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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO**

FRANK RENE LOPEZ & GEORGE
MOORE, individually, and on behalf of all
others similarly situated,

Plaintiffs,

vs.

BAUER'S INTELLIGENT
TRANSPORTATION, INC., a California
corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: CGC-21-589567

PAGA REPRESENTATIVE ACTION

[Assigned to Hon. Samuel K. Feng, Dept. 610]

**JOINT STIPULATION OF PAGA
REPRESENTATIVE ACTION
SETTLEMENT**

Complaint filed: February 11, 2021
Trial date: Not set

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1 **JOINT STIPULATION OF PAGA REPRESENTATIVE ACTION SETTLEMENT**

2 This Joint Stipulation of PAGA Representative Action Settlement (“Joint Stipulation of
3 Settlement” or “Settlement” or “Agreement”) is made and entered into by and between Plaintiffs FRANK
4 RENE LOPEZ and GEORGE MOORE, individually, and on behalf of all others similarly situated,
5 (“Plaintiffs”) and Defendant BAUER’S INTELLIGENT TRANSPORTATION, INC. (“Defendant”).
6 Plaintiffs and Defendant may hereinafter be referred to individually as a “Party” or collectively as “the
7 Parties.” THE PARTIES STIPULATE AND AGREE as follows:

8 **DEFINITIONS**

9 1. For purposes of this Settlement, “Complaint” refers to the First Amended Complaint filed in
10 the Action.

11 2. For purposes of this Settlement, “Action” refers to the above-captioned action entitled *FRANK*
12 *RENE LOPEZ & GEORGE MOORE V. BAUER’S INTELLIGENT TRANSPORTATION, INC.*, Case No.
13 CGC-21-589567, alleging a cause of action for Civil Penalties Under the Private Attorneys General Act
14 (Labor Code §§ 2698. et seq.), initiated on February 11, 2021, pending in Superior Court of the State of
15 California, County of San Francisco.

16 3. For purposes of this Settlement, “PAGA” means the Labor Code Private Attorneys General
17 Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*).

18 4. For purposes of this Settlement, “PAGA Notice” means Plaintiff Frank Rene Lopez’s letters to
19 Defendant and the LWDA, dated January 27, 2021, providing notice pursuant to Labor Code section
20 2699.3, subd.(a). Plaintiff’s PAGA case number is LWDA-CM-819828-21.

21 5. For purposes of this Settlement, the “PAGA Period” is February 11, 2020, through the date the
22 Court grants approval of the Settlement.

23 6. For purposes of this Settlement, the “Aggrieved Employees” consist of: all commercial drivers
24 who were employed by Defendant in California during the PAGA Period. The Parties estimate that there
25 are approximately 353 Aggrieved Employees and 3,000 pay periods from February 11, 2020 through
26 September 30, 2022 (the “Data Period”).

27 7. For purposes of this Settlement, “Aggrieved Employee Data” means Aggrieved Employee
28 identifying information in Defendants’ possession including the Aggrieved Employee’s name, last-known

1 mailing address, Social Security number, and number of PAGA Pay Periods.

2 8. For purposes of this Settlement, "PAGA Counsel" means MOON & YANG, APC.

3 9. For purposes of this Settlement, "Attorneys' Fees and Costs" or "PAGA Counsel Fee
4 Payment" means the attorneys' fees agreed upon by the Parties for PAGA Counsel's litigation and
5 resolution of the Action and all costs incurred and to be incurred by PAGA Counsel in the Action, subject
6 to the Court's approval. PAGA Counsel will request Attorneys' Fees not to exceed one-third (33 1/3%) of
7 the Gross Settlement Amount, which is \$38,333.33. The Costs requested to be reimbursed will not exceed
8 \$17,000.00.

9 10. For purposes of this Settlement, "PAGA Pay Period" means any pay period during which an
10 Aggrieved Employee worked as a commercial driver for Defendant at Defendant's locations in California
11 during the PAGA Period.

12 11. For purposes of this Settlement, "Defendant's Counsel" means LITTLER MENDELSON,
13 P.C.

14 12. For purposes of this Settlement, "Settlement Administrator" means Phoenix Class Action
15 Administrator, the neutral entity the Parties have agreed to appoint to administer the Settlement.
16 "Settlement Administration Costs" means the costs payable from the Gross Settlement Amount to the
17 Settlement Administrator for administering this Settlement. The Settlement Administration Costs are
18 currently estimated not to exceed \$7,000.00. To the extent actual Settlement Administration Costs are
19 greater than \$7,000.00, such excess amount will be deducted from the Gross Settlement Amount,
20 subject to the Court's approval.

21 13. For purposes of this Settlement, "PAGA Payment" or "Net Settlement Amount" means the
22 total amount of PAGA civil penalties to be paid from the Gross Settlement Amount after deducting the
23 Settlement Administration Costs, Individual Settlement Amounts, PAGA Counsel Attorneys' Fees and
24 Costs. PAGA Payment shall be allocated 25% to Aggrieved Employees and 75% to the California Labor
25 and Workforce Development Agency ("LWDA")

26 14. For purposes of this Settlement, "Individual PAGA Payment" means the portion of the 25% of
27 the Net Settlement Amount allocated to each Aggrieved Employee. There shall be no need to submit any
28 documentation to receive an Individual PAGA Payment.

