections.** Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

10.2 **Duty to Cooperate.** If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final Approval. The Court’s decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

10.3 **Continuing Jurisdiction of the Court.** The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

10.4 **Waiver of Right to Appeal.** Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties’ obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10.5 **Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment.** If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of

release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

11. **AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

12. **ADDITIONAL PROVISIONS.**

12.1 **No Admission of Liability, Class Certification or Representative Manageability for Other Purposes.** This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does not grant Preliminary Approval, Final Approval or enter Judgment, Defendant reserves the right to contest certification of any class for any reasons, and Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

12.2 **Confidentiality Prior to Preliminary Approval.** Plaintiff, Class Counsel, Defendant, and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendant, and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, with any third party regarding this

Agreement or the matters giving rise to this Agreement except to respond only that “the matter was resolved,” or words to that effect. This paragraph does not restrict Class Counsel’s communications with Class Members in accordance with Class Counsel’s ethical obligations owed to Class Members.

- 12.3 Neutral Employment Reference. If Defendant receives any requests from prospective employers or other persons about Plaintiff’s employment, Defendant shall provide a neutral and objective employment reference, to the extent permitted by law, and refrain from subjectively characterizing Plaintiff’s personal characteristics, qualities, or job performance in any manner that reflects poorly on Plaintiff and shall not refer to the Action or this Settlement.
- 12.4 No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel’s ability to communicate with Class Members in accordance with Class Counsel’s ethical obligations owed to Class Members.
- 12.5 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 12.6 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 12.7 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 12.8 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 12.9 No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury

Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

- 12.10 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 12.11 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 12.12 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 12.13 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 12.14 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 12.15 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 12.16 Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 12.17 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

The Kick Law Firm, APC
815 Moraga Drive
Los Angeles, CA 90049

To Defendant:

Larson & Gaston, LLP
200 South Los Robles Avenue, Suite 530
Pasadena, California 91101

- 12.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and

each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

- 12.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

Date: 12/23/2022

By: 
C15E1929DE944F3...
Kenneth Kernitzki
Plaintiff and Class Representative

Date: _____

By: _____
For Defendant

APPROVED AS TO FORM ONLY:

Date: 12/23/2022

By: 
6DE1B9716B564B2...
Taras Kick
The Kick Law Firm, APC
Attorneys for Plaintiff and the Class

Date: _____

By: _____
Victor J. Cosentino
Gloria G. Medel
Larson & Gaston, LLP
Attorneys for Defendant

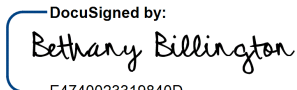
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Date: _____

By: _____
Kenneth Kernitzki
Plaintiff and Class Representative

Date: 12/2/2022

By:  _____
For Defendant

APPROVED AS TO FORM ONLY:

Date: _____

By: _____
Taras Kick
The Kick Law Firm, APC
Attorneys for Plaintiff and the Class

Date: 12/2/2022

By:  _____
Victor J. Cosentino
Gloria G. Medel
Larson & Gaston, LLP
Attorneys for Defendant

EXHIBIT A

COURT APPROVED NOTICE OF CLASS ACTION & PAGA SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL

(Kernitzki v. Quality Car Shippers, LLC, Riverside Superior Court Case No.
CVRI2100564)

***The Superior Court for the State of California authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

You may be eligible to receive money from an employee class action lawsuit ("Action") against Defendant Quality Car Shippers, LLC, a California Limited Liability Company (hereinafter referred to as "QCS" or "Defendant") for alleged wage and hour violations. The Action was filed by former QCS employee Kenneth Kernitzki ("Plaintiff") and seeks payment of (1) back wages and other relief for a class of all current and former drivers, classified by Defendant as independent contractors, who hauled for Defendant at any time during the Class Period ("Class Members"); and (2) penalties under the California Private Attorney General Act ("PAGA") for all Class Members who worked for QCS during the PAGA Period ("Aggrieved Employees"). The Class Period is from February 5, 2017 through <<PA filing date>>. The PAGA Period is from September 11, 2019 through <<PA filing date>>.

The proposed Settlement has two main parts: (1) a Class Settlement requiring QCS to fund Individual Class Payments, and (2) a PAGA Settlement requiring QCS to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency ("LWDA").

Based on QCS's records, and the Parties' current assumptions, **your Individual Class Payment is estimated to be \$** <<PA filing date>> **(less withholding) and your Individual PAGA Payment is estimated to be \$** <<PA filing date>>. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to QCS's records you are not eligible for an Individual PAGA Payment under the Settlement because you didn't work during the PAGA Period.)

The above estimates are based on QCS's records showing that **you worked** <<PA filing date>> **workweeks** during the Class Period and **you worked** <<PA filing date>> **workweeks** during the PAGA Period. If you believe that you worked more workweeks during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or do not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff's attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires QCS to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against QCS.

If you worked for QCS during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

(1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against QCS.

(2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against QCS, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

QCS will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against QCS that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is [RESPONSE DEADLINE]	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. QCS must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).

Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by [RESPONSE DEADLINE]	All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed Settlement. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.
You Can Participate in the [] Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on []. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks/Pay Periods Written Challenges Must be Submitted by [RESPONSE DEADLINE]	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Period Workweeks and number of PAGA Period Pay Periods you worked according to QCS’s records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by [RESPONSE DEADLINE]. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former employee of QCS. The Action accuses QCS of violating California labor laws by failing to pay minimum wages, wages due upon separation, and reimbursable expenses and failing to provide meal periods, rest breaks, and accurate itemized wage statements. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”). Plaintiff is represented by attorneys in the Action: The Kick Law Firm, APC (“Class Counsel”).

QCS strongly denies violating any laws or failing to pay any wages and contends it complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether QCS or Plaintiff is correct on the merits. In the meantime, Plaintiff and QCS through counsel negotiated over several weeks to resolve the Action by voluntary agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and QCS have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, QCS does not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) QCS has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

- A. QCS Will Pay \$450,000 as the Gross Settlement Amount (“Gross Settlement”). QCS has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s attorney’s fees and expenses, the Administrator’s expenses, and penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, QCS will fund the Gross Settlement within 20 days following final approval of the settlement by the Superior Court or June 14, 2023, whichever is later. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
- B. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - i. Up to one-third (33⅓%) of the Gross Settlement, which is currently estimated to be \$150,000 to Class Counsel for attorneys’ fees and up to \$15,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
 - ii. Up to \$10,000 as a Class Representative Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiff will receive other

than Plaintiff's Individual Class Payment and any Individual PAGA Payment.

- iii. Up to \$7,000 to the Administrator for services administering the Settlement.
- iv. Up to \$30,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

- C. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.
- D. Taxes Owed on Payments to Class Members. Plaintiff and QCS are asking the Court to approve an allocation of 20% of each Individual Class Payment to taxable wages ("Wage Portion") and 80% to interest and penalties ("Non-Wage Portion"). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and QCS have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

- E. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies represented by your check will be irrevocably lost to you because they will be paid to non-profit organizations ("Cy Pres Recipients").
- F. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than [RESPONSE DEADLINE], that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the [REDACTED] Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member's name, present address, telephone number, and a simple statement electing to be excluded from the Settlement.

Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against QCS.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against QCS based on the PAGA Period facts alleged in the Action.

- G. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and QCS have agreed that, in either case, the Settlement will be void: QCS will not pay any money and Class Members will not release any claims against QCS.
- H. Administrator. The Court has appointed a neutral company, Simpluris, Inc. (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and re- mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.
- I. Participating Class Members’ Release. After the Judgment is final and QCS has fully funded the Gross Settlement and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against QCS or related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint. Except as set forth in Section 5.4 of the Settlement Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.

- J. Aggrieved Employees' PAGA Release. After the Court's judgment is final, and QCS has paid the Gross Settlement and separately paid the employer-side payroll taxes, all Aggrieved Employees will be barred from asserting PAGA claims against QCS, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against QCS or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

The Aggrieved Employees' Releases for Participating and Non-Participating Class Members are as follows:

All Participating and Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties, from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice.

4. **HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?**

- A. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.
- B. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$7,500 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.
- C. Workweek/Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in QCS's records, are stated in the first page of this Notice. You have until **[RESPONSE DEADLINE]** to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept QCS's calculation of Workweeks and/or Pay Periods based on QCS's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based on your submission and on input from Class

Counsel (who will advocate on behalf of Participating Class Members) and QCS's Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

- A. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.
- B. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as *Kernitzki v. Quality Car Shippers, LLC*, Riverside Superior Court Case No. CVRI2100564, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by [RESPONSE DEADLINE], or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and QCS are asking the Court to approve. At least 16 days before the [REDACTED] Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view

them on the Administrator's Website (url) or the Court's website at <https://epublic-access.riverside.courts.ca.gov/public-portal/>.

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is [RESPONSE DEADLINE]**. Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action as *Kernitzki v. Quality Car Shippers, LLC*, Riverside Superior Court Case No. CVRI2100564 and include your name, current address, telephone number, and approximate dates of employment for QCS and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on (date) at (time) in Department 10 of the Riverside Superior Court, located at 4050 Main Street, Riverside, CA 92501. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via the department's Zoom link, which can be accessed through the Riverside Superior Court's website at <https://www.riverside.courts.ca.gov/PublicNotices/remote-appearances.php>. Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything QCS and Plaintiff have promised to do under the proposed Class Action and PAGA Settlement Agreement ("Agreement"). The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to Simpluris' website at (url). You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Riverside County Superior Court website by going to <https://epublic-access.riverside.courts.ca.gov/public-portal/> and searching the Case

Number for the Action, Case No. CVRI2100564. The Agreement was filed with the Riverside County Superior Court, located at 4050 Main Street, Riverside, CA 92501, on [preliminary approval filing date] as Exhibit 1 to the Declaration of Greg Taylor in Support of Plaintiff's Motion for Preliminary Approval of Class and PAGA Representative Action Settlement.

**DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION
ABOUT THE SETTLEMENT**

Class Counsel:

Name of Attorney: Taras Kick

Email Address: taras@kicklawfirm.com

Name of Firm: The Kick Law Firm, APC

Mailing Address: 815 Moraga Drive, Los Angeles, CA 90049

Telephone: (310) 395-2988

Settlement Administrator:

Name of Company: Simpluris, Inc.

Email Address: CaseSupport@Simpluris.com

Mailing Address: P.O. Box 26170 Santa Ana, CA 92799

Telephone: (888) 369-3780

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void, you will have no way to recover the money.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

EXHIBIT 2

CODICIL TO THE SETTLEMENT AGREEMENT

1. To the extent that any provisions of the Class Action and PAGA Settlement Agreement and Class Notice (“Settlement”), executed December 23, 2022, are inconsistent with the Court’s Class Action Case Management Order (“CMO”), the parties agree that the terms of the CMO shall govern and supersede the inconsistent terms in the Settlement, provided that such CMO terms do not materially alter the primary terms and conditions of the Settlement (e.g., the gross settlement amount).
2. The parties to the Settlement are specifically amending the definition of “Released Parties” in the Settlement. Rather than the definition stated at paragraph 1.42 of the Settlement, the parties agree on the following modified definition:

“Released Parties” means Defendant Quality Car Shippers, LLC, together with its officers, directors, employees, and agents, including its owners and managing agents.

3. The parties to the Settlement also are specifically amending the “Release by Participating Class Members” in the Settlement. Rather than the language stated at paragraph 5.4 of the Settlement, the parties agree on the following modified release language:

Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the facts alleged in the Operative Complaint. Except as set forth in Section 5.5 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.

4. The parties to the Settlement also are specifically amending the “Release by Aggrieved Employees” in the Settlement. Rather than the language stated at paragraph 5.5 of the Settlement, the parties agree on the following modified release language:

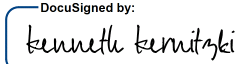
Release by Aggrieved Employees: Plaintiff is deemed to release the Released Parties from all claims for statutory penalties that could have been sought by the Labor Commissioner for the violations identified in Plaintiff’s pre-filing letter to the LWDA and only to the extent such violations are alleged in the Operative Complaint. This release shall bind only Plaintiff and the State of California. Plaintiff does not release any aggrieved employee’s claim for wages or damages.

5. In light of the Court’s preference expressed in the CMO, the parties also agree to amend the terms governing distribution of the value of uncashed checks. Rather than the language stated at paragraph 4.4.3 of the Settlement, the parties agree on the following modified language:

The Parties agree that the value of any uncashed or undeliverable Individual Class Payment checks or Individual PAGA Payment checks will first be redistributed back to those Class Members who have cashed their checks. If, after this second

distribution, any Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall then transmit the funds represented by such checks to the Parties' proposed cy pres recipients, subject to Court approval, without further amendment to the Settlement, consistent with Code of Civil Procedure Section 384, subd. (b) ("Cy Pres Recipients"). The Parties propose that funds represented by any such uncashed or undeliverable checks shall be distributed to two section 501(c)(3) non-profit organizations as follows: 50% to Defendants' nominee St. Christopher Truckers Development & Relief Fund Inc. and 50% to Plaintiff's nominee Public Citizen Foundation. The Parties, Class Counsel and Defense Counsel represent that they have no financial interest in the proposed Cy Pres Recipients and do not have members on the Board of Directors of the organizations, or hold any other governing type relationship with the organizations. Participating Class Members who do not cash their Individual Class Payment and Individual PAGA Payment checks remain bound to the terms of this Agreement.

Date: 3/28/2023

By: 
Kenneth Kernitzki
Plaintiff and Class Representative

Date: 03 / 27 / 2023

By: 
For Defendant
Bethany Billington
President

APPROVED AS TO FORM ONLY:

Date: 3/28/2023

By: 
Taras Kick
Greg Taylor
The Kick Law Firm, APC
Attorneys for Plaintiff and the Class

Date: March 27, 2023

By: 
Victor J. Cosentino
Gloria G. Medel
Larson & Gaston, LLP
Attorneys for Defendant

EXHIBIT 3

The Kick Law Firm

A Professional Corporation

815 Moraga Drive
Los Angeles, CA 90049
310 395 2988 / Fax 310 395 2088

September 11, 2020

Via Certified U.S. Mail – Return

Receipt Requested

Quality Car Shippers, LLC
c/o Rebecca Kort
30056 Point Marina Dr.
Canyon Lake, CA 92587

Via Online Submission

Department of Industrial Relations
Accounting Unit
Attn. PAGA Administrator
455 Golden Gate Ave, 10th Floor
San Francisco, CA 94102

Re: Notice Pursuant to California Labor Code § 2699.3

Employee: Kenneth Kernitzki

Employers: Quality Car Shippers, LLC and related entities

To Whom It May Concern:

This office represents Kenneth Kernitzki (“Mr. Kernitzki”), who was employed by Quality Car Shippers, LLC and related entities (collectively, “Employers”) as a driver. Pursuant to the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code § 2698, *et seq.*, this letter sets forth the specific provisions of the Labor Code and Industrial Welfare Commission (“IWC”) Wage Order No. 9-2001, which Mr. Kernitzki alleges Employers have violated, including the facts and theories to support the alleged violations. Please be advised that this letter constitutes written notice required by Labor Code § 2699.3, subdivisions (a)(1)(A) and (c)(1)(A) and may lead to immediate action against Employers in a court of law and/or administrative proceedings, as well as the imposition of substantial penalties and other remedies against Employers. Enclosed please find a draft of Mr. Kernitzki’s proposed complaint, which is incorporated by reference into this notice. Under separate cover, our office is sending a check in the amount of \$75.00 to the Accounting Unit of the Department of Industrial Relations for the requisite filing fee, pursuant to Labor Code § 2699.3, subdivisions (a)(1)(B) and (c)(1)(B).

This letter also serves as notice of Mr. Kernitzki’s demand for preservation and non-spoilation of evidence, requesting that all relevant documents and data be saved and that all electronic files and hard-copy documents that are related to Mr. Kernitzki’s employment and potential claims must be preserved, even without a court order. Spoliation of evidence may result in legal claims for damages and monetary and evidentiary sanctions, including “adverse inference” jury instructions. Furthermore, intentional spoliation of evidence may carry criminal consequences pursuant to California Penal Code § 135.

We are investigating a potential class and representative action on behalf of Employers’ current and former non-exempt employees in the State of California regarding, among other things, the following violations: failure to provide meal and rest periods to employees in violation of Labor Code §§ 226.7 and 512 and Wage Order No. 9-2001, §§ 11-12; failure to pay one additional hour of compensation at the employee’s regular rate of compensation for each workday that a meal or rest period is not provided in violation of Labor Code § 226.7 and Wage Order No. 9-2001, §§ 11(B) and 12(B); failure to pay employees minimum wages for all hours worked in violation of

Labor Code §§ 1194, 1197 and 1197.1 and Wage Order No. 9-2001, § 4; failure to pay employees overtime wages in violation of Labor Code §§ 510 and 1194 and Wage Order No. 9-2001, § 3; failure to timely pay employees all wages earned in violation of Labor Code § 204; willful failure to pay all wages due to discharged and quitting employees in violation of Labor Code §§ 201-203; failure to furnish accurate itemized wage statements to employees in violation of Labor Code § 226; failure to maintain required records pursuant to Labor Code §§ 226, 1174 and 1174.5 and Wage Order No. 9-2001, § 7; failure to indemnify employees for necessary expenditures incurred in discharge of duties in violation of Labor Code § 2802(a); failure to provide suitable seating in violation of Labor Code § 1198 and Wage Order No. 9-2001, § 14; unlawful deductions and withholdings from employees' wages in violation of Labor Code §§ 221, 222.5, 223 and 224; and willful misclassification as independent contractors in violation of Labor Code § 226.8.

The allegations made by Mr. Kernitzki on behalf of himself and all other similarly-situated current and former non-exempt employees of Employers (including, but not limited to those employees misclassified as independent contractors) in the State of California during the four years preceding the date of this notice are based on the following facts and theories: meal periods were less than thirty minutes, late (first meal periods starting after the fifth hour of work and/or second meal periods starting after the tenth hour), not given at all (including second meal periods after ten hours of work), or interrupted; rest periods were less than ten minutes, not provided, interrupted, and/or late; employees were not provided one hour of pay for each workday a meal period was not provided; employees were not provided one hour of pay for each workday a rest break was not authorized and permitted; and employees were not paid proper minimum and overtime wages for all hours worked as required by California law.¹ Given the overtime, meal period and rest period violations and Employers' failure to compensate their employees fully, as set forth above, employees' wage statements were inaccurate and failed to comply with California law. In short, Employers' unlawful employment practices and policies have deprived their employees of earned wages and other compensation.

Failure to Provide Meal Periods

Pursuant to Labor Code §§ 226.7 and 512 and Wage Order No. 9-2001, § 11, an employer is required to provide meal periods to its employees. An employer must provide a meal period to any employee who works a shift of more than five (5) hours and a second meal period to any employee who works a shift of more than ten (10) hours. Furthermore, an employer must pay one extra hour of compensation for each workday a meal period is not provided.

If an employee is not relieved of all duty during a meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal period is permitted only when 1) the nature of the work prevents an employee from being relieved of all duty and 2) the parties have agreed in writing to on duty meal periods.

Mr. Kernitzki and other aggrieved employees are non-exempt employees and are entitled to the protections of California Labor Code §§ 226.7 and 512 and Wage Order No. 9-2001, § 11. Employers failed to provide their employees timely and uninterrupted thirty-minute meal breaks. In fact, Mr. Kernitzki's and other aggrieved employees' meal periods were short (less than thirty

¹ "[T]he statement that defendant has not provided its employees with proper rest periods states both the facts and the theory." *Gutierrez v. California Commerce Club, Inc.* (2010) 187 Cal.App.4th 969, 979 n.5.

minutes), late (first meal periods after the fifth hour of work and second meal periods after the tenth hour), interrupted and/or missed. Employers consistently failed to provide Mr. Kernitzki and other aggrieved employees meal breaks because Mr. Kernitzki and other aggrieved employees were given too much work to perform to take meal breaks.