1 15. For purposes of this Settlement, "LWDA PAGA Payment" means the 75% of the PAGA
2 Payment paid to the LWDA under Labor Code section 2699, subd. (i).

3 16. For purposes of this Settlement, "Effective Date" is the first court date after all of the following
4 have occurred: (a) the Court enters a dismissal of Plaintiffs' individual claims with prejudice and class
5 claims without prejudice, (b) the Court enters a Judgment on its Order Approving the PAGA Settlement,
6 and (c) the Judgment is final (i.e., the time to appeal the Judgment has expired.).

7 17. For purposes of this Settlement, "PAGA Representatives" mean Plaintiffs.

8 18. For purposes of this Settlement, "Released PAGA Claims" mean the claims being released by
9 Plaintiff and Aggrieved Employees as described in Paragraph 34 below.

10 19. For purposes of this Settlement, "PAGA Settlement Approval Order" means the Court's order
11 granting approval of this PAGA Settlement.

12 20. For purposes of this Settlement, "Judgment" means the judgment entered by the Court upon
13 granting final approval of the Settlement and signing the PAGA Settlement Approval Order.

14 **STIPULATED BACKGROUND**

15 21. On February 11, 2021, Plaintiff Frank Rene Lopez initiated this Action in San Francisco
16 County Superior Court, alleging Labor Code violations by Defendant. The initial complaint set forth class
17 claims and Plaintiff's individual claims.

18 22. Pursuant to Labor Code section 2699.3, subd. (a), Plaintiff Lopez gave written notice to
19 Defendant and the LWDA by sending the PAGA Notice on January 27, 2021. Plaintiff's PAGA Notice
20 alleges Defendant violated the following California Labor Code provisions: §§ 201, 202, 203, 204, 210,
21 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 2698, et seq., 2699, et seq., 2802,
22 and IWC Wage Orders, regarding alleged: failure to provide meal periods, failure to authorize and
23 permit rest periods, failure to pay all wages owed, failure to furnish accurate itemized wage
24 statements, failure to maintain complete and accurate records, failure to reimburse necessary business
25 expenses, failure to pay earned wages two times per month, and failure to pay all wages owed at the
26 time of termination.

27 23. On April 21, 2021, after Plaintiff Lopez satisfied the administrative exhaustion requirement for
28 filing a PAGA claim, Plaintiff filed a First Amended Complaint adding a cause of action for Civil

1 Penalties Under PAGA.

2 24. Subsequently, the Parties agreed to participate in a PAGA-only mediation after Defendant's
3 counsel provided Plaintiff's counsel with Plaintiff's signed arbitration agreement containing a class action
4 waiver. Plaintiff's counsel agreed that the arbitration agreement's class action waiver covered all the class
5 claims alleged in the First Amended Complaint. As part of this Agreement, Plaintiffs agree to seek
6 dismissal of the remaining claims in the Complaint as non-litigable due to the arbitration agreements.

7 25. On September 9, 2022, Defendant filed a Motion to Compel Arbitration, which the Court
8 granted in part on October 11, 2022. The Court ordered arbitration of Plaintiff's individual PAGA claims
9 and stayed the representative PAGA claims.

10 26. The Parties thereafter agreed to keep mediation as scheduled. In order to prepare for mediation,
11 the Parties engaged in extensive informal discovery. Defendant provided to Plaintiffs' counsel the
12 following: Plaintiff's employment records, a representative sample of time and wage records for
13 Aggrieved Employees, and Defendant's employee handbook. The Parties then had data experts analyze
14 the time and wage records to assess Plaintiff's PAGA claims.

15 27. On November 14, 2022, the Parties participated in an all-day mediation presided over by
16 experienced class and representative action mediator Tripper Ortman, Esq., which led to this Agreement to
17 settle the Action.

18 28. On February 1, 2023, the Parties submitted a Joint Stipulation and Proposed Order requesting
19 the Court to grant Plaintiff leave to file his Second Amended Complaint which adds George Moore as an
20 additional plaintiff in this Action.

21 29. Plaintiffs and Defendant now wish to fully and finally settle all of the disputes and differences
22 between them, including, but not limited to, the Action, and any known or unknown rights or claims that
23 Plaintiff may have against Defendant. The Parties agree that this Agreement reflects their good faith
24 compromise of the claims raised in the Action, based upon their assessment of the mutual risks and costs
25 of further litigation and the assessments of their respective counsel.

26 30. Defendant denies and continues to deny all of the allegations made by Plaintiff and the
27 Aggrieved Employees in the Action, including in the PAGA Notice, the initial complaint, the FAC, and
28 the SAC. Defendant further denies and continues to deny that it is liable or owes damages, penalties,

1 interest, attorneys' fees, costs, wages, expense reimbursements, or other compensation or remedies with
2 respect to the alleged facts or claims asserted in the Action. Nonetheless, without admitting or conceding
3 any liability or damages, Defendant has agreed to settle the Action on the terms and conditions set forth in
4 this Agreement, to avoid the burden, expense, and uncertainty of continuing litigating the Action. Plaintiff
5 acknowledges that the execution of this Agreement and the payment of consideration or any other
6 obligation hereunder are not and shall not be construed in any way as an admission of wrongdoing or
7 liability on the part of Defendant or the Released Parties.

8 31. The Parties, PAGA Counsel and Defense Counsel represent that they are not aware of any
9 other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

10 **PRIMARY TERMS OF SETTLEMENT**

11 **32. MONETARY TERMS.**

12 (a) **Gross Settlement Amount:** Defendant shall pay a total of \$115,000.00 for the Gross
13 Settlement Amount. The Gross Settlement Amount includes the PAGA Payment,
14 Settlement Administration Expenses, PAGA Representative Enhancement Awards,
15 and Attorneys' Fees and Costs. The Settlement Administrator will disburse the entire
16 Gross Settlement Amount without asking or requiring Aggrieved Employees to submit
17 any claim as a condition of payment. None of the Gross Settlement Amount will revert
18 to Defendant.

19 (b) **Payments from the Gross Settlement Amount:** The Settlement Administrator will make
20 and deduct the following payments from the Gross Settlement Amount, in the amounts
21 specified by the Court in the Final Approval:

22 (i) **PAGA Counsel Attorneys' Fees and Costs:** PAGA Counsel will request
23 Attorneys' Fees of up to one third (33 1/3%) of the Gross Settlement Amount,
24 which is currently estimated to be \$38,333.33, and reimbursement of Costs
25 not to exceed \$17,000.00. Defendant will not oppose requests for these
26 payments provided that they do not exceed these amounts. The Settlement
27 Administrator will pay the Attorneys' Fees and Costs using one or more IRS
28 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes

owed on the Attorneys' Fees and Costs and will hold Defendant harmless, and indemnify Defendant, from any dispute or controversy regarding any division or sharing of any of these payments. A reduction of the PAGA Attorneys' Fees and/or Costs shall not be grounds to nullify this Agreement.

(ii) Settlement Administration Costs: Settlement Administration Costs not to exceed \$7,000.00 except for a showing of good cause and as approved by the Court. To the extent the Settlement Administration Costs are less or the Court approves payment less than \$7,000.00, the Settlement Administrator will retain the remainder in the Net Settlement Amount for distribution on a pro rata basis to Aggrieved Employees.

(iii) PAGA Representative Enhancement Award: From the Gross Settlement Amount, Plaintiffs Frank Rene Lopez and George Moore will each receive \$7,500 each in recognition of their effort and work in prosecuting the Actions on behalf of all Aggrieved Employees and for their respective general release of all claims.

(iv) PAGA Payment (To the LWDA and Aggrieved Employees): PAGA Payment to be paid from the Gross Settlement Amount, with 75% allocated to the LWDA and 25% allocated to the Individual PAGA Payments.

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

33. SETTLEMENT DATA, FUNDING, AND PAYMENTS.

(a) Escalator Clause: This Settlement is based on Defendant's representation that there are

1 approximately 353 Aggrieved Employees and approximately 3,000 pay periods in the
2 Data Period. If the actual number of Pay Periods encompassed within the PAGA
3 Period exceeds 3,000 by more than 10%, then, the Gross Settlement Amount shall be
4 increased by the percentage that the actual number of pay periods in which Aggrieved
5 Employees worked charter and/or commuter driving shifts in the Data Period exceeds
6 3,300.

7 (b) Aggrieved Employee Data: Within fourteen (14) calendar days from the date the Court
8 grants approval of this Settlement, Defendant will deliver the Aggrieved Employee
9 Data to the Settlement Administrator. To protect Aggrieved Employees' privacy rights,
10 the Settlement Administrator must maintain the Aggrieved Employee Data in
11 confidence, use the Aggrieved Employee Data only for purposes of this Settlement and
12 for no other purpose, and restrict access to the Aggrieved Employee Data to Settlement
13 Administrator employees who need access to the Aggrieved Employee Data to effect
14 and perform under this Agreement. Defendant has a continuing duty to immediately
15 notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted
16 Aggrieved Employee identifying information and to provide corrected or updated
17 Aggrieved Employee Data as soon as reasonably feasible. Without any extension of
18 the deadline by which Defendant must send the Aggrieved Employee Data to the
19 Settlement Administrator, the Parties and their counsel will expeditiously use best
20 efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing
21 or omitted Aggrieved Employee Data.

22 (c) Funding of Gross Settlement Amount: Defendant shall fully fund the Gross Settlement
23 Amount by transmitting the funds to the Settlement Administrator no later than fifteen
24 (15) business days following the Effective Date. In the event Defendant defaults on the
25 payment as set forth above, it will have an opportunity to cure within fourteen (14)
26 days after being given notice by PAGA Counsel.

27 (d) Payments from the Gross Settlement Amount: Within fourteen (14) calendar days after
28 Defendant funds the Gross Settlement Amount, the Settlement Administrator will mail

1 checks for all Individual PAGA Payment, LWDA PAGA Payment, Settlement
2 Administration Costs, Individual Settlement Amounts, PAGA Counsel Attorneys' Fees
3 and Costs. Disbursement of PAGA Counsel Attorneys' Fees and Costs shall not
4 precede disbursement of Individual PAGA Payments.

5 (i) Distribution of Settlement Payments: The Settlement Administrator will issue
6 checks for the Individual PAGA Payments and send them to the Aggrieved
7 Employees via first-class United States Postal Service ("USPS") mail, postage
8 prepaid. The check shall be accompanied by a cover letter from the Settlement
9 Administrator, substantially in the form attached to this Agreement as **Exhibit**
10 **A**. The face of each check shall prominently state the date (not less than one-
11 hundred eighty (180) calendar days after the date of mailing) when the check
12 will be voided. The Settlement Administrator will cancel all checks not cashed
13 by the void date. Before mailing any checks, the Settlement Administrator
14 must update the recipients' mailing addresses using the National Change of
15 Address Database.