Employers further violated Labor Code § 226.7 and Wage Order No. 9-2001 by failing to compensate Mr. Kernitzki and other aggrieved employees who were not provided with meal periods in accordance with California law one additional hour of pay at each employee's regular rate of compensation for each workday a meal period was not provided.

Failure to Authorize and Permit Rest Periods

Pursuant to Labor Code § 226.7 and Wage Order No. 9-2001, § 12, an employer is required to provide rest periods to its employees. An employer must provide a ten (10) minute rest period for every four (4) hours worked or major action thereof which insofar as practicable shall be in the middle of each work period. Furthermore, an employer must pay one extra hour of compensation for each workday a rest period is not authorized and permitted.

Mr. Kernitzki and other aggrieved employees were and are non-exempt employees and are entitled to the protections of Labor Code § 226.7 and Wage Order No. 9-2001. Employers failed to authorize and permit their employees to take required rest periods. Specifically, Employers maintained a policy or practice of not authorizing and permitting Mr. Kernitzki and other aggrieved employees to take one 10-minute rest break for shifts 3.5-6.0 hours, a second rest break for shifts greater than 6 hours and less than or equal to 10 hours, and a third rest break for shifts in excess of 10 hours. Employers consistently failed to authorize and permit Mr. Kernitzki and other similarly-situated individuals to take rest breaks because Mr. Kernitzki and other similarly-situated individuals were given too much work to perform to take rest breaks. When Mr. Kernitzki and other aggrieved employees were able to take rest breaks, Employers failed to authorize and permit Mr. Kernitzki and other aggrieved employees to take their rest breaks in the middle of each work period insofar as practicable.

Employers further violated Labor Code § 226.7 and Wage Order No. 9-2001, § 12 by failing to pay Mr. Kernitzki and other aggrieved employees one additional hour of pay at each employee's regular rate of compensation for each workday a rest period was not authorized and permitted.

Failure to Pay Minimum Wages

Pursuant to Labor Code §§ 1194 and 1197 and Wage Order No. 9-2001, § 4, payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

Mr. Kernitzki and other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code §§ 1194 and 1197 and Wage Order No. 9-2001, § 4. Employers failed to pay Mr. Kernitzki and other aggrieved employees minimum wages for all hours worked by, among other things: requiring, suffering or permitting Mr. Kernitzki and other similarly-situated individuals to work off-the-clock; requiring, suffering or

permitting Mr. Kernitzki and other aggrieved employees to work through their meal breaks but not compensating them for this time; illegally and inaccurately recording time worked by Mr. Kernitzki and other aggrieved employees; failing to properly maintain Mr. Kernitzki's and other aggrieved employees' records; failing to provide accurate itemized wage statements to Mr. Kernitzki and other aggrieved employees for each pay period; and other methods to be discovered.

Employers' conduct violates Labor Code §§ 1194 and 1197 and Wage Order No. 9-2001, § 4.

Failure to Pay Overtime Wages

Pursuant to California Labor Code §§ 510 and 1194 and Wage Order No. 9-2001, § 3, an employer must compensate its employees for all overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive work day, with double time for all hours worked in excess of eight (8) hours on the seventh day of any workweek, or after twelve (12) hours in any workday.

Mr. Kernitzki and other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code §§ 510 and 1194 and Wage Order No. 9-2001. Employers failed to compensate Mr. Kernitzki and other aggrieved employees for all overtime hours worked as required under the foregoing provisions of the Labor Code and IWC Wage Order by, among other things: failing to pay overtime at one and one-half (1 ½) times or double the regular rate of pay as provided by Labor Code §§ 510 and 1194 and Wage Order No. 9-2001, § 3; requiring, suffering or permitting Mr. Kernitzki and other aggrieved employees to work off-the-clock; requiring, suffering or permitting Mr. Kernitzki and other aggrieved employees to work through meal periods but not compensating them for this time; illegally and inaccurately recording time worked by Mr. Kernitzki and other aggrieved employees; failing to properly maintain Mr. Kernitzki's and other aggrieved employees' records through falsifying hours worked; failing to provide accurate itemized statements to Mr. Kernitzki and other aggrieved employees for each pay period; and other methods to be discovered.

In violation of California law, Employers have refused to perform their obligations to compensate Mr. Kernitzki and other aggrieved employees for all wages earned and all hours worked. Employers' conduct violates Labor Code §§ 510 and 1194 and Wage Order No. 9-2001, § 3.

Failure to Timely Pay All Wages Earned

Pursuant to Labor Code § 204, an employer must pay its employees at least twice a month for all wages earned during the preceding pay period. Labor Code § 204 provides that labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. An employer using an alternate payday schedule must pay wages within seven calendar days of the end of the payroll period in which the wages were earned.