16 (ii) Aggrieved Employee Address Search: The Settlement Administrator must
17 conduct an Aggrieved Employee Address Search for all other Aggrieved
18 Employees whose checks are returned undelivered without USPS forwarding
19 address. Within seven (7) calendar days of receiving a returned check the
20 Settlement Administrator must re-mail checks to the USPS forwarding
21 address provided or to an address ascertained through the Aggrieved
22 Employee Address Search. The Settlement Administrator need not take
23 further steps to deliver checks to Aggrieved Employees whose re-mailed
24 checks are returned as undelivered. The Settlement Administrator shall
25 promptly send a replacement check to any Aggrieved Employee whose
26 original check was lost or misplaced, requested by the Aggrieved Employee
27 prior to the void date.

28 (iii) Uncashed Settlement Checks: Any checks issued by the Settlement

1 Administrator to Aggrieved Employees will be negotiable for one-hundred
2 eighty (180) calendar days. After one-hundred eighty (180) calendar days
3 from the date of mailing, the checks shall become null and void. For any
4 Aggrieved Employee whose Individual PAGA Payment check is uncashed
5 and cancelled after the void date, the Administrator shall transmit the funds
6 represented by such checks to the California Controller's Unclaimed Property
7 Fund in the name of the Aggrieved Employee pursuant to the Unclaimed
8 Property Law, California Civil Code § 1500 et seq. The Parties agree that this
9 disposition results in no "unpaid residue" under California Civil Procedure
10 Code § 384, as the entire Gross Settlement Amount will be paid out to,
11 whether or not they all cash their Settlement Checks. Therefore, Defendant
12 will not be required to pay any interest on said amount.

13 (iv) Unaffected Benefits: The Individual PAGA Payments made to Aggrieved
14 Employees under this Settlement, and any other payments made pursuant to
15 this Settlement, will not be utilized to calculate any additional benefits under
16 any benefit plans to which any Aggrieved Employees may be eligible,
17 including, but not limited to, profit-sharing plans, bonus plans, 401(k) plans,
18 stock purchase plans, vacation plans, sick leave plans, PTO plans, and any
19 other benefit plan. Rather, it is the Parties' intention that this Settlement will
20 not affect any rights, contributions, or amounts to which any Aggrieved
21 Employees may be entitled under any benefit plans.

22 **34. RELEASE.** Effective on the date when Defendant fully funds the entire Gross Settlement
23 Amount, Plaintiffs, PAGA Counsel, and Aggrieved Employees will release claims against all Released
24 Parties, as follows:

25 (a) **Plaintiffs' Release.** Upon the entry of final judgment and Defendant's fulfillment of
26 its Settlement Payment obligations pursuant to the terms of this Agreement which
27 includes Plaintiffs' PAGA Representative Enhancement Award, Plaintiffs hereby
28 provide a general release of claims for themselves and their spouse, heirs,

1 executors, successors, assigns, administrators, and representatives and forever
2 releases, remises and discharges Defendant and the Released Parties from any and
3 all charges, complaints, claims, liabilities, obligations, promises, agreements,
4 controversies, damages, actions, causes of action, suits, rights, demands, costs,
5 losses, debts and expenses (including attorney fees and costs), known or unknown,
6 at law or in equity, which they may now have or may have after the signing of this
7 Agreement, arising out of or in any way connected with their employment with
8 Defendant including, the PAGA Released Claims, claims that were asserted or
9 could have been asserted and any and all transactions, occurrences, or matters
10 between the Parties occurring prior to the date this Agreement is fully executed.
11 Without limiting the generality of the foregoing, this release shall include, but not
12 be limited to, any and all claims under the (a) Americans With Disabilities Act, as
13 amended; (b) Title VII of the Civil Rights Act of 1964, as amended; (c) the Civil
14 Rights Act of 1991; (d) 42 U.S.C. § 1981, as amended; (e) the Age Discrimination
15 in Employment Act, as amended; (f) the Fair Labor Standards Act, as amended; (g)
16 the Equal Pay Act; (h) the Employee Retirement Income Security Act, as amended;
17 (i) the Consolidated Omnibus Budget Reconciliation Act; (j) the Rehabilitation Act
18 of 1973; (k) the Family and Medical Leave Act; (l) the Civil Rights Act of 1966;
19 (m) the California Fair Employment and Housing Act; (n) the California
20 Constitution; (o) the California Labor Code; (p) the California Government Code;
21 (q) the California Civil Code; and (r) any and all other federal, state and local
22 statutes, ordinances, regulations, rules and other laws, and any and all claims based
23 on constitutional, statutory, common law or regulatory grounds as well as any other
24 claims based on theories of wrongful or constructive discharge, breach of contract
25 or implied contract, fraud, misrepresentation, promissory estoppel or intentional
26 and/or negligent infliction of emotional distress, or damages under any other
27 federal, state or local statutes, ordinances, regulations, rules or laws.