Employers failed to pay Mr. Kernitzki and other aggrieved employees on their regularly scheduled payday for all work performed during the preceding pay period. Specifically, Employers required Mr. Kernitzki and other aggrieved employees to work off-the-clock without compensation, including but not limited time spent awaiting loads and/or dispatches, and required Mr. Kernitzki and other aggrieved employees to work through required meal breaks without compensation. Additionally, Employers failed to pay Mr. Kernitzki and other aggrieved employees premium wages owed for each workday a meal period was not provided and each workday a rest period was not authorized and permitted.

Employers also failed to pay Mr. Kernitzki and other aggrieved employees for the overtime wages they earned in violation of Labor Code § 204. Labor Code § 204 requires an employer to pay overtime wages no later than the payday for the next regular payroll period following the payroll period in which the overtime wages were earned. Employers knew they were required to pay overtime wages, yet on many occasions failed to pay Mr. Kernitzki and other aggrieved employees overtime wages on any payday.

Failure to Pay All Wages Due Upon Separation

Pursuant to Labor Code § 201, 202 and 203, an employer is required to pay all earned and unpaid wages to an employee upon separation. Labor Code § 201 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge are due and payable immediately. Pursuant to Labor Code § 202, an employer is required to pay all accrued wages due to an employee no later than 72 hours after the employee quits his or her employment, unless the employee provided 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 provides that if an employer willfully fails to pay, in accordance with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the employer is liable for waiting time penalties in the form of continued compensation to the employee at the same rate for up to thirty (30) days.

Employers willfully failed to pay accrued wages and other compensation to Mr. Kernitzki and other aggrieved employees in accordance with Labor Code §§ 201 and 202. Because Employers required Mr. Kernitzki and other aggrieved employees to work off-the-clock without compensation and through required meal breaks without compensation and failed to pay Mr. Kernitzki and other aggrieved employees the premium wages for all meal periods which were not provided and all rest periods which were not authorized or permitted, Employers failed and continue to fail to pay the full earned and unpaid wages due to Mr. Kernitzki and other aggrieved employees upon separation.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226 requires every employer to furnish each of its employees an accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits

of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Employers failed to provide Mr. Kernitzki and other aggrieved employees with timely and accurate itemized wage statements in writing showing each employee's gross wages earned, total hours worked, the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, all deductions made, net wages earned, the inclusive dates of the period for which the employee is paid, the name and address of the legal entity or entities employing Mr. Kernitzki and other aggrieved employees, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate, in violation of Labor Code § 226 and Wage Order No. 9-2001, § 7.

Specifically, Employers had knowledge they were not providing their employees with proper meal and rest breaks; nevertheless, Employers knowingly failed to include in the wage statements the extra hour of compensation owed for each workday a meal break was not provided and each workday a rest break was not authorized and permitted. As a result, Mr. Kernitzki and other aggrieved employees lost wages. In addition, Employers had knowledge they were requiring employees to work off-the-clock and were not properly compensating their employees for all hours worked, yet Employers knowingly failed to include this time worked in the wage statements. As a result, Mr. Kernitzki and other aggrieved employees lost wages. Employers also did not properly calculate the regular rate of pay of Mr. Kernitzki and other aggrieved employees. As a result, Mr. Kernitzki's and other aggrieved employees' wage statements did not include all applicable hourly rates in effect during the pay period and the corresponding number of hours worked.

Failure to Maintain Required Records

Employers failed to maintain records as required under Labor Code §§ 226 and 1174 and Wage Order No. 9-2001, § 7, including but not limited to the following records: total daily hours worked by each employee; applicable rates of pay; all deductions; meal periods; time records showing when each employee begins and ends each work period; and accurate itemized statements.

Specifically, Employers had knowledge they were not providing their employees with proper meal and rest breaks; nevertheless, Employers knowingly failed to include in the wage statements the extra hour of compensation owed for each workday a meal break was not provided and each workday a rest break was not authorized and permitted. In addition, Employers had knowledge they were requiring employees to work off-the-clock and were not properly compensating their employees for all hours worked, yet Employers knowingly failed to include this time worked in the regular rate of pay of aggrieved employees.

Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties, and Unlawful Deductions

Labor Code § 2802(a) requires an employer to indemnify an employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of her his

or her duties, or of his or her obedience to the directions of the employer. Employers failed to indemnify Mr. Kernitzki and other aggrieved employees for all business expenses and/or losses incurred in direct consequence of the discharge of their duties while working under the direction of Employers, including but not limited to expenses for cell phones, equipment, fees, fines, fuel, maintenance, travel-related expenses, and other employment-related expenses, in violation of Labor Code § 2802.

Moreover, Labor Code §§ 221, 222.5, and 223 makes it unlawful to deduct or withhold from employees' wages outside of circumstances specified in Labor Code § 224. Employers, however, made such deductions directly from Mr. Kernitzki and other aggrieved employees' compensation in violation of Labor Code §§ 221, 222.5, 223 and 224. Specifically, such deductions included, but were not limited to deductions for insurance, leased equipment, fuel, and fees. Furthermore, Labor Code § 450 provides that no employer "may compel or coerce an employee, or applicant for employment, to patronize his or her employer, or any other person, in the purchase of any thing of value."