28 (i) With respect to the General Release, Plaintiffs stipulate and agree that, upon

1 Defendant's fulfillment of its Settlement Payment obligations under this
2 Agreement, Plaintiffs shall be deemed to have expressly waived and
3 relinquished, to the fullest extent permitted by law, the provisions, rights and
4 benefits of section 1542 of the California Civil Code, or any other similar
5 provision under federal or state law, which provides:

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

10 (b) **Released Claims by Aggrieved Employees.** Upon the entry of final judgment and
11 Defendant's fulfillment of its Settlement Payment obligations, the Released Parties,
12 including Defendant, shall be entitled to a release from all PAGA claims for civil
13 penalties under California Labor Code Sections 2698, et seq., predicated on all of the
14 California Labor Code violations that are asserted in the LWDA Notice and operative
15 complaint including but not limited to civil penalties pursuant to Labor Code section
16 2699, et seq. for violations of Labor Code sections §§ 201, 202, 203, 204, 210, 226(a),
17 226.7, 226.8, 510, 512, 558, 1194, 1197, 1197.1 1198, 2802 and applicable Industrial
18 Welfare Commission Wage Orders. The release does not include underlying wage and
19 hour claims, claims for wrongful termination, discrimination, unemployment
20 insurance, disability, and workers' compensation, and claims outside of the PAGA
21 Period. The Released Claims do not include any claims that cannot be released as a
22 matter of law.

23 (c) **Released Parties.** Released Parties are Defendant and its past, present and/or future,
24 direct and/or indirect, officers, directors, members, managers, employees, agents,
25 representatives, attorneys, insurers, partners, investors, shareholders, administrators,
26 parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns,
27 and joint venturers.

28 **35. MOTION FOR PAGA APPROVAL.** The Parties agree to jointly prepare and file a motion
for final approval ("Motion for PAGA Settlement Approval") of this Settlement.

- 1 (a) Plaintiffs' Responsibilities. Within sixty (60) days of full execution of this Agreement,
2 and not later than sixteen (16) court days before the calendared PAGA Settlement
3 Approval Hearing, Plaintiffs will file with the Court, a motion for approval of the
4 PAGA Settlement that includes a request for approval of the PAGA settlement under
5 Labor Code section 2699, subd. (l), declarations by Plaintiffs and PAGA Counsel, and
6 a Proposed Order and Judgment (collectively "Motion for PAGA Settlement
7 Approval"). Prior to filing all documents necessary for obtaining PAGA Settlement
8 Approval, Plaintiffs will provide drafts of these documents to Defense Counsel for
9 review at least five (5) business days before filing the Motion for PAGA Settlement
10 Approval.
- 11 (b) Responsibilities of Counsel. PAGA Counsel and Defense Counsel are jointly
12 responsible for expeditiously finalizing and filing the Motion for PAGA Settlement
13 Approval, obtaining a prompt hearing date for the Motion for PAGA Settlement
14 Approval, and for appearing in Court to advocate in favor of the Motion for PAGA
15 Settlement Approval. PAGA Counsel is responsible for delivering the Court's
16 Preliminary Approval Order to the Settlement Administrator.
- 17 (c) Duty to Cooperate. If the Parties disagree on any aspect of the proposed motion for
18 PAGA Settlement Approval of this Settlement and/or the supporting declarations and
19 documents, PAGA Counsel and Defense Counsel will expeditiously work together on
20 behalf of the Parties by meeting and conferring in good faith, to resolve the
21 disagreement. If the Court does not grant PAGA Settlement Approval or conditions
22 PAGA Settlement Approval on any material change to the Settlement (including, but
23 not limited to, the scope of release to be granted by Aggrieved Employees), the Parties
24 will expeditiously work together in good faith to address the Court's concerns by
25 revising the Agreement as necessary to obtain PAGA Settlement Approval. The
26 Court's decision to award less than the amounts requested for the Individual Settlement
27 Amount, PAGA Counsel Fees Payment, and/or Settlement Administrator Expenses
28 Payment shall not constitute a material modification to the Agreement within the

1 meaning of this Section.

- 2 (d) LWDA Notice. The Parties agree that Plaintiffs will submit Notice to the LWDA of
3 this Settlement along with a copy of this Agreement within ten (10) calendar days of its
4 execution by all Parties and PAGA Counsel and will thereafter submit a copy of any
5 Judgment or any other order (e.g., the PAGA Approval Order) providing for an award
6 of civil penalties in conformity with Labor Code Section 2699(l).

7 **36. SETTLEMENT ADMINISTRATION.**

- 8 (a) Selection of Settlement Administrator. The Parties have jointly selected Phoenix Class
9 Action Administrator ("Phoenix") to serve as the Settlement Administrator and
10 verified that, as a condition of appointment, Phoenix agrees to be bound by this
11 Agreement and to perform, as a fiduciary, all duties specified in this Agreement in
12 exchange for payment of Settlement Administration Expenses. The Parties and their
13 Counsel represent that they have no interest or relationship, financial or otherwise, with
14 the Settlement Administrator other than a professional relationship arising out of prior
15 experiences administering settlements. Phoenix will administer the settlement and shall
16 be paid for Administration Costs, which are estimated not to exceed \$7,000.
- 17 (b) Employer Identification Number. The Administrator shall have and use its own
18 Employer Identification Number for purposes of calculating payroll tax withholdings
19 and providing reports state and federal tax authorities.
- 20 (c) Qualified Settlement Fund. The Administrator shall establish a settlement fund that
21 meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury
22 Regulation section 468B-1.
- 23 (d) Administrator Duties. The Administrator has a duty to perform or observe all tasks to
24 be performed or observed by the Administrator contained in this Agreement or
25 otherwise.

26 Administration Timeline: Within fifteen (15) business days after the Effective Date,
27 Defendant shall pay the total amount of the PAGA and Individual Settlement
28 Amounts. Defendant will provide the necessary information about the Aggrieved

1 Employees to the Settlement Administrator within thirty (30) days of the Effective
2 Date. Within fifteen (15) days after receipt of the Gross PAGA Settlement Amount
3 from Defendant, the Settlement Administrator will pay the Attorneys' Fees, the
4 Attorneys' Expenses and Costs, the Administration Costs, and the portion of the
5 PAGA Payment allocated to the LWDA from the Gross PAGA Settlement Amount.
6 Within thirty (30) days after receipt of the Gross PAGA Settlement Amount from
7 Defendant, Phoenix will issue to each Aggrieved Employee a check for their
8 Individual PAGA Payment at their last known home address along with an explanatory
9 letter, which will be mutually approved by the Parties.

10 (e)

11 (f)

12 (g) Unclaimed Funds: Checks will remain negotiable for one-hundred eight (180) days.

13 Any checks returned as non-deliverable on or before the check cashing deadline will be
14 promptly sent via regular First-Class U.S. Mail to the forwarding address affixed
15 thereto. If no forwarding address is provided, Phoenix will promptly attempt to
16 determine the correct address using a skip-trace, or other search using the name,
17 address, Social Security number, phone number, credit reporting and social media of
18 the Aggrieved Employee involved and will then perform a re-mailing. If an Aggrieved
19 Employee's check is not cashed within 120 days after its first mailing to the Aggrieved
20 Employees the Settlement Administrator shall send the affected Aggrieved Employee's
21 notice informing them that unless their check is cashed in the next 60 days, it will
22 expire and become non-negotiable, and offer to replace the check if it was lost or
23 misplaced but not cashed. Subject to Court's approval, all checks not cashed within
24 180 days of payment shall first be allocated to Aggrieved Employees who dispute their
25 settlement allocation and Defendant later verifies they are owed additional penalties.
26 The remainder shall be paid to the State Controller Fund in the name(s) of the absent
27 Aggrieved Employee(s). The Aggrieved Employees who have not cashed their check
28 shall remain bound by the Settlement. The Individual PAGA Payments are 100%

penalties and shall be reported using IRS tax form 1099.

(h) The Settlement Administrator will provide an accounting under oath to the parties of the amounts paid out.

(i) Defendant makes no representations or warranties with respect to tax consequences of any payment under this Agreement.

37. CONTINUING JURISDICTION OF THE COURT. The Parties agree that the Court shall retain continuing jurisdiction over this case under CCP Section 664.6 to ensure the continuing implementation of the provisions of this settlement and that the time within which to bring this action to trial under CCP Section 583.310 shall be extended from the date of the signing of this agreement by all Parties until the entry of the final approval order and judgment or if not entered the date this agreement shall no longer be of any force or effect. Pursuant to CCP §664.6, after entry of Judgment, the Court will retain jurisdiction over the Parties, Actions, 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.

(a) Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the PAGA Counsel Attorneys' Fees and Costs, the Parties, and their respective counsel 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 another party 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.

38. ADDITIONAL PROVISIONS.

(a) Nullification. The Settlement will be null and void if any of the following occur: (i) the Court does not enter the PAGA Settlement Approval Order and approve the Released PAGA Claims specified herein; (ii) Plaintiffs exercise their option to nullify the

1 Agreement after Defendant defaults on its payment of the Gross Settlement Amount
2 and fails to cure the default as described in paragraph 37(c); or (iii) the Settlement does
3 not become final for any other reason (e.g., an objection by the LWDA). A reduction
4 of the Attorneys' Fees and Costs and/or any PAGA Representative Enhancement
5 Payment(s) shall not be grounds for nullification of this Settlement. If the Settlement is
6 nullified, any order or judgment entered by the Court in furtherance of this Agreement
7 shall be treated as void from the beginning, and the Stipulations and Recitals contained
8 herein shall be of no force or effect, and shall not be treated as an admission by the
9 Parties or their counsel. In such a case, the Parties and any funds to be awarded under
10 this Agreement shall be returned to their respective statuses as of the date and time
11 immediately prior to the execution of this Agreement, and the Parties shall proceed in
12 all respects as if this Agreement had not been executed, except that any fees already
13 incurred by the Settlement Administrator shall be paid equally by both Parties.

14 (b) Confidentiality. Neither Plaintiffs nor Plaintiffs' Counsel shall issue any press release
15 or announcement of any kind related in any way to the Settlement. Plaintiffs shall be
16 informed that the Settlement is confidential and shall be advised to keep the Settlement
17 confidential. The Aggrieved Employees (including Plaintiff and PAGA Counsel) may:
18 (1) as required by law; (2) as required under the terms of the Settlement; or (3) as
19 required under counsel's duties and responsibilities as PAGA Counsel, comment
20 regarding the specific terms of the Settlement. In all other cases, Plaintiffs and PAGA
21 Counsel agree to limit their statements regarding the terms of the Settlement, whether
22 oral, written or electronic (including the world wide web), to say the Actions have been
23 resolved and that Plaintiffs and PAGA Counsel are satisfied with the Settlement terms.
24 Nothing in this Section is intended to interfere with PAGA Counsel's duties and
25 obligations to faithfully discharge their duties as PAGA Counsel, including but not
26 limited to, communicating with Aggrieved Employees regarding the Settlement. This
27 Settlement shall not be advertised on Plaintiffs' Counsels' personal or firm website(s).
28 However, Plaintiffs' Counsel may include publicly-available information in their

1 declarations describing their qualifications as counsel in other cases.