Willful Misclassification as Independent Contractors

Labor Code § 226.8(a) states in part that it is "unlawful for any person or employer to engage" in the "(1) Willful misclassification of an individual as an independent contractor." Moreover, Labor Code § 226.8(a) goes on to also state that it is similarly "unlawful for any person or employer to engage" in the "(2) Charging an individual who has been willfully misclassified as an independent contractor a fee, or making any deduction from compensation, for any purpose... arising from the individuals employment where any of the acts described... would have violated the law if the individual had not been misclassified." Mr. Kernitzki and other aggrieved employees were willfully misclassified as independent contractors and required to pay, by direct payment and/or deductions from wages, for various goods, materials, space rental, services, government licenses, repairs, equipment maintenance, or fines arising from their employment by Employers in violation of Labor Code § 226.8.

Specifically, Employers willfully misclassified Mr. Kernitzki and other aggrieved employees as independent contractors, "owner-operators" or "lease-operators" to avoid compliance with the California Labor Code and the applicable IWC Orders' wages. Moreover, Employers' willful misclassification made Mr. Kernitzki and other aggrieved employees assume Employers' responsibilities to pay operational expenses, including but not limited to administrative fees, fees for the use of equipment, maintenance, fuel expenses, and the costs of workers' compensation/occupational accident insurance for Mr. Kernitzki and other aggrieved employees. For instance, Mr. Kernitzki and/or other aggrieved employees were required to pay for their own truck, trailer, onboard equipment, fuel, and insurance by paying Employers or a source chosen by Employers, but still were only allowed to transport loads for Employers, were required to take the loads dictated to them, were required to follow the specific delivery instructions provided to them, and to do so for the amount of compensation determined for them by Employers or Employers' dispatchers and other agents.

This notice is hereby given to Employers and any and all related and/or alter ego companies, corporations, partnerships, and/or business entities, as well as against any and all

officers, owners, directors, managers, managing agents, or entities who are or may be liable under California law for any of the violations alleged herein as to any locations or employees who worked at any time in the State of California.

This notice is made on behalf of all persons who are, were, or will be non-exempt employees of Employers, or any related or alter-ego company, corporation, partnership, and/or business entity at any time on or after a date four years prior to the date of this letter in the State of California.

This notice shall be construed as extending without limitation to any past, present, future, or continuing violation of the Labor Code, the applicable IWC Wage Order, or any applicable regulation which might be discovered as a result of a reasonable and diligent investigation made pursuant to this notice.

This notice shall further represent Mr. Kernitzki's reasonable attempt to settle his dispute with Employers prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to apprise Employers of Mr. Kernitzki's aforementioned grievances and the proposed remedies as detailed below, while affording Employers reasonable opportunity to meet Mr. Kernitzki's demands.

Demand is hereby made that Employer shall agree, in writing received at this office no later than 30 calendar days from the postmark date of this notice, as follows:

1. Employers shall pay Mr. Kernitzki and all other similarly-situated persons employed by Employers at any time during the past 48 months back pay and compensation for the above-referenced violations.

2. Employers shall comply with all California labor laws and ensure that their non-exempt employees are paid proper overtime compensation and given required meal and rest periods.

3. Employers shall conduct a survey or interview all current and former non-exempt employees in California during the past 48 months to obtain information from them regarding the number of meal breaks which were not provided, the number of rest breaks which were not authorized and permitted, and the number of employees who were required to pay for cell phones, equipment, maintenance, travel-related expenses, fuel, insurance, fines, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.

4. Employers shall pay each employee one hour of pay for each workday he or she was not authorized and permitted one or more rest periods, as required by Labor Code § 226.7. Employers also shall pay each employee one hour of pay for each workday he or she was not provided one or more and meal periods, as required by Labor Code § 226.7.

5. Employers shall reimburse those employees who were forced to pay for any business expenses incurred for Employers' benefit, as well as those items employees were compelled and coerced to purchase from Employers or other persons, that include but are not limited to leases, equipment, maintenance, insurance, fuel, fees, fines, phone, and travel-related expenses.

6. Employers shall pay waiting time penalties, equal to thirty days of pay, to each former employee who was not paid all wages due as described herein.

7. Employers shall pay accrued interest to all employees at the rate of ten percent per annum for said unpaid wages.

8. Employers shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code § 2698 *et seq.*, including but not limited to penalties under Labor Code §§ 206.5, 210, 225.5, 226.3, 558, 1174.5, 1182.12, 1197.1, 1198, 1199 and 2699 and Wage Order No. 9-2001, § 20.

If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please notify this office of that decision by certified mail addressed to The Kick Law Firm, APC, 815 Moraga Drive, Los Angeles, CA 90049. Additionally, please advise us if the Agency or Employers require additional information regarding Mr. Kernitzki's complaints.

Thank you for your prompt attention to this matter.