2 (c) Applicable Law. All terms and conditions of this Agreement and its exhibits will be
3 governed by and interpreted according to the internal laws of the state of California,
4 without regard to conflict of law principles. This Agreement shall be deemed to have
5 been entered into in San Francisco County, California, and all questions of validity,
6 interpretation, or performance of any of its terms or of any rights or obligations of the
7 parties to this Agreement shall be governed by California law. If any legal or equitable
8 action or arbitration is necessary to enforce the terms of this Agreement, it shall be
9 brought in the State of California, County of San Francisco.

10 (d) Entire Agreement. This Agreement constitutes the entirety of the Parties' Settlement
11 terms. No other prior or contemporaneous written or oral agreements may be deemed
12 binding on the Parties.

13 (e) Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and
14 represent that they are authorized by Plaintiffs and Defendant, respectively, to take all
15 appropriate action required or permitted to be taken by such Parties pursuant to this
16 Agreement to effectuate its terms, and to execute any other documents reasonably
17 required to effectuate the terms of this Agreement including any amendments to this
18 Agreement.

19 (f) Amendment or Modification. This Agreement may be amended, modified, changed,
20 or waived only by an express written instrument signed by all Parties or their counsel,
21 and approved by the Court.

22 (g) Assignment Binding on Successors. This Settlement shall be binding upon and inure to
23 the benefit of the Parties hereto and their respective heirs, trustees, executors,
24 administrators, successors and assigns.

25 (h) Costs and Fees. The Parties shall each bear their own costs, attorneys' fees, mediator
26 fees, and other fees incurred in connection with this Agreement and in connection with
27 the Action and Plaintiff's claims, except as otherwise set forth specifically herein.

28 (i) Captions and Contractual Terms. Paragraph titles or captions contained herein are

1 inserted as a matter of convenience and for reference, and in no way define, limit,
2 extend, or describe the scope of this Settlement or any provision hereof. Each term of
3 this Settlement is contractual and not merely a recital.

4 (j) Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall
5 be to calendar days. In the event any date or deadline set forth in this Agreement falls
6 on a weekend or federal legal holiday, such date or deadline shall be on the first
7 business day thereafter.

8 (k) Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of
9 this Agreement. This Agreement will not be construed against any Party on the basis
10 that the Party was the drafter or participated in the drafting.

11 (l) No Tax Advice. Neither Plaintiffs, PAGA Counsel, Defendant, nor Defense Counsel
12 are providing any advice regarding taxes or taxability, nor shall anything in this
13 Settlement be relied upon as such within the meaning of United States Treasury
14 Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

15 (m) Invalidity of Any Provision. Before declaring any provision of this Agreement invalid,
16 the Court will first attempt to construe the provision as valid to the fullest extent
17 possible consistent with applicable precedents so as to define all provisions of this
18 Agreement valid and enforceable

19 (n) Execution and Counterparts. This Agreement is subject only to the execution of all
20 Parties. However, the Agreement may be executed in one or more counterparts. All
21 executed counterparts and each of them, including electronic signatures (e.g.,
22 DocuSign), facsimile and scanned copies of the signature page, will be deemed to be
23 one and the same instrument. The Parties expressly agree to the use of electronic
24 signatures (e.g., DocuSign).

25 (o) Binding Agreement. The Parties warrant that they understand and have full authority to
26 enter into this Agreement, and further intend that this Agreement will be fully
27 enforceable and binding on all Parties, and agree that it will be admissible and subject
28 to disclosure in any proceeding to enforce its terms, notwithstanding any mediation

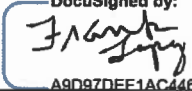
- 1 confidentiality provisions that otherwise might apply under federal or state law.
- 2 (p) Covenants and Representations by Plaintiffs and PAGA Counsel. Plaintiffs represent
- 3 and warrant that they have not assigned or transferred or purported to assign or transfer
- 4 to any person or entity, any claim or portion thereof, or interest therein, which is or
- 5 may be subject to this Agreement. Plaintiffs acknowledge they have read this
- 6 Agreement, that they fully understand their rights, privileges, and duties under the
- 7 Agreement, and enter into this Agreement freely and voluntarily. Plaintiffs further
- 8 acknowledge that they had the opportunity to consult with
- 9 their attorneys to explain the terms of this Agreement and the consequences of signing
- 10 this Agreement.
- 11 (q) Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this
- 12 Agreement is a fair, adequate, and reasonable settlement of the Actions and have
- 13 arrived at this Settlement after arm's-length negotiations and in the context of
- 14 adversarial litigation, taking into account all relevant factors, present and potential. The
- 15 Parties further acknowledge that they are each represented by competent counsel and
- 16 that they have had an opportunity to consult with their counsel regarding the fairness
- 17 and reasonableness of this Settlement.
- 18 (r) Stay of Litigation. The Parties agree not to object to any Court filings consistent with
- 19 this Agreement. The Parties further agree that upon the execution of this Agreement,
- 20 the litigation shall be stayed, except to effectuate the terms of this Agreement.