Very truly yours,

The Kick Law Firm, APC



Daniel J. Bass

EXHIBIT 4

Taras Kick (State Bar No. 143379)
Taras@kicklawfirm.com
Greg Taylor (State Bar No. 315128)
Greg@kicklawfirm.com
THE KICK LAW FIRM, APC
815 Moraga Drive
Los Angeles, California 90049
Telephone: (310) 395-2988
Facsimile: (310) 395-2088

Attorneys for Plaintiff Kenneth
Kernitzki, individually and on behalf of
all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

KENNETH KERNITZKI, individually, and
on behalf of all others similarly situated,

Plaintiff,

v.

QUALITY CAR SHIPPERS, LLC, a
California limited liability company; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: CVRI2100564

*[Assigned to the Honorable Harold W. Hopp,
Department 1]*

**JOINT STIPULATION REGARDING
UNOPPOSED MOTION FOR FINAL
APPROVAL OF CLASS AND PAGA
REPRESENTATIVE ACTION
SETTLEMENT; ~~PROPOSED~~ ORDER**

Complaint filed: February 5, 2021
Trial date: None set

Plaintiff Kenneth Kernitzki ("Plaintiff") and Defendant Quality Car Shippers, LLC ("Defendant"; all parties collectively, the "Parties"), through their counsel of record, hereby stipulate as follows regarding filing of Plaintiff's Unopposed Motion for Final Approval of Class and PAGA Representative Action Settlement ("Motion for Final Approval") and related dates.

On June 29, 2023, one day prior to the current deadline to file the Motion for Final Approval, Defendant discovered it had inadvertently omitted 19 class members from the Class Data provided to the Settlement Administrator pursuant to the terms of the Settlement Agreement, who worked an additional 646 pay periods. This increases the total number of class member pay periods by 14.9% from 4,330 to 4,732.

The Parties acknowledge that drivers who have received the Court-approved Notice of Class Action Settlement (“Class Notice”), which was mailed out on May 31, 2023, may already have an expectation of compensation based on the terms of that notice and that the Court preliminarily approved the Settlement based on the amount and stated number of drivers and estimated pay periods.

Accordingly, the Parties have agreed to include the additional drivers 19 drivers in the Settlement Class and Defendant has agreed to increase the Gross Settlement Amount by 14.9%, based on the proportionate increase in the number of pay periods compared to the Class Data previously provided to the Administrator. Therefore, the Parties agree to increase the Gross Settlement Amount from \$450,000 to \$517,050.

In order to provide the additional 19 class members with notice and an opportunity to object, request exclusion, or dispute pay periods, the Parties agree, subject to this Court’s approval, to vacate the current final approval hearing date and motion filing deadline and establish the following schedule pertaining to the addition of these 19 Class members (“New Class Members”):

Event	Timing
Deadline for Settlement Administrator to initiate mailing Class Notice to New Class Members.	July 7, 2023
Last day for Class Counsel to file Motion for Final Approval.	July 27, 2023
Last day for Class members to mail Objections, Exclusion Requests, or Workweek/PAGA Pay Period Disputes to the Settlement Administrator (“Response Deadline for New Class Members”).	August 11, 2023
Last day for the Parties to respond to any objections by the New Class Members	August 16, 2023
Final Approval Hearing.	August 23, 2023, at _____ a.m./p.m.

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IT IS SO STIPULATED.

Dated: June 30, 2023

Respectfully submitted,
THE KICK LAW FIRM, APC

By: /s/Taras Kick
Taras Kick
Greg Taylor
Attorneys for Plaintiff
KENNETH KERNITZKI and others similarly
situated and aggrieved

Dated: June 30, 2023

LARSON & GASTON, LLP

By: /s/Victor Consentino
Victor Consentino
Attorneys for Defendant
QUALITY CAR SHIPPERS, LLC

~~PROPOSED~~ ORDER

Having considered the stipulation by the parties, and for good cause shown, the Court
ORDERS as follows:

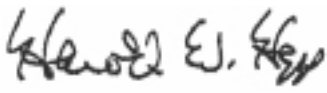
1. The current Motion for Final Approval hearing date of July 25, 2023, and deadline to file a Motion for Final Approval by June 30, 2023, are hereby vacated.
2. The Court orders the following Implementation Schedule:

Event	Timing
Deadline for Settlement Administrator to initiate mailing Class Notice to additional 19 Class members ("New Class Members")	July 7, 2023
Last day for Class Counsel to file Motion for Final Approval.	July 27, 2023
Last day for Class members to mail Objections, Exclusion Requests, or Workweek/PAGA Pay Period Disputes to the Settlement Administrator ("Response Deadline for New Class Members").	August 11, 2023
Last day for the Parties to respond to any objections by the New Class Members	August 16, 2023
Final Approval Hearing.	August 23, 2023, at <u>8:30</u> a.m./ p.m.

3. All other previously established deadlines remain in effect, including the Response Deadline for Class Members other than the 19 New Class Members.

IT IS SO ORDERED.

Dated: July 3, 2023



HON. HAROLD W. HOPP
JUDGE OF THE SUPERIOR COURT