21 IT IS SO STIPULATED.

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Plaintiffs & PAGA Representatives:

Dated: 4/4/2023

By: 
Frank Rene Lopez

Dated:

By: _____
George Moore

Plaintiff's Counsel:

Dated: 04/04/2023

MOON & YANG, APC

By: 
Kane Moon
Allen Feghali
Julie Sohyun Oh
Attorneys for Plaintiff Frank Rene Lopez

Plaintiff's Counsel:

Dated:

LEBE LAW

By: _____
Jonathan M. Lebe
Attorneys for Plaintiff George Moore

Defendant:

Dated:

BAUER'S INTELLIGENT TRANSPORTATION, INC.

By: 

Defendant's Counsel:

Dated:

LITTLER MENDELSON, P.C.

By: 
Robert G. Hulteng
William A. Cosmopulos
Robert M. Geiger
Attorney for Defendant

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Exhibit A

<<DATE>>

<<FIRST_NAME>> <<LAST_NAME>>

<<ADDRESS 1>>

<<ADDRESS 2>>

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT

Lopez v. Bauer's Intelligent Transportation, Inc.

Superior Court of California, County of San Francisco, Case No. CGC-21-589567

PLEASE READ THIS NOTICE

Enclosed is your payment from the settlement of the lawsuit entitled *Lopez v. Bauer's Intelligent Transportation, Inc.* (San Francisco County Superior Court, Case No. CGC-21-589567). The lawsuit was filed by a former employee, Frank Rene Lopez and George Moore ("Plaintiffs"), against the named defendant Bauer's Intelligent Transportation, Inc. ("Defendant"), pursuant to the California Private Attorneys General Act of 2004, codified at California Labor Code § 2698, *et seq.* (called "PAGA"). The lawsuit was brought on behalf of the State of California and all commercial drivers who were employed by Defendant in California at any time between February 11, 2020 and [APPROVAL DATE] ("Relevant Period"). You have been identified as one of the employees on whose behalf the lawsuit was filed.

Plaintiffs allege they and other commercial drivers employed by Defendant in California during the Relevant Period were subjected to various Labor Code violations. Defendant denied and continues to deny all allegations and liability. However, to avoid further time and expense of protracted and uncertain litigation, Plaintiffs and Defendant have agreed to settle the lawsuit for civil penalties via the Settlement.

The Court approved the Settlement on [DATE]. On the date the Court enters the Order approving the Settlement, and payment of all funds due under the Settlement are made, the Labor and Workforce Development Agency ("LWDA") and PAGA Members (as defined below), including Plaintiff, fully release and forever discharge the Released Parties (as defined below) from any and all Released Claims (as defined below).

"PAGA Members" means all commercial drivers who were employed by Defendant in California from February 11, 2020 through [APPROVAL DATE].

"Released Claims" that as part of the settlement, you will be releasing claims for civil penalties that arose during the Relevant Period related to the following: all PAGA claims for civil penalties under California Labor Code Sections 2698, *et seq.*, predicated on all of the California Labor Code violations that are asserted in the LWDA Notice and operative complaint including but not limited to civil penalties pursuant to Labor Code section 2699, *et seq.* for violations of Labor Code sections §§ 201, 202, 203, 204, 210, 226(a), 226.7, 226.8, 510, 512, 558, 1194, 1197, 1197.1 1198, 2802 and applicable Industrial Welfare Commission Wage Orders. The release does not include

underlying wage and hour claims, claims for wrongful termination, discrimination, unemployment insurance, disability, and workers' compensation, and claims outside of the PAGA Period. The Released Claims do not include any claims that cannot be released as a matter of law.

"Released Parties" are Defendant and its past, present and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers.

The Gross Settlement Amount is the maximum total payment under the Settlement. The Gross Settlement Amount is \$115,000.00. This sum is comprised of PAGA Counsel's Fees of \$38,333.33; PAGA Counsel's Costs of up to \$17,000.00; Settlement Administration Costs of up to \$7,000.00; the PAGA Representative Enhancement Awards of \$7,500.00 to each named Plaintiff; and the remainder as PAGA Penalties. The PAGA Penalties are comprised of the LWDA payment and the Individual Payments to PAGA Members. \$ _____, or 75% of the PAGA Penalties will be paid to the LWDA in accordance with the PAGA. \$ _____, or 25% of the PAGA Penalties will be paid to the PAGA Members as Individual PAGA Payments, which will be calculated based on the number of each PAGA Member's pay periods worked during the Relevant Period. The enclosed check represents your share based upon the number of pay periods you worked during the period from February 11, 2020 through [APPROVAL DATE].

An IRS 1099 Form is enclosed. You will be solely responsible for paying federal, state or local taxes, if any, on the amount of your check.

Your enclosed check is valid for 180 days from the date of its issuance. **It is strongly recommended that you cash or deposit this check immediately.** After that date, you cannot cash the check and it will be null and void and the amount forwarded to the State of California Controller's Office Unclaimed Property Division for further handling.

Even if you fail to cash the enclosed check, you will still be deemed to have waived all claims arising from the above-entitled lawsuit as defined above under "Released Claims," including all claims set forth in the release of claims described above.

If the check is lost or misplaced, please contact the Settlement Administrator immediately at [xxx-xxx-xxxx]. If you have any questions about your check, please contact the [insert administrator information